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C.R.P.(MD) Nos.458 & 459 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.07.2023
Delivered on	17.11.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) Nos.458 & 459 of 2023

and

C.M.P.(MD) No.2185 of 2023

P.Rajasekar

... Petitioner in
both C.R.Ps.

Vs.

P.Subramanian

... Respondent in
both C.R.Ps.

Common Prayer:- These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 02.02.2023 passed in I.A.Nos.10 & 11 of 2022 in O.S.No.55 of 2016 on the file of the Sub Court, Thuraiyur.

For Petitioner
in both C.R.Ps. : Mr.Raguvaran Gopalan

For Respondent
in both C.R.Ps. : No appearance



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C.R.P.(MD) Nos.458 & 459 of 2023

COMMON ORDER

By this common order, both these Civil Revision Petitions are being disposed of.

2. Both these Civil Revision Petitions have been filed by the petitioner as against the impugned orders dated 02.02.2023 passed in I.A.Nos.10 & 11 of 2022 in O.S.No.55 of 2016 on the file of the Sub Court, Thuraiyur.

3. The petitioner is the second defendant in the suit in O.S.No.55 of 2016. The said suit in O.S.No.55 of 2016 was filed by the respondent/plaintiff for partition. After the evidence on the side of the respondent/plaintiff was closed, the petitioner/second defendant filed I.A.Nos.10 & 11 of 2022 to reopen the evidence on the side of the plaintiff and recall P.W.1 for further cross examination with regard to the entries in Accounts Books maintained by the deceased first defendant, namely the father of the parties. The said I.As. were dismissed by the Trial Court *vide* impugned orders dated 02.02.2023. Aggrieved by this, the present Civil Revision Petitions have been filed.



C.R.P.(MD) Nos.458 & 459 of 2023

4. The learned counsel appearing for the petitioner/second defendant would submit that the suit for partition was filed by the respondent/plaintiff against the father of the petitioner/second defendant. The Trial Court erred in dismissing the I.As. on the ground that the I.As. have been filed belatedly. Hence, the impugned orders passed by the Trial Court are liable to be set aside.

5. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that in the year 2020 itself, the evidence of P.W.1 was completed and after completion of evidence, the suit is posted for arguments. At this stage, such an application cannot be entertained. The Trial Court has rightly dismissed the applications which calls for no interference.

6. Heard on both sides. Records perused.

7. The petitioner/second defendant filed the applications in I.A.Nos.10 & 11 of 2022 to reopen the evidence on the side of the plaintiff and to recall P.W. 1 for cross examination with regard to the entries in Accounts Books maintained by the father of the petitioner/second defendant and the respondent/plaintiff.



C.R.P.(MD) Nos.458 & 459 of 2023

WEB COPY 8. It is now well settled law that the power to recall any witness under Order 18 Rule 17 of the Code of Civil Procedure, 1908 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit. Such a power is to be invoked not to fill up the lacuna in the evidence of the witness, but to clear an ambiguity that may have arisen during the course of his examination.

9. However, rigorous power under Order 18 Rule 17 of the Code of Civil Procedure, 1908 does not affect the inherent power of the Court to pass required order to meet the ends of justice. To reopen the evidence for the purpose of further examination or cross examination or even for production of fresh evidence, this power can be exercised at any stage of the suit even after closure of evidence.

10. The power under Section 151 of the Code of Civil Procedure, 1908 can be invoked in appropriate cases to reopen the evidence or to recall the witness for further examination. Even if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party come across some evidence which he could



C.R.P.(MD) Nos.458 & 459 of 2023

not lay his hands earlier, or some evidence with regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under section 151 of the Code of Civil Procedure, 1908, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the Court may deem fit to impose.

11. In the present case, the petitioner/second defendant filed applications to reopen the evidence and recall P.W.1 for cross examination with regard to the entries in the Accounts Books maintained by the deceased first defendant, the father of the petitioner/second defendant and the respondent/plaintiff. The same would not amount to filling up lacuna in the evidence. In the interest of justice and to have a fair adjudication, the Trial Court ought to have allowed the said applications. Therefore, the impugned orders dated 02.02.2023 passed by the Trial Court in I.A.Nos.10 & 11 of 2022 in O.S.No.55 of 2016 are set aside.

12. Considering the fact that the suit is of the year 2016, the Trial Court is directed to dispose the suit, expeditiously, within a period of 2 months from the date of receipt of a copy of this order.



C.R.P.(MD) Nos.458 & 459 of 2023

WEB COPY 13. In the result, these Civil Revision Petitions are allowed. No cost.

Consequently, connected Miscellaneous Petition is closed.

17.11.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
jen/vsn

To

1. The Sub Judge, Thuraiyur.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD) Nos.458 & 459 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

jen/vsn

Pre-Delivery Common Order made in

C.R.P.(MD) Nos.458 & 459 of 2023
and
C.M.P.(MD) No.2185 of 2023

17.11.2023