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CRP (MD) No.484 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	20.07.2023
Pronounced on	17.11.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.484 of 2020
and
CMP (MD).Nos.2971 of 2020

P.Muthu

... Petitioner/1st defendant

Vs.

A.K.Kaja Kamaludeen (Died)

1.K.Asma
2.K.K.Haafil
3.A.K.Abdul Kareem
4.K.Ayisha Siddique
5.Khaja Nazeerudeen

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order passed in O.S.No.982 of 2012 dated 11.02.2020 on the file learned I Additional District Munsif Court, Trichy, expunging the portion of oral evidence of P.W.1 -A.K.Abdul Kareem, and allow the present civil revision petition.

For Petitioner : Mr.M.Saravanan



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For Respondent : Mr.M.Parameswari

ORDER

The revision petition is filed against the order passed by the learned I Additional District Munsif Court, Trichy in O.S.No.982 of 2012 dated 11.02.2020.

2.According to the revision petitioner, the order of the trial Court expunging the portion of oral evidence of P.W.1 is illegal. The revision petitioner would further submit that the petitioner has only stated that his grandfather was inducted as a tenant by one Kajamain Rawthar and he was a tenant under Kaja Kamaludeen. However, the trial Court has erroneously held that the petitioner has admitted that he was in dural relation ship and erroneously held that the petitioner is a tenant under Kaja Kamaludeen and therefore, he cannot put questions about non-joinder of the legal heirs of Kajamain Rowther is fatal. He would further submit that the specific stand taken by the petitioner is that the said Kaja Moihdeen has no locus standi to



file the suit without impleading the legal heirs of the Kajamian Rowthar that the respondents 1 to 4 cannot maintain the suit without impleading other co-owners. The trial Court erred in holding that the petitioner being a cultivating tenant, cannot raise the question relating to non-joinder of necessary parties. Hence, the order passed by the trial Court expunging the portion of oral evidence of P.W.1 in O.S.No.1982 of 2012 is liable to be set aside.

3.The learned Counsel appearing for the revision petitioner would submit that Section 138 of the Evidence Act, provides that cross-examination need not be confined to the facts to which the Witness testified on his examination-in-chief. Section 146 of the Evidence Act, provides that it shall be lawful for the cross-examining Counsel, to put questions to discover who the Witness is and what is his position in life or to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty of forfeiture. Therefore, it was definitely open to the Counsel to ask the question regarding the character of the Witnesses, while cross-examining the Witness ***[Ref: 2018(2)CTC 620]***.



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4. His further contention is that both oral and documentary evidence should not be shut down at the initial stage itself. The same has to be taken on file subject to objections. To support his contention he has relied upon the following decision in **[Bipin Shantilal Panchal Vs State of Gujarat and another reported in 2002-1-LW (Crl)]** in which it is held:

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objections before proceeding further. For all other objections the procedure suggested above can be followed.)"

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during



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evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

5. The said evidence has to be considered on merits at the time of final hearing. To support his contention he had relied upon the following decision in the case ***J.Vasantha v Johnson*** reported in ***2016-3-LW 743***

"7. In support of their submissions, the learned counsel for the petitioner as well as the learned counsel for the respondent relied on the Judgment of the Hon'ble Apex Court reported in 2002-1-L.W. (Crl.) 115- 2001 (3) SCC 1 [Bipin Shantilal Panchal Vs State of Gujarat and another], wherein in paragraphs 14 and 15, it has been rejected

8. I have heard the learned counsel for the parties and perused materials available on record and also considered the Judgment relied on by the learned counsel for the petitioner and the respondent.



9. *The point for consideration is whether the recording of answers of the petitioner with objections is correct or not.*

10. *This issue is no longer res integra. The said issue was already settled by number of Judgments of the Hon'ble Apex Court as well as by this Court. It is settled that the evidence, both oral and documentary should not be shut down at the initial stage itself. The same has to be taken on file subject to objections. The said evidence has to be considered on merits at the time of final hearing and either rejected or sustained) The Judgment relied on by the learned counsel for the respondent is squarely applicable to the facts of the case. The learned Judge has properly appreciated the materials on record and the Judgments relied on and dismissed the application, giving cogent and valid reasons. The learned Judge has exercised his power properly and there is no infirmity or illegality in the impugned order, dated 24.03.2015, passed in I.A.No.207 of 2015 in C.T.O.P.No.1 of 1998, by the learned Principal District Munsif, Nagercoil.*

11. *For the above reasons, the Civil Revision Petition is dismissed. No costs Consequently, connected miscellaneous petition is also dismissed."*

6. On the other hand, the learned counsel appearing for the respondent



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would submit that the Trial Court has every right to decide the objection at the time of recording of evidence. The order of expunge is reasonable. The respondent has put irrelevant questions such as how much legal heirs, non-joinder of legal heirs, suit instituted by instigation of third parties etc. The suit for bare injunction will not decide title of the parties. Admittedly the suit property belongs to plaintiff's father, which is not questioned by the respondent herein. The recording of evidence for irrelevant question should enlarge the Honourable Court time and it will not support the case of the respondent. Moreover, there is direction of this Honourable Court in C.R.P. (MD) No. 1004 of 2013 to decide the suit within a period of six months. Evidence was recorded on 11.02.2020 and then on 09.03.2020. At present, the suit is posted for respondent side evidence. The present civil revision petition is filed after the petitioner side evidence closed and it was posted for respondent side evidence. The intention of the revision petitioner is to drag on the proceedings. Hence, liable to be dismissed.

9.Heard on both sides and records perused.

10.As per Order 18 Rule 11 C.P.C where any question put by witness



is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

11.The case of the plaintiff is that the suit schedule property is situated at Varaganeri Village, Ward No. 8, Block No. 25, T.S. No. 2339 / 2 measuring 56 cents of punja land. During the settlement period the above suit property stood in the name of N.M. Kajamian Rowther in old S.F. No. 2339/ 2 as per resettlement register dated 20.01.1930. The joint patta was issued in the name of the legal heir of plaintiff's father.

12.It is the contention of the revision petitioner that the plaintiff's grandfather was inducted as a tenant by one Kajamian Rowther and the deceased Kaja Kamaludeen has no locus standi to file the suit without impleading the legal heirs of Kajamian Rowther. When the learned counsel for the revision petitioner before the trial Court put questions about the legal heirs of Kajamain Rowther and about non-joinder of necessary parties, the same was recorded by the trial Court. However, the trial Court considering the objections made by the respondent expunged the portion of the oral



evidence of P.W.1 in this regard. Aggrieved by this, the present revision petition is filed to set aside the order of the trial Court expunging the portion of oral evidence adduced by P.W.1. It is no doubt, that at the time of recording of evidence whenever any objection is raised regarding admissibility of any material evidence the Court does not proceed further without passing order on such objection. In this regard, the Hon'ble Supreme Court in the case of *Bipin Shathilal punchal v. State of Gujarath and Another* reported in **2001 3 SCC** recasted such practice by giving a better substitute which would accelerate the trial Court proceedings. The observation made by the Hon'ble Supreme Court in this regard is as follows:

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection



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relates to deficiency of stamp duty of a document the court has to decide the objections before proceeding further. For all other objections the procedure suggested above can be followed.)

As rightly pointed out by the learned Counsel for the revision petitioner Section 138 of Evidence Act provides that cross examination need not be confined to the facts to which the witness testified on his examination in chief. Section 146 of the Evidence Act provides that it shall be lawful for the cross examining counsel to put questions to discover certain facts. Therefore, it is definitely open to the counsel to ask the question to the witness to bring out certain facts to support his defence. Therefore, I do not see any need to strike off the evidence recorded by the trial Court, for the reason that oral evidence need not be struck off at the initial stage and the same may be taken on file subject to objections. It has to be considered at the time of final hearing. The said evidence has to be considered on merits at the time of final hearing. It may be either rejected or sustained.

13.For the above reason, the said revision petition is allowed. The order passed by the learned Additional District Munsif Court is set aside. The



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evidence expunged is directed to be brought on record and to be considered on merits at the time of final hearing. No Costs. Consequently, connected miscellaneous petition is closed.

17 .11.2023

vsn

To

The Principal District Munsif, Tirunelveli



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K.GOVINDARAJAN THILAKAVADLJ,

vsn

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