



C.R.P.(MD) Nos.1706 & 1707 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	24.07.2023
Delivered on	17.11.2023

CORAM

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

C.R.P.(MD) Nos.1706 & 1707 of 2023

and

C.M.P.(MD) Nos.8531 & 8532 of 2023

1.S.Ravi

2.S.Kalaiselvi

3.R.Maheswaran

4.R.Narmadha

5.R.Lavanmalar

6.S.Selvam

... Petitioners in
both C.R.Ps.

Vs.

1.S.Muthaih

S.Manickam (deceased)

2.M.Gunasekaran

3.M.Kannadhasan

4.K.Periyasamy



C.R.P.(MD) Nos.1706 & 1707 of 2023

M.Muthulingam (Died)

5.M.Sundarambal

6.M.Lakneswaran

7.M.Deepa

8.M.Narmadha

9.M.Madhavi

... Respondents in
both C.R.Ps.

Common Prayer:- These Civil Revision Petitions filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decretal orders dated 26.06.2023 passed in I.A.Nos.13 & 14 of 2023 in O.S.No.35 of 2016 on the file of the Subordinate Court, Thuraiyur and set aside the same.

For Petitioners
in both C.R.Ps. : Mr.M.Dinesh Hari Sudarsan

For Respondents
in both C.R.Ps. : Mr.Saravanakumar
for M/s.Issac Chambers

COMMON ORDER

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



C.R.P.(MD) Nos.1706 & 1707 of 2023

WEB COPY

2. Both these Civil Revision Petitions have been filed by the petitioners as against the impugned orders dated 26.06.2023 passed in I.A.Nos.13 & 14 of 2023 in O.S.No.35 of 2016 on the file of the Sub Court, Thuraiyur.

3. The above suit in O.S.No.35 of 2016 was filed by the first to third respondents along with deceased S.Manicam/plaintiffs for permanent injunction. During the pendency of the suit, the plaintiffs filed I.A.Nos.13 & 14 of 2023 to reopen the evidence on the side of the plaintiffs and recall P.W.1 for marking certain documents to establish the case of the plaintiffs. The same was resisted on the side of the defendants who are the petitioners and other respondents in these C.R.Ps.

4.The Trial Court after considering the averments made in the applications and in the counter affidavit allowed the I.As. by stating that no prejudice would be caused to the other side by allowing the applications to re-open the evidence and recall the witness for marking documents mentioned in the applications. Aggrieved by this, the present Civil Revision Petitions have been filed.



C.R.P.(MD) Nos.1706 & 1707 of 2023

5. The learned counsel for the petitioners/first to sixth defendants would submit that the applications to reopen the evidence and recall the witness after lapse of 4 years are nothing but abuse of process of law. The first to third respondents/plaintiffs cannot be permitted to rectify the defects and fill up the lacuna after the evidence was closed. It is submitted that the first to third respondents/plaintiffs had specifically admitted in their plaint that the deceased Krishnasamy Naidu had no legal heirs and now by way of filing certain documents, the first to third respondents/plaintiffs are attempting to deny the above facts which is expressly barred as per the Explanation provided in Section 5 of the Indian Evidence Act, 1872.

6. The learned counsel for the petitioners/first to sixth defendants would submit that even as per Section 115 of the Indian Evidence Act, 1872, there is a statutory bar when the fact is admitted by the party. The same stood as an estoppel to deny the same. He would further submit that the evidence which the first to third respondents/plaintiffs wanted to introduce by way of P.W.1 was not found in the list of documents and therefore, same requires a grant of leave from the Court as mandated under Order VII Rule 14(3) of the Code of Civil Procedure, 1908. Order 7 Rule 14(3) of the Code of Civil Procedure, 1908 reads as under:-



WEB COPY



C.R.P.(MD) Nos.1706 & 1707 of 2023

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

7. The learned counsel for the petitioners/first to sixth defendants would further submit 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. But, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded. The discretionary power under Order 18 Rule of the Code of Civil Procedure, 1908 has to be exercised with the greatest care and only in exceptional circumstances.

8. In support of his contentions, the learned counsel for the petitioners/first to sixth defendants has relied upon the following decisions:-

- i. **Nandkishore Lalbhar Mehta Vs. New Era Fabrics Pvt. Ltd. and others**, reported in 2015 (5) CTC 577.
- ii. **Ram Rati Vs. Manngé Ram**, reported in (2016) 11 SCC 296.
- iii. **Vadiraj Naggappa Vernekar Vs. Sharad Chand**



WEB COPY



C.R.P.(MD) Nos.1706 & 1707 of 2023

Prabhakar Gogate, reported in (2009) 4 SCC 410.

iv. **Sunder Theaters Vs. Allahabad Bank, Jhansi**, AIR
1999 All. 14.

9. Hence, the learned counsel for the petitioners/first to sixth defendants would submit that the Trial Court erred in allowing the applications filed by the plaintiffs and therefore, the impugned orders are liable to be set aside.

10. On the other hand, the learned counsel appearing for the respondents would submit that the first defendant has stated certain facts at the time of his evidence which are factually not true. The first defendant during the course of his evidence has stated that the said Krishnasamy Naidu had no legal heirs which is totally incorrect. To establish the fact that the said Krishnasamy Naidu had two daughters and to establish that he had executed 2 Sale Deeds in favour his daughters and to prove the case of the plaintiffs, it has become necessary for the plaintiffs to reopen the evidence and recall P.W.1 for marking certain documents. It is therefore submitted that the Trial Court has rightly allowed the applications which calls for no interference.

11. Heard on both sides. Records perused.



C.R.P.(MD) Nos.1706 & 1707 of 2023

WEB COPY

12. According to the first to third respondents/plaintiffs, the first defendant has adduced evidence contrary to the pleadings in his Written Statement and therefore, it has become necessary for the first to third respondents/plaintiffs to recall P.W.1 and to mark certain documents to establish the case of the first to third respondents/plaintiffs. On the other hand, the contention of the petitioners/first to sixth defendants is that the intention of the first to third respondents/plaintiffs is to fill up the lacuna and same cannot be permitted.

13. Now, this Court has to decide as to whether there is a need to recall the witness as already evidence on the side of the plaintiffs was closed and evidence of P.W.1 was recorded. The plaintiffs have come out with the applications after lapse of 4 years. The provisions under Order 18 Rule 17 of the Code of Civil Procedure, 1908 are not intended to be used to fill up the omissions and gaps in the evidence of witness which has already been recorded. The evidence which is sought to be introduced by recalling the witness in question was not available at the time of examination of witness on the side of the plaintiffs.



C.R.P.(MD) Nos.1706 & 1707 of 2023

14. The provisions under Order 18 Rule 17 of the Code of Civil Procedure, 1908 can be invoked only to clarify certain doubts which may have with regard to the evidence let by the parties. The said provisions are not intended to be used to fill up the lacuna in the evidence of the witness which has already been recorded.

15. Moreover, the first to third respondents/plaintiffs themselves stated in the plaint that the said Krishnasamy Naidu had no legal heirs. While so, the the first to third respondents/plaintiffs cannot be permitted to let any evidence contrary to their pleadings. In such circumstances, the impugned orders passed by the Trial Court are unsustainable. The Trial Court has not considered the settled dictum laid down by the Hon'ble Apex Court while allowing the petition to recall the witness. The Trial Court cannot permit the parties to fill up the lacuna in the evidence of witness which has already been recorded.

16. Therefore,, the impugned orders passed by the Trial Court in I.A.Nos.13 & 14 of 2023 in O.S.No.35 of 2016 are liable to be set aside and are accordingly set aside.



C.R.P.(MD) Nos.1706 & 1707 of 2023

17. In the result, these Civil Revision Petitions are allowed. No cost.

Consequently, connected Miscellaneous Petitions are 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.



WEB COPY



C.R.P.(MD) Nos.1706 & 1707 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

jen/vsn

Pre-Delivery Common Order made in

C.R.P.(MD) Nos.1706 & 1707 of 2023

and

C.M.P.(MD) Nos.8531 & 8532 of 2023

17.11.2023