



CRP (MD) Nos.1757 and 1758 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 17.08.2023

Pronounced on: 13.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.1757 and 1758 of 2023

and

C.M.P(MD)No.8788 of 2023

Maguthu Meeran S/o. Seghumuthu

... Petitioner common in
both Revision petitions.

Versus

1. Mayilraj S/o. Shankarapandian
2. Haja Mohideen S/o. Late Mohammed Hanifa
3. Kandhasamy Pandian S/o. M. Periyasamy Pandian
4. S.P. Murugaiah S/o. Pirama Nambiyar
5. C. Prakash S/o. Chellaiah
6. V. Kumarasamy S/o. Valasubbiah
P. Sornam (died)
7. S.S. Varadharajan S/o. S.T. Shanmugam
8. M. Pattan
9. Meena D/o. Pattan
10. Saravanan S/o. Pattan
11. Hariharan S/o. Pattan
12. R. Radhika Devi W/o. G.S. Ramesh
13. Thilakavathy D/o. Late Pichai Kaalimuthu
14. Chandran S/o. Late Pichai Kaalimuthu
15. Vasantha D/o. Late Pichai Kaalimuthu
16. Bavani D/o. Late Pichai Kaalimuthu
17. Sivananthi D/o. Late Pichai Kaalimuthu

1/12



CRP (MD) Nos.1757 and 1758 of 2023

18. Sivakumar S/o. Late Pichai Kaalimuthu
19. Kumaravel S/o. Lae Pichai Kaalimuthu

... Respondents common in
both Revision petitions.

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COMMON PRAYER : These Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the fair and decreetal orders made in I.A. Nos.10 of 2023 and I.A. No11 of 2023 respectively in O.S. No. 40 of 2011 dated 20.04.2023 passed by the learned Additional District Judge (Fast Track Court), Tenkasi.

For Revision Petitioner : Mr. S. Meenakshi Sundaram,
[in both petitions] Senior Counsel
for Mr. N. Ganagasapapathy

For Respondents : Mr. V. Meenakshi Sundaram for
[in both petitions] Mr. S.A. Ganapathyraman [for R1].

No Appearance [R3, R5, R6, R7, R12]

R7 to R11 - Exparte

COMMON ORDER

These Civil Revision Petitions are preferred as against the fair and decreetal orders made in I.A. Nos.10 of 2023 and I.A. No11 of 2023 respectively in O.S. No.40 of 2011 dated 20.04.2023 passed by the learned Additional District Judge (Fast Track Court), Tenkasi.



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2. According to the Revision Petitioner, the 1st respondent as plaintiff filed a suit for partition in O.S. No.40 of 2011. Originally the suit was filed before the 1st Additional District Court, Tirunelveli. Due to the bifurcation of Districts, the said suit was transferred to the file of learned Additional District Judge, Tenkasi. Since the revision petitioner was not aware of the transfer of the case, he was under the impression that the suit is being proceeded only before the I Additional District Court, Tirunelveli. When the suit was transferred to the Additional District Court, Tenkasi, the trial was commenced and the learned counsel for the petitioner did not cross examine the plaintiff side witnesses. Thereafter, the revision petitioner came to know that the suit was transferred to the Additional District Court, Tenkasi. The revision petitioner immediately changed his counsel at Tenkasi. During the pendency of the said suits, he filed an applications in I.A. Nos.10 and 11 of 2023 to re-open and to recall the plaintiff side witnesses for cross examination. Further the Trial Court without considering the above facts, had erroneously dismissed the applications filed by the revision petitioner.



3. The learned counsel appearing for the Revision Petitioner would submit that examination of witnesses cannot be denied. The Court in appropriate cases, should exercise his discretion to permit reopening of evidence / recalling of witnesses for further examination / cross examination after the evidence let in by the parties is concluded and even when the arguments are concluded and the case has been reserved for judgment and if ends of justice so warrant.

4. The learned counsel for the revision petitioner would further submit that deletion of Order XVIII Rule 17A does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments.

5. To support his contention, the learned counsel for the petitioner has relied upon the reported case in **CDJ 2011 SC 314**.



6. On the other hand, the learned counsel appearing for the Respondents would submit that Order XVIII Rule 17 is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. In the present case, the reason stated in the affidavit filed by the petitioner is not sufficient for re-opening and recalling the plaintiff side witnesses for cross examination. Even when the suit was pending before the I Additional District Court, Tirunelveli, the petitioner was not inclined to proceed with the suit. Only the defendants 1 to 6 and 8 were conducting the case. Thereafter, the suit was transferred to the Additional District Court, Tenkasi and the learned counsel appearing for the petitioner continued to conduct the case on behalf of the petitioner. In spite of several opportunities afforded to the petitioner / defendants 1 to 6 and 8, and only on 07.02.2023, PW1 was cross examined by the learned counsel appearing for the petitioners. On 16.02.2023, the learned counsel for the 13th defendant reported 'no instructions' and therefore, the 13th defendant was set exparte. On the same day, PW1 was cross examined by the defendants 14 to 20. On 07.03.2023, when the case was posted for the cross examination of PW2, the learned counsel appearing for the defendants 1 to 6 and 8 had endorsed as 'no



cross' and thereafter the learned counsel appearing for the defendants 14 to 20

cross examined PW2 and again on 14.03.2023, PW3 was examined in chief and it was posted for cross examination by the defendants 1 to 6 and 8 on 16.03.2023. Since the defendants 1 to 6 and 8 failed to cross examine PW3, the same was closed and the learned counsel appearing for the defendants 14 to 20 had cross examined PW3. On 21.03.2023, the plaintiff side evidence was closed and on 23.03.2023, 28.03.2023, 30.03.2023 and 06.04.2023, the case was posted for evidence on the side of defendants 1 to 6 and 8 and at that stage, the defendants had filed the above applications on 06.04.2023 to re-open the plaintiff side evidence and to recall PW1 to 3 for further cross examination.

7. The contention of the learned counsel for the respondents is that, the claim of the petitioner that only on 04.04.2023, they came to know that the learned counsel failed to cross examine the plaintiff side witnesses and the case was posted for 06.04.2023 for his side evidence, is utter false. It is submitted that the learned counsel appearing for the defendants had cross examined PW1 and failed to cross examine PW2 and therefore an application



filed to re-open and to recall the plaintiff side witnesses, is unsustainable. It is further submitted that on 12.03.2023, PW1 met with an accident and suffered fracture on his leg and he is unable to walk and now, he is now bed-ridden. It is further submitted that PW2 and PW3 are residing at Srilanka and came to India only for the purpose of the case to let in evidence on the side of plaintiff. Thereafter, on expiry of VISA, they returned back to Srilanka. Unless or otherwise, PW2 and PW3 are able to get VISA for attending the case in India, they can be recalled. Moreover, their cost of travel would be around Rs.22,000/- to arrive India for the purpose of the case. Further more, the learned counsel appearing for the petitioner himself has endorsed that there is no cross examination on his side with respect to PW2. The learned counsel appearing for the petitioner further submitted that after deletion of Order XVIII Rule 17A, there is no provision as to whether the Court can exercise his discretion to permit reopening of evidence or recalling of witnesses either for cross examination or for further examination. No ground is made out for recalling the witnesses. Therefore the applications filed by the petitioner herein were rightly dismissed by the Trial Court which needs no interference.



8. Heard both sides and perused the records.

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9. Order XVIII Rule 17 of the Code enables the Court, at any stage of a suit, to recall any witness who has been examined and put such questions to him as it thinks fit. The power to recall any witness under Order XVIII Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined [vide ***Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate – 2009 (4) SCC 410***]. Order XVIII Rule 17 of the Code is not a provision intended to enable the parties to recall any witness for their further examination – in – chief or cross examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order XVIII Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either suo moto,



or at the request of any party, so that the Court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. The Code earlier had a specific provision in Order XVIII Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the Court to permit a party to produce any evidence even at a later stage, after the conclusion of his evidence if he satisfied the Court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 01.07.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments [RE: ***CDJ 2011 SC 314***].

10. Though Section 151 of C.P.C. do not create or par any power or



jurisdiction of Courts which recognizes or confirms that if the Court does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice so warrant. Therefore the arguments put forth by the learned counsel for the respondents that the inherent powers conferred on Courts under Section 151 C.P.C. cannot be invoked for reopening and recalling witnesses for further examination is unsustainable.

11. In this case, the contention of the petitioner is that due to bifurcation of Districts, the suit was transferred to the Additional District Court, Tenkasi was not within his knowledge and therefore his counsel was unable to cross examine the plaintiff side witness.

12. While so, the Trial Court ought to have considered whether it was necessary to reopen the case and ought to have exercised its discretionary power in the interest of justice.



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13. Accordingly, these Civil Revision petitions are allowed. No costs.

Consequently, the connected miscellaneous petition is closed.

13. 12.2023

mjs

Index: Yes/No

Speaking Order : Yes/No

To

The Additional District Judge, Fast Track Court, Tenkasi.



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K.GOVINDARAJAN THILAKAVADI,J.

mjs

ORDER MADE IN
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13.12.2023