



C.R.P(MD)Nos.2042 to 2044 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2023
DELIVERED ON : 18.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)Nos.2042 to 2044 of 2015
and
M.P(MD)No.1 of 2015

C.R.P(MD)No.2042 of 2015

K.Sujatha

... Petitioner

Vs.

1.K.Thirumalaiyandi Pillai
2.T.K.Nagarajan
3.K.Nagammal
4.Mohandas
5.Lakshmi

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.07.2015 passed in I.A.No.293 of 2015 in O.S.No.340 of 2013 on the file of the I Additional District Munsif, Kuzhithurai.

C.R.P(MD)No.2043 of 2015

K.Sujatha

... Petitioner

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Vs.

1.K.Thirumalaiyandi Pillai
2.T.K.Nagarajan
3.K.Nagammal
4.Mohandas
5.Lakshmi

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.07.2015 passed in I.A.No.294 of 2015 in O.S.No.340 of 2013 on the file of the I Additional District Munsif, Kuzhithurai.

C.R.P(MD)No.2044 of 2015

K.Sujatha

... Petitioner

Vs.

1.K.Thirumalaiyandi Pillai
2.T.K.Nagarajan
3.K.Nagammal
4.Mohandas
5.Lakshmi

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.07.2015 passed in I.A.No.295 of 2015 in O.S.No.340 of 2013 on the file of the I Additional District Munsif, Kuzhithurai.



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For Petitioner : Mr.J.Anandhavalli

For R-1 & R-2 : No appearance

For R-3 : Dispensed with

For R-4 & R-5 : Mr.P.Thiagarajan

COMMON ORDER

These Civil Revision Petitions are filed assailing the order passed by the learned I Additional District Munsif Court at Kuzhithurai in I.A.Nos. 293, 294 and 295 of 2015 in O.S.No.340 of 2013. The original suit in O.S.No.340 of 2013 was one for partition. I.A.Nos.293, 294 and 295 of 2015 has been preferred by the petitioner / petitioner / plaintiff. For the sake of convenience, the parties herein are referred to as arrayed in I.A.Nos.293, 294 and 295 of 2015.

2. I.A.No.293 of 2015 was filed under Section 151 of the Code of Civil Procedure, 1908, seeking to reopen the evidence of the plaintiff, thereby allowing the plaintiff to give evidence in the original suit. I.A.No. 294 of 2015 was filed under Section 151 of the Code of Civil Procedure, 1908 to give further evidence on the side of the plaintiff. I.A.No.295 of 2015 was filed under Order XIII, Rule 2 and Section 151 of the Code of Civil Procedure, 1908 seeking to mark the documents scheduled therein the



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said petition as Exhibits A8 to A11. All the three I.As came to be filed before the learned I Additional District Munsif Court, Kuzhithurai when the original suit in O.S.No.340 of 2013 was posted for the arguments of both sides, that too for the third time.

3. Heard the learned Counsels for the petitioner and the respondents at length and anxiously perused the materials available on record.

4. A perusal of the records would reveal that the respondent / defendants have filed their counter in all the three interlocutory applications and thereafter by means of a common order, the learned I Additional District Munsif Court at Kuzhithurai on 14.07.2015 dismissed all the three interlocutory applications. Assailing the same, these three Civil Revision Petitions came to be filed.

5. When the suit was posted for arguments on 22.04.2014 for the second time, the petitioner / plaintiffs filed all these three interlocutory applications for the following grounds:



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(i) During cross-examination of P.W1, a specific question was put up to P.W1 that the plaintiff did not appear before the Court for deposing her evidence because she was insane.

(ii) The plaintiff was unable to attend the Court on the date when the suit was listed due to chronic asthma and hence her husband was examined as P.W1.

(iii) The plaintiff has got one of the crucial documents for proper adjudication only at that later stage. In all the three interlocutory applications, the reasons pleaded by the petitioner / plaintiff are identical in a copy paste format.

6. The interlocutory application in I.A.No.295 of 2015 seeking the permission of the learned Trial Court to mark Exhibits A8 to A11 has been filed without stating any probable reason for the delay in filing the said interlocutory application, that too when the evidence of both the sides was closed and the case was posted for arguments.

7. The respondent / defendants have filed their counter and have resisted all those three interlocutory applications. On merits, the learned Trial Court dismissed all the three interlocutory applications after



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meticulous discussion. The learned Trial Court has observed in para 4 of the impugned order that the petitioner / plaintiff has filed these interlocutory applications on the prime ground that at the time of cross examination, a suggestion was suggested by the learned Counsel for the defendant that the plaintiff did not depose her evidence at the first instance in the said original suit only because she is insane. The learned Trial Court has clarified that the perusal of the cross examination of P.W1 would reveal that such a question has never been suggested by the defendants at all and the only suggestion put-forth was that the plaintiff did not depose her evidence on her reluctance to give false evidence before the learned Trial Court. On that basis, the learned Trial Court came to a conclusion that the reasons put-forth by the petitioner / plaintiff seeking the permission of the Court to allow her to depose the evidence after the evidence of both the plaintiffs and defendants were closed could not be entertained. Rejecting the said reason and the other reasons as well, the learned Trial Court has rightly dismissed all the three interlocutory applications.

8. As far as the petitioner / plaintiff's interlocutory applications in I.A.No.295 of 2015 seeking permission of the Court to produce four



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additional documents, it is the considered view of this Court that the learned Trial Court has rightly dismissed the same because all those documents were produced in a belated stage that too when the case was posted for arguments. Order XIII, Rule 1(1) is extracted usefully as follows:

“1. Original documents to be produced at or before the settlement of issues.-(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.”

9. Likewise Order XVIII, Rule 3A is also extracted as follows:

“3-A. Party to appear before other witnesses.-Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

10. The learned Counsel for the petitioner has relied upon the following cases:

(i) ***P.S.Pandian Vs. Annai Velanganni Films represented by its Partner Mrs.Savithri Devaraj 9, Krishna Street, T.Nagar, Chennai-600 017 and Another reported in 2002 (3) CTC 92 dated 24.04.2002.***



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(ii) The Hon'ble Supreme Court of India in the case of ***Sugandhi (Dead) by Legal heirs and Others Vs. P.Rajkumar reported in [MANU/SC/0792/2020]*** dated 13.10.2020.

11. Both the above cases are not relevant to the facts and circumstances of these cases.

12. The learned Counsel for the respondents relied on the following decisions of this Court:

(i) This Court in the case of ***Ravi and Another Vs. Ramar reported in 2007 (0) Supreme Today 3277*** dated 11.10.2007 has dealt with a similar matter, the relevant portion of which is extracted as follows:

“22. The amendment was introduced with a view to ensure that the party examining himself as a witness at a later stage should not be permitted to fill-up the lacunae in the evidence adduced from his side. Where the Court comes to a conclusion that the party had deliberately with-held himself to be examined as a witness at a later stage with a view to fill-up the lacunae in the evidence, obviously permission cannot be granted to such a party to examine himself at a later stage. This is a relevant consideration where the application is filed, seeking permission to



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examine him at a later stage, either at the threshold of examination of other witnesses or subsequently after examination of all or some of the witnesses. The real test is to find out whether there was a genuine cause for which the party was not examined as a first witness. If for some genuine reasons, which could not be foreseen initially, a party wants to examine himself at a later stage, permission can be granted. Therefore, the overriding consideration is not whether the party makes the application at the threshold or at the subsequent stage, but whether for a genuine and germane reason the party is required to be examined at a later stage notwithstanding the fact that he was not examined as a witness at the beginning. This seems to be the essence of the different decisions of different High Court. What would be the relevant facts and circumstances, obviously cannot be laid down in a strait jacket formula and obviously it is for the Court concerned to deal with the matter in judicious manner. The reference is accordingly answered. The civil revisions shall now be placed before the learned Single Judge for disposal, in accordance with law.”

(ii) This Court in the case of ***M.Kumar Vs. S.Subbiah Kone and Another reported in 2008 (0) Supreme Today 4750*** dated 23.12.2008 has dealt with a similar matter, the relevant portion of which is extracted as follows:



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“25. Adverting to the allegations contained in the affidavit filed by the first respondent, it is bereft of the reasons as to the necessity of the first respondent to examine the power of attorney before he was examined. The only reason available thereon is that in order to comply with the legal requirements, the petition is being filed. But the trial Court has observed in its order that since the plaintiff was ill, he had authorised his power of attorney to file the suit and that might be considered as a reason for filing this application. The said observation is not at all sustainable for the reason that at the time of trial what has prevented the plaintiff from examining himself at the first instance, has to be specifically pleaded him and the same has to convince the Court also. The law requires the Court to record its reasons for permitting the party to examine himself at a later stage. Any deviation in this regard shall render the permission granted by the Court, an invalid one and the said order would get vitiated in view of the absence of recording proper reasons by the Court.”

13. In this case, the documents which are sought to be marked in I.A.No.295 of 2015 are intended to fill up the lacunae in the evidence of the petitioner / plaintiff.



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14. The learned Trial Court has rightly come to a conclusion that the petitioner / plaintiff had deliberately withheld herself from being examined as a witness at the first instance and she has come forward with I.A.Nos. 293, 294 of 2015 seeking the permission of the Court to examine herself as the plaintiff after the examination of P.W.1 and P.W2 without proper reasons. The reasons substantiated by the petitioner / plaintiff are certainly not genuine. Obviously on such circumstances, permission cannot be granted to the petitioner / plaintiff to examine herself at a later stage when the case was posted for arguments. The petitioner / plaintiff has miserably failed to pass the real test by establishing that there was a genuine cause for her being not examined at the first instance and the learned Trial Court has rightly adjudicated all the three interlocutory applications by clarifying that the grounds relied by the petitioner / plaintiff are not true by verifying with the cross examination of P.W1. Since the petitioner / plaintiff has not put forth any genuine and germane reason to permit her to be examined as plaintiff side evidence at a later stage, the learned Trial Court has rightly dismissed I.A.Nos.293 and 294 of 2015. Likewise in view of the provision of the Code of Civil Procedure in Order XIII, Rule 1, the learned Trial Court rightly disallowed I.A.No.295 of 2015 which was filed to produce



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documents in a later stage after the settlement of the issues when the case was posted for arguments.

15. In view of the above observation, this Court is not inclined to interfere with the common order passed by the learned I Additional District Munsif Court, Kuzhithurai in I.A.Nos.293, 294 and 295 of 2015 in O.S.No. 340 of 2015. In fine, all the three Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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L.VICTORIA GOWRI, J.

BTR

To

- 1.The I Additional District Munsif,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
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18.07.2023