



C.R.P.(MD)No.2046 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.11.2023

Delivered on : 08.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.2046 of 2022

and

C.M.P(MD)No.9358 of 2022

1.Kanagaraj

2.Rakeshwaran : Petitioners/Petitioners 1 & 2/
Defendants 1 & 2

Vs.

1.Mareeshwari : 1st Respondent/1st Respondent/
Plaintiff

2.Nagammal (died) : 2nd Respondent/2nd Respondent/
3rd Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records in pertaining to the order made in I.A.No.393 of 2022 in O.S.No.914 of 2017, dated 16.08.2022 on the file of the Subordinate Judge, Thirumangalam and set aside the same.

For Petitioners : Mr.T.Vadivelan

For Respondents : Mr.R.R.Kannan, for R1.



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.393 of 2022 in O.S.No.914 of 2017, dated 16.08.2022 on the file of the Subordinate Judge, Thirumangalam, dismissing the petition filed under Order 18 Rule 17 of the Code of Civil Procedure.

2. The first respondent as plaintiff has filed the above suit for partition and allotment of 1/ 2 share in the suit properties and for future mesne profits.

3. It is evident from the records that the trial has already been commenced; that the plaintiff was examined as P.W.1 and when P.W.2 was examined in chief and was pending cross examination, the above petition came to be filed, seeking orders to recall P.W.1 for the purpose of further cross examination.

4. The revision petitioners, who are the defendants 1 and 2 in their affidavit filed in support of the above petition, has alleged that P.W.1 was



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to be further cross examined with regard to the sale deeds in respect of the family properties and for that purpose, P.W.1 has to be recalled.

5. It is not in dispute that the plaintiff as P.W.1 was examined in chief on 01.03.2022 and subsequently, P.W.1 was cross examined by the defendant side on 27.04.2022 and again on 20.06.2022.

6. As rightly observed by the learned trial Judge, the petitioners have not raised any specific averments in the affidavit filed in support of the above petition with regard to the aspects that were omitted to be examined. Order 18 Rule of the Code of Civil Procedure enables the Court, at any stage of a suit, to recall any witness who has been examined, (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit.

7. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Ram Rati vs Mange Ram (D) Thr Lrs. & Others*** reported in ***2016 11 SCC 296***, wherein the judgment of the Hon'ble Apex Court in ***Vadiraj Nagppa Vernekar Vs. Sharadchandra Prabhakar***



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Gogate reported in **2009 4 SCC 410**, was referred and relied on by the learned trial Judge and the relevant passages are extracted hereunder :

“11. The respondent filed the application under Rule 17 read with Section 151 of the CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. ‘No prejudice is caused to either party’ is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.

12. In Vadiraj Naggappa Vernekar (Dead) Through LR.s. v. Sharadchandra Prabhakar Gogate¹, this principle has been summarized at paragraphs- 25, 28 and 29:



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“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

xxx xxx xxx

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground 1 (2009) 4 SCC 410 that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC 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 as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”



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8. Considering the above, the legal position is well settled that the power under Order 18 Rule 17 of the Code 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; that the said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined and that the said provision is not a provision intended to enable the parties to recall any witnesses 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.

9. The legal position above referred is squarely applicable to the case on hand. In the present case also, the revision petitioners in a casual manner have filed the petition to recall P.W.1 for further cross examination, without assigning any proper or acceptable reason or ground for further cross examination.

10. The learned trial Judge, by specifically observing that the reasons stated by the petitioners are not sufficient to allow the petition and



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that their petition is devoid of merits, has rightly dismissed the petition and as such, the same cannot be found fault with. Hence, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. Since the suit is pending from 2017, the learned trial Judge is hereby directed to complete the trial and dispose of the suit as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

No costs

08.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Subordinate Judge, Thirumangalam.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P.(PD)(MD)No.2046 of 2022
and
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Dated : 08.12.2023