



C.R.P.(MD).Nos.2270 and 2271 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	08.09.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.2270 and 2271 of 2023

and

C.M.P.(MD)No.11696 of 2023

S.Rajasekaran

... Revision Petitioner in
both CRPs

Versus

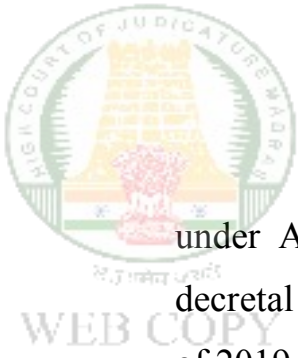
1.Sithalakshmi

2.C.Uma

... Respondents in
both CRPs

Prayer in CRP.(MD)No.2270 of 2023: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.07.2023 passed in I.A.No.352 of 2020 in O.S.No.41 of 2019 on the file of the learned Subordinate Judge, Melur.

Prayer in CRP.(MD)No.2271 of 2023: The Civil Revision Petition is filed



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under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.07.2023 passed in I.A.No.353 of 2020 in O.S.No.41 of 2019 on the file of the learned Subordinate Judge, Melur.

For Revision Petitioner : Mr.S.M.Arun Kumar
(in both CRPs)

For Respondents : Mr.S.Parthasarathy
(in both CRPs) for Mr.M.Balakrishnan

ORDER

These revisions are preferred as against the order passed in I.A.Nos.352 and 353 of 2020 in O.S.No.41 of 2019 on the file of Sub Court, Melur.

2. According to the Revision Petitioner/Plaintiff, the Revision Petitioner filed the above suit in O.S.No.41 of 2019 before the Sub Court, Melur for recovery of money. The Respondents are the legal heirs of one Arumugam, who had borrowed a sum of Rs.5,00,000/- on 13.01.2010 from the Petitioner by executing a promissory note, promising to pay the said amount along with interest at the rate of 18 % per annum. On 13.12.2010, when the Revision Petitioner insisted for repayment, the said Arumugam issued a post-dated cheque bearing No.812105 dated 03.03.2011 for a sum



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of Rs.3,00,000/- drawn on State Bank of India, Vinayaga Nagar Branch. In the last week of February 2011, the said Arumugam requested the Revision Petitioner not to present the cheque and made assurances that he would settle the entire amount by June 2011. Unexpectedly, the said Arumugam fell ill and therefore, the Revision Petitioner was not insisting for repayment. In October 2011, the said Arumugam died leaving behind the Respondents as his legal heirs to succeed to his estate. Since the Respondents have inherited the estate of Arumugam, they are obliged to repay the amount borrowed by the said Arumugam. Since the Respondents did not repay the amount, the Revision Petitioner was constrained to file a suit in O.S.No.44 of 2013 which was renumbered as O.S.No.41 of 2019 after constitution of the Sub Court at Melur. The Respondents appeared before the Trial Court and filed a written statement with false allegations.

3. They also made all attempts to protract the trial and when the case was nearing completion of trial, the Respondents moved application in I.A.Nos.352 and 353 of 2020 seeking permission to receive a Will dated 10.08.2011 allegedly executed by the said Arumugam in favour of the 2nd Respondent and certain other documents and also to recall D.W.1 to mark



the above document. The purpose of introducing the said document assigned by the Respondent was that the property of the said Arumugam was bequeathed by him by means of a registered Will dated 10.08.2011 in favour of the 2nd Respondent, even before filing the suit and before the said property was attached by the Trial Court. The 2nd Respondent got the said property by means of the above said Will and that the reception of the said document was necessary.

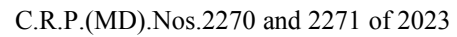
4. However, no valid reason or cause was assigned by the 2nd Respondent for her failure to exercise due diligence in producing those documents earlier. Those documents were deliberately introduced at the fag end of the trial to prolong the proceedings of the suit. The Revision Petitioner also filed his counter in the above application. However, the Trial Court was pleased to allow the above application on 17.07.2023. Aggrieved by this, the Revision Petitioner preferred these present applications.

5. The learned counsel appearing for the Revision Petitioner would contend that the power under Order 18 Rule 17 does not affect the inherent powers of the Court to pass the required orders to meet the ends of



justice to reopen the evidence for the purpose of further examination or cross examination or even for production of fresh evidence. Such power can also be exercised by the Petitioner at any stage of the suit even after closure of evidence. 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. No doubt, once the Court recall the witness for the purpose of any such clarifications, the Court may permit the party to access the Court by examining the witnesses for the purpose of clarifications required or permitted by the Court. However, 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. The settled legal position under Order 18 Rule 17 read with Section 151 of Code of Civil Procedure is that, though it is a discretionary power of the Court, it has 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.

6. Therefore, the impugned order passed by the Trial Court to recall the witnesses at the instance of the Respondent for further elaboration



7. On the other hand, the learned counsel appearing for the Respondent would contend that since the deceased Arumugam has bequeathed his property in favour of the 2nd Respondent/2nd Plaintiff by virtue of a registered Will dated 10.08.2011 even before filing the suit, it is necessary to mark the above document through D.W.1 and therefore, the above applications for marking the document and for recalling D.W.1 was rightly allowed by the Trial Court to meet the ends of justice. Therefore, the present Civil Revision Petitions are devoid of merits and they are liable to be dismissed.

8. Heard on both sides and perused the records.

9. The case of the Plaintiff is that one Arumugam borrowed a



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sum of Rs.5,00,000/- from the Revision Petitioner and executed a promissory note in favour of the Revision Petitioner. Thereafter, the said Arumugam died leaving behind the Respondents as his legal heirs. In spite of repeated demands, the Respondents failed to repay the loan amount. Therefore, the Revision Petitioner was constrained to file a suit in O.S.No.44 of 2013 which was renumbered as O.S.No.41 of 2019. The contention of the Respondents is that, the said Arumugam executed a registered Will on 10.08.2011 in favour of the 2nd Respondent/2nd Plaintiff and therefore, filed two applications in I.A.Nos.352 and 353 of 2020 for marking the said Will through D.W.1 and to recall D.W.1 for the said purpose. The above applications were allowed by the Trial Court against which the present Revisions are preferred.

10. The point for determination is whether the witness can be recalled under Order 18 Rule 17 of Code of Civil Procedure when the evidence is already closed to establish the above facts. Even according to the Revision Petitioner, the trial of the above suit is likely to be concluded and at that stage, the Respondents have come out with these applications only with an intention to drag on the proceedings.



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11. No doubt, the power under Rule 17 cannot be invoked to fill up omissions in the evidence already led by the witnesses. Even if no prejudice is caused to either side, the party cannot be permitted to invoke Rule 17. But in the present case, the petition under Order 18 Rule 17 of Code of Civil Procedure filed for elucidating the existence of a Will which is in favour of the 2nd Respondent. It cannot be said that the above petition is filed to further elaborate on the left out point. It is the contention of the Respondents that, the deceased Arumugam executed a Will in favour of the 2nd Respondent and therefore, the above document is necessary in the suit for having just decision of the case. The specific contention of the Respondent is that even before the order of the attachment, the Will was executed in favour of the 2nd Respondent and the patta was also transferred in the name of the 2nd Respondent. On perusal of record it is seen that the Defendant Side evidence is not closed and posted for Defendant Side further evidence.

12. Therefore, in order to substantiate the contention of the Defendants, the Trial Court has rightly allowed the above applications and the Revision Petitioner has ample opportunity to cross examine the



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witnesses with regard to the veracity of the alleged document.

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13. Therefore, no infirmity found in the orders passed by the Trial Court. Accordingly, these Civil Revision Petitions are dismissed. Moreover, in the interest of justice and to have a fair adjudication, an opportunity must be given to the Respondents to put forth their Defence. No costs. Consequently, connected miscellaneous petition is closed.

20. 12.2023

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Index: Yes/No

Speaking Order : Yes/No

K.GOVINDARAJAN THILAKAVADI,J.

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To

The Subordinate Judge,
Melur.

ORDER MADE IN

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