



CRP(MD).Nos.2537 and 2538 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.07.2023

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THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(PD) (MD).Nos.2537 and 2538 of 2018 and
CMP(MD).No.11156 of 2018

Poolachi

Petitioner in both CRPs

Vs.

1.Ajithkumar
2.Balakrishnan

Respondent in both CRPs

COMMON PRAYER: Civil Revision Petitions under Article 227 of the Constitution of India to call for the records and set aside the fair and decreetal order, dated 23.10.2018 in I.A.Nos.1008 and 1009 of 2018 in O.S.No.375 of 2011 on the file of the Additional District Munsif Court, Manapparai.

For Petitioner : Mr.H.Lakshmi Sankar in both CRPs

For Respondent No.1: Mr.Raguvaragopalan in both CRPs



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COMMON ORDER

These Civil Revision Petitions have been filed to call for the records and set aside the fair and decreetal order, dated 23.10.2018 made in I.A.Nos.1008 and 1009 of 2018 in O.S.No.375 of 2011, on the file of the Additional District Munsif Court, Manapparai.

2. The petitioner herein is the second defendant in the suit. It appears that the 1st respondent herein is the plaintiff in the suit.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. The plaintiff, who is the 1st respondent herein filed a suit for relief of declaration and partition. The revision petitioner herein / 2nd defendant before the trial Court is the subsequent purchaser, and the first defendant / 2nd respondent herein is the father of the petitioner. It appears that after the suit was posted for arguments, the plaintiff has filed an applications to reopen the defendant side evidence and to recall DW.1. The reasons assigned by the petitioner / plaintiff is that he has omitted to



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put up some important questions with regard to the relationship between the defendants 1 and 2. Such applications were resisted by the revision petitioner / second defendant on the ground that the recall and reopen petitions filed with a hidden agenda. However, the learned Trial Judge, allowed the applications, in the interest of justice. Aggrieved with the said orders, the second defendant / 2nd respondent has come up with the present Civil Revision Petitions.

5. The learned counsel appearing for the second respondent / petitioner herein vehemently submits that Order 18 Rule 17 CPC postulates allowing the application for recall only when the Court reaches the conclusion that there is ambiguity in the evidence, which need to be clarified. In this case, the learned Trial Judge, has not recorded any reason. In support of his contention, the learned counsel appearing for the petitioner also relied on Judgment of the Hon'ble Supreme Court reported in **2016(4) LW 447** in the case of **(Ram Rati Vs. Mange Ram (d) Through Lrs and others)**, wherein at, paragraph Nos.11 and 12 it is held as follows:

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 Nagappa Vernkar (dead) Through Lrs. V. Sharadchandra Prabhakar Gogate (2009-5-L.W.52 = (2009) 4 SCC 410] this principle has been summarized at paragraphs 25, 28 and 29;

"25. In our view, though the provision 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.

Xxxxxx

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 that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme of 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



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to clear any ambiguity that may have arisen during the course of his examination.”

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6. The learned counsel appearing for the revision petitioner, would invite the attention of this Court on the Ruling and would submit that the basic purpose of Rule 17 of Order 18 is to enable the Court to clarify any position or doubt, and the Court may either suomotu or on the request of any party, recall any witness at any stage in that regard. The learned counsel also would submit that recall cannot be used to fill up *lacunae* and such power has to be exercised only sparingly.

7. However, the learned counsel appearing for the 1st respondent / plaintiff would submit that the very order passed by the learned Trial Judge has contain reason as to how the learned Judge has come to the conclusion in exercise of his discretionary power and therefore, nothing to interfere with the order passed by the learned trial Judge.

8. I have given my anxious consideration to the submissions of the learned counsel appearing on either side and perused the materials available on record.



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9. The 1st respondent / plaintiff has specifically mentioned that he needs to put certain questions in respect of relationship between the first and second defendants. However, the learned counsel appearing for the revision petitioner / second defendant has invited the attention of this Court about the deposition, where the plaintiff has already cross examined DW.1 in respect of the relationship, and therefore, contended that there is no need for him to recall and reopen. Though the respondent has stated that the petitioner has some hidden agenda, he did not explain the same. Here, the petitioner wants to put some question regarding relationship. Though some question have already been asked, that does not mean that, he will not have any more question on that aspect. Further, only through cross examination, both the parties could effectively elicit truth. Though, the learned counsel appearing for the revision petitioner / 2nd defendant would submit that the 1st respondent / plaintiff has filed applications only to fill up the *lacunae*, this Court could not accept the arguments of the learned counsel upon the above reasons.

10. Thus, from the perusal of the affidavit and evidence which had been annexed in the typed set of papers, this court is of the opinion that the applications not appears to have been filed to fill up the *lacunae*.



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Therefore, this Court is of the view that though the order of the learned Trial Judge has not contain any reason, except by referring to allow the applications, in the interest of justice, this Court do not want to interfere with the order passed by Court below as this Court recorded merits in these revisions. Hence, these Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11. At this juncture, the learned counsel appearing for the revision petitioner / 2nd defendant would seeks a direction to the 1st respondent herein / plaintiff not to put up any other question beyond the ground stated in his affidavit. Therefore, as requested by the learned counsel for the petitioner / 1st defendant, the 1st respondent / plaintiff is directed to restrict his question to DW.1 only within the ground mentioned in the petition to recall DW.1.

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To

The Additional District Munsif Court, Manapparai.



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