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*O.A.Nos. 114 & 115 of 2024*

**O.A.Nos. 114 & 115 of 2024**  
**in**  
**E.L.P. No. 9 of 2021**

**P.T.ASHA, J.**

The above applications have been filed to recall and reopen the evidence of P.W.1. The said applications have been taken out by the 1<sup>st</sup> respondent.

2. In the affidavit filed in support of the said applications, the 1<sup>st</sup> respondent / applicant would submit that in paragraph no.8 of the Election Petition, it had been stated that the Form 26 submitted by the petitioner herein was incorrect as the petitioner has intentionally suppressed his right to 23 cents out of 2.08 acres comprised in S.No.207 / 2A, Reetiyoor Village, in which the applicant is alleged to have an undivided interest.



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3. The applicant would submit that the aforesaid statement had been denied by him in the detailed counter statement to the election petition, E.L.P.No.9 of 2021. He had stated that the entire extent of 2.08 acres in S.No.207/2A had been sold and nothing remains in his hands. The petitioner would further submit that an Encumbrance certificate had been filed by the election petitioner, which was marked as Ex.P.5 which was for the period from 01.01.1990 to 07.06.2021. From out of the total extent of 2.08 acres, an extent of 1.81 alone had been sold and the remaining extent was not sold. For this purpose, the applicant sought to recall the witness and reopen his evidence.

4. A common counter affidavit has been filed, wherein the election petitioner / 1<sup>st</sup> respondent would contend that P.W.1 had been cross examined on 15.02.2023 and 02.03.2023, where he was asked over 102 questions and had been extensively cross examined by the counsel for the applicant. The evidence of P.W.1 had been



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closed, the other witnesses on the side of the election petitioner had been examined in chief and cross and the evidence of the court witnesses had concluded on 21.12.2023.

5. The Election Petitioner would submit that thereafter the applicant had himself entered box on 29.01.2024 and his evidence was closed on 02.02.2004. It is after this that the present application has been filed. The Election Petitioner would further submit that no reason has been given for recalling the witness and reopening the evidence. The attempt of the applicant appears to only be to drag on the proceedings. Therefore, he sought to have the applications dismissed.

6. Heard both the learned counsels and perused records.

7. The applicant / 1<sup>st</sup> respondent has moved these applications to recall P.W.1 and to reopen his evidence. The only reason for reopening the evidence is to cross examine P.W.1 on Ex.P.5. This





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10. The provisions of Order XVIII Rule 17 empowers the Court to clarify any issue or doubt, which the Court may entertain. Even where the request is made by a party, then the recalling or reopening the evidence should only be to assist the Court to clarify the evidence and not to fill up any lacunae in the evidence already recorded.

11. In the instant case, it is clear that the applicant / 1<sup>st</sup> respondent is only attempting to fill up his omission to question P.W1 in respect of Ex.P.5. Therefore, the said applications cannot be entertained and are accordingly dismissed.

**11.03.2024**

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