



C.R.P.(MD)Nos.634 & 635 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)Nos.634 & 635 of 2020

and

C.M.P.(MD)No.4127 of 2020

Thangachamy

... Petitioner / Petitioner / Defendant

Vs.

1.Chinnaponnu

2.Mookkusamy (Died)

3.Prabhakaran

... Respondents / Respondents / Plaintiffs

PRAYER in C.R.P.(MD)No.634 of 2020 : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 04.07.2020 passed in I.A.No.1 of 2020 in O.S.No.148 of 2017 on the file of the learned Principal District Munsif, Manamadurai.

PRAYER in C.R.P.(MD)No.635 of 2020 : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated



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04.07.2020 passed in I.A.No.2 of 2020 in O.S.No.148 of 2017 on the file of the learned Principal District Munsif, Manamadurai.

For Petitioner : Mr.R.Senthil Kumar

For R-1 & R-3 : M/s.Vijayakumari Natarajan

COMMON ORDER

These Civil Revision Petitions came to be filed assailing the orders passed by the learned Principal District Munsif, Manamadurai, in I.A.No.1 of 2020 which has been filed to recall the defendant D.W-1 and mark the two revenue documents on the side of the defendant and I.A.No.2 of 2020 which has been filed seeking to receive the documents on the side of the defendant by condoning the delay on the side of the defendant to produce the documents in the trial.

2. For the sake of convenience, the parties are referred herein as per their rank in the Original Suit.



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3. The facts which led to the filing of this Civil Revision Petition are as follows:

The defendant in the original suit is the petitioner herein. I.A.No.1 of 2020 came to be filed by the defendant before the learned Trial Court under Order 18 Rule 17 of the Civil Procedure Code, 1908, seeking permission of this Court to recall D.W-1 and mark certain revenue documents which came available to him during the pendency of the suit. However, both the I.A.Nos.1 and 2 of 2020 came to be dismissed by the learned Trial Court, by a common order dated 04.07.2020. The learned Trial Court came to a conclusion that no amount of evidence or arguments can be looked into or considered in the absence of any pleadings and issues and on that basis since the details as to the revenue records which is sought to be marked by recalling D.W-1 is not reflected in the pleadings, the learned Trial Court dismissed the same. Assailing the said orders, these Civil Revision Petitions came to be filed.

4. The learned counsel appearing for the civil revision petitioners submitted that, the suit was one for declaration and permanent injunction and Item No.2 of the plaint schedule properties is absolutely in the possession and



enjoyment of the defendant and revenue documents especially Adangal Register pertaining to plaint schedule property Item No.2 in favour of the defendant became available to the defendant only during the pendency of the suit, after the examination of D.W-1 on the basis of the Memo dated 18.12.2019 of the Tahsildar, Manamadurai. The defendant's failure to mark the same, while he was examined as D.W-1, at the first instance, was neither wanton nor indeligent but only due to the non availability of the same, the same was not marked. However, the same is a vital document for substantiating the claim of the case before the learned Trial Court and hence, the learned Trial Court ought not to have dismissed both the I.As., despite the defendants having pleaded in the written statement in 2nd paragraph in page 3 as to the fact that the Item No.2 of the plaint schedule property is under the possession and enjoyment of the defendant and he acquired title over the same by the strength of a sale deed dated 30.05.1986 executed in his favour by one Bangaru Thirumalai Raja. In view of the same, the observation of the learned Trial Court that the defendant had failed to plead as to the details of the revenue documents would become irrelevant due to the fact that he had fairly pleaded details as to the possession and title of the defendants over the same and on that basis



pressed for allowing the Civil Revision Petitions.

5. Per contra, the learned counsel for the respondents submitted that the Civil Revision Petitions are liable to be dismissed on three grounds. Especially for the reason that the defendant had filed both the I.As before the learned Trial Court after completion of examination of D.W-1 and submitted that after completion of cross examination of D.W-3 then the case was posted for further examination of the defendants, the I.As came to be filed belatedly. That apart, the specific pleadings as to the existence of the revenue documents which are sought to be marked by the defendants was also not found in the written statement filed by the defendants. In addition to that, the revenue records especially the Adangal Register which was sought to be marked by the defendants was obtained by him by influencing the revenue authorities in an *ex parte* hearing without putting the plaintiffs on notice and submitted that it is not necessary to interfere with the order passed by the learned Trial Court and pressed for dismissal of the Civil Revision Petitions.



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6. Heard, the learned counsel appearing for the petitioner, the learned counsels appearing for the respondents and carefully perused the materials available on record.

7. Order 18, Rule 17 of the Code of Civil Procedure, 1908, is an enabling provision which enables the Court to recall any witness to be examined. Though, normally the Courts do not permit to recall the witnesses at the instance of parties under Order 18, Rule 17 of the Civil Procedure Code, 1908; since Order 18 Rule 17(a) of Civil Procedure Code, 1908, is now deleted, it is that the power of recalling is purely discretionary on the part of the learned Trial Court though it is sparingly used in rare cases. The observation of the learned Trial Court that the defendant failed to plead the details of the revenue records which was sought to be marked by him when the case was posted for further examination of defendants after completion of examination and cross examination of D.W-3 do not have any substance, for the reason that it is not necessary for the parties to a civil suit to elaborate the contents of the documents on the basis of which, the parties claim title over the same. In the instant case, the defendant had duly pleaded that he has title, possession and



enjoyment over the Item No.2 of the plaint schedule property in view of the sale deed in favour of him executed on 30.05.1986 by one Bangaru Thirumalai Raja. The Natham Adangal which is sought to be marked by the defendant by filing I.A.No.1 of 2020 and I.A.No.2 of 2020 to recall D.W-1 is obviously a substantial document in addition to the title deed about which he had already pleaded. He had diligently submitted before the learned Trial Court that the same was not available to him while he was examined as D.W-1.

8. On careful perusal of the same, which has been produced before me, the said Adangal has been issued by the revenue authorities on 24.01.2020, however, he was examined as D.W-1 even before that. This Court in the case of ***S.Rathinaswamy .vs. S.Bhanumathi dated 11.08.2005 reported in AIR 2006 MAD 221***, has dealt with a similar issue and the relevant portion which is applicable to the facts and circumstances of this case is extracted as follows:

“25. Order 18, Rule 17, C.P.C, empowers the Court to recall at any stage a Witness who has been examined and cross-examined. The powers under the Rule are very wide and the Court can recall a Witness for the purpose of clarification of any ambiguity or omission noticed.



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The power can be exercised suo motu as also at the instance of a party. In the decision in S.S.S.Durai Pandian v. S.A. Samuthira Pandian AIR 1998 Mad. 323, it has been held that the Trial Court has got powers to recall the Plaintiff for re-cross-examination under Order 18, Rule 17 of the Code of Civil Procedure on the Application filed by the Defendant independent of Section 151, C.P.C. It is also clear that this power is purely discretionary. However, but the same ought to be exercised with the greatest care and only in the most peculiar circumstances. The right of the Court to act under this Rule is not restricted to action of its own motion.

26. Order 18, Rule 17, C.P.C. is the enabling provision for the Court to recall any witness, who has been examined. Normally, Order 18, Rule 17, C.P.C, does not permit the Court normally to recall a Witness at the instance of a party. Since Order 18, Rule 17-A, C.P.C, is now deleted, the power of the Court under Order 18, Rule 17 to recall the Witness at the instance of the party becomes more limited. The power is purely discretionary which is to be sparingly exercised in rare cases. In the cases where Courts recall the witnesses under Order 18, Rule 17 C.P.C, at the instance of the party, duty is cast upon the Court to record its reasons in exercising the discretion to recall the witnesses. Lest multitude of applications would be filed under Order 18, Rule 17, C.P.C, whenever parties desire to produce additional evidence. Such course would defeat the object of the legislature in deleting Order 18, Rule 17-A, C.P.C.



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27. In this case, the Plaintiffs have produced documents-Plan and Survey Plan regarding S.No.1, 15 and 16 and in the Affidavit, it is averred that the documents were not earlier traceable. The plan sought to be produced are the Public documents.”

9. Even in the instant case, in the line of the order passed by this Court in similar lines which is extracted supra, the documents which is sought to be marked as public document, it is averred the same is not earlier traceable. It is needless to state that, Order 18, Rule 17 of Code of Civil Procedure, 1908, empowers the Court to recall a witness at any stage who has already been examined and cross examined. In view of the same, I have no hesitation to hold that the Trial Court ought to have given an opportunity to the defendant by allowing both the I.A.Nos.1 and 2 of 2020. Accordingly, I hereby set aside the the order passed by the learned Trial Court dated 04.07.2020. The learned Trial Court is directed to permit the defendant to mark the document by recalling D.W-1.



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10. Accordingly, these Civil Revision Petitions stands allowed. There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

11.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Principal District Munsif,
Manamadurai.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Sml

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