



C.R.P.(MD)Nos.3092 to 3094 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P(MD)Nos.3092 to 3094 of 2023

and

CMP(MD)Nos.15966, 15957 and 15968 of 2023

(1)CRP(MD)No.3092 of 2023:-

P.Venkatachalam : Petitioner/1st Respondent/
1st Defendant

Vs.

Edumbaraja (Died)

1.E.Indurani

2.E.Maharajan

: R1 to R3/Petitioners/
Plaintiffs

3.The Tahsildar,
Aandipatti Taluk,
Theni District.

4.The District Collector,
Theni District.

: R3 and R4/R2 and R3/
Defendants 2 and 3

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the impugned fair and decreetal order passed in IA No.17 of 2023 in OS No.149 of 2012, dated 10/11/2023 on the file of the District Munsif Court, Aandipatti.

(2)CRP(MD)No.3093 of 2023:-

P.Venkatachalam : Petitioner/1st Respondent/
1st Defendant

Vs.



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C.R.P.(MD)Nos.3092 to 3094 of 2023

Edumbaraja (Died)

1.E.Indurani

2.E.Maharajan

: R1 to R3/Petitioners/
Plaintiffs

3.The Tahsildar,
Aandipatti Taluk,
Theni District.

4.The District Collector,
Theni District.

: R3 and R4/R2 and R3/
Defendants 2 and 3

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the impugned fair and decreetal order passed in IA No.18 of 2023 in OS No.149 of 2012, dated 10/11/2023 on the file of the District Munsif Court, Aandipatti.

(3)CRP(MD)No.3093 of 2023:-

P.Venkatachalam

: Petitioner/1st Respondent/
1st Defendant

Vs.

Edumbaraja (Died)

1.E.Indurani

2.E.Maharajan

: R1 to R3/Petitioners/
Plaintiffs

3.The Tahsildar,
Aandipatti Taluk,
Theni District.

4.The District Collector,
Theni District.

: R3 and R4/R2 and R3/
Defendants 2 and 3

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the impugned fair and decreetal order passed in IA No.19 of 2023 in OS No.149 of 2012, dated 10/11/2023 on the file of the District Munsif Court, Aandipatti.



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For Petitioner (in all cases)	: Mr.B.Saravanan Senior Counsel for Mr.D.Kirubakaran
For R1 and R2 (in all cases)	: Mr.S.Ramesh
For R3 and R4 (in all cases)	: Mr.J.Ashok Additional Government Pleader

ORDER

These civil revision petitions have been filed seeking to set aside the fair and decreetal orders passed in IA Nos.17 to 19 of 2023 in OS No.149 of 2012, dated 10/11/2023 by the District Munsif Court, Aandipatti.

2.The facts in brief:-

The suit in OS No.149 of 2012 was filed by the deceased Edumbaraja seeking the relief of declaration; and mandatory injunction and for costs. The defendants appeared, filed their written statement. Pending trial process, petitions were taken out by this petitioner herein in IA Nos.17 to 19 of 2023 under Order VII Rule 14 CPC and section 151 CPC with the following averments:-

The trial process is over and posted for arguments. It was admitted by both sides that the suit property originally belongs to Meenakshi Ammal. The documents mentioned in the affidavit are required for proper



consideration. To show that the southern property also belongs to Meenakshi Ammal, now the documents are required to be produced. Similarly to show the prior title, documents are required. So the evidence must be re-opened and PW1 must be recalled for further chief examination and for reception of additional evidence. Those came to be allowed by this trial court with certain conditions.

3. Aggrieved over the same, these civil revision petitions are preferred.

4. Heard both sides.

5. The learned Senior Counsel appearing for the petitioner would directly draw the attention of this court to the judgment of the Hon'ble Supreme Court in the case of K.K.Velusamy Vs. N.Palanisamy **[(2011)11 SCC 275]** and would submit that para 11 it has been held as under:-

"11. There is no specific provision in the Code enabling the parties to re-open the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect



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the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under [section 151](#) of the Code, subject to its limitations, can be invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications."

6. According to him, Order 18 Rule 17 CPC is not applicable to the present petitions. So, according to him, the respondents herein ought to have satisfied the requirement of the ingredients under section 151 CPC. Apart from that, he would also draw the attention of this court to para 13 and 14 of the judgment, which reads as under:-



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"13.The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14.The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and



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then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under [section 151](#) of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose."

7.Further para 16 reads as under:-

"16. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under [section 151](#) or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective



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adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings."

8.By drawing the attention in para No.16 of the said decision, he would submit that absolutely, there is no finding to that effect by the trial court.

9.Further, in para 19, the Hon'ble Supreme Court has issued the following guidelines to exercise the discretion, which would run thus:-

"19.We may add a word of caution. The power under [section 151](#) or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may



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exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

10.In the light of the above said observations, he would submit that no proper reason was assigned by the petitioner for the delay. Simply because, the legal advise is rendered, when the documents were already available with them, absolutely, this provision cannot be invoked.

11.But now the documents sought to be introduced by the petitioner is the title documents, which are ancient in nature of one Meenakshi Ammal. They have produced the documents showing the boundary recitals in the connected records.



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12.I am of the considered view that even though, no proper reasoning is stated by the trial court in allowing the petitions, in view of the fact that the title documents are available, I am of the considered view that the discretion has been exercised by the trial court in a right manner, which requires no interference at the revisional stage.

13.In the result, all the civil revision petitions are **dismissed**. But however, there shall be a direction to the respondents herein to complete the examination of witnesses within a period of one month from the date of receipt of this order copy. No costs. Consequently, connected Miscellaneous Petitions are closed.

22/02/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Additional District Munsif-cum-Judicial Magistrate,
Sivagiri.
- 2.The Sub Court,
Sankarankovil.



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G.ILANGO VAN, J

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