



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**RESERVED ON : 29.10.2024****PRONOUNCED ON : 08.05.2025****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.R.P.(MD)Nos.2168 to 2170 of 2024 AND****C.M.P.(MD)No.12308 of 2024**

Saroja (died)

1. P.Murugesan
2. M.Mohan
3. J.Kaleeswari
4. A.Manimaran
5. Minor Jeyavijaraj
6. Minor Jeyasoundar

(Minor petitioners 5 & 6 are rep. by their mother /
natural guardian, the third petitioner namely Kaleeswari)

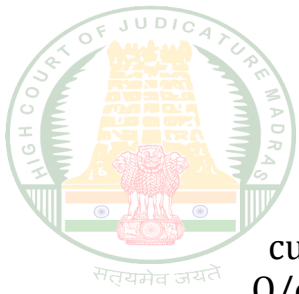
... Petitioners / Petitioners 2 to 7 /
Plaintiffs 2 to 7 in all CRPs.

Vs.

1. R.Guruvammal ... 1st Respondent / 1st Respondent /
1st Defendant
- R.Sountharapandian(died) ... 2nd Respondent / 2nd Defendant

2. R.Maruthupandian
3. M.Ramamoorthi @ Gomathipandian
4. R.Sathyakala
5. K.Pushpalatha
6. A.Ananthi
(R-6 is rep. through her power agent namely
A.Palsamy, the 7th respondent)
7. A.Palsamy

8. The Revenue Divisional Land Acquisition Officer



WEB COPY

cum Revenue Divisional Officer,
O/o.the Revenue Divisional Office,
Sivakasi Revenue Division,
Sivakasi,
Virudhunagar District.

9. The Tahsildar cum Land Acquisition Officer,
Sathur Taluk, Sathur,
Virudhunagar District.

10. The Sub Registrar,
Sathur Sub Registrar Office,
Sathur, Virudhunagar District.

11. A.Roja Maruthu

12. S.Elangeshwari

... Respondents 2 to 12 /
Respondents 3 to 13
Defendants 3 to 13 in all CRPs.

Prayer in C.R.P.(MD)No.2168 of 2024 : Civil Revision petition filed under Article 227 of the Constitution of India, to allow this civil revision petition by setting aside the order and decree dated 21.08.2024 made in I.A.No.16 of 2024 in O.S.No.41 of 2021 on the file of the Sub Court, Sathur(originally numbered as O.S.No.11 of 2015 before the Sub Court, Sivakasi).

Prayer in C.R.P.(MD)No.2169 of 2024 : Civil Revision petition filed under Article 227 of the Constitution of India, to allow this civil revision petition by setting aside the order and decree dated 21.08.2024 made in I.A.No.18 of 2024 in O.S.No.41 of 2021 on the file of the Sub Court, Sathur(originally numbered as O.S.No.11 of 2015 before the Sub Court, Sivakasi).

**Prayer in C.R.P.(MD)No.2170 of 2024 : Civil Revision**

petition filed under Article 227 of the Constitution of India, to allow this civil revision petition by setting aside the order and decree dated 21.08.2024 made in I.A.No.17 of 2024 in O.S.No.41 of 2021 on the file of the Sub Court, Sathur(originally numbered as O.S.No.11 of 2015 before the Sub Court, Sivakasi).

(in all CRPs.)

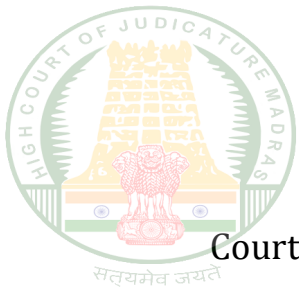
For Petitioners : Mr.M.Thirunavukkarasu

* * *

COMMON ORDER

Heard both sides.

2. One Saroja, wife of the first petitioner herein filed O.S. No.11 of 2015 before the Sub Court, Sivakasi seeking the relief of partition and separate possession and for declaration that the partition deed dated 26.12.2014 executed between the second and third defendants is null and void and for other reliefs. The suit was originally decreed on 07.03.2016. Aggrieved by the same, the defendants filed A.S.No.38 of 2016 before the Additional District Court, Srivilliputhur. The matter was remanded to the file of the Sub



Court, Sathur and it was renumbered as O.S.No.41 of 2021. The

WEB COPY

reason for ordering remand was because both the parties filed petitions under Order 41 Rule 27 CPC to ascertain whether the suit properties are ancestral properties or self-acquired properties of Ramaiya Thevar, the father of the plaintiff and defendants 2 and 3 and the husband of the first defendant. Saroja passed away in the meantime. The first petitioner's husband and the other legal heirs came on record. During the cross examination of P.W.2, defendants put a question regarding the settlement of property situated in survey No.393/2C, Melamadai Village on the strength of the sale deed dated 28.03.1990 in favour of Saroja. The plaintiffs contended that the suit properties are joint family properties which assertion is denied by the defendants. In this background, the plaintiffs filed I.A.Nos.16, 17 and 18 of 2024 for reopening the proceedings and for recalling P.W.2 and for marking additional documents. All the three IAs were dismissed by the Court below vide order dated 21.08.2024. Challenging the same, these civil revision petitions came to be filed.

3. The learned counsel appearing for the revision petitioners reiterated all the contentions set out in the grounds of



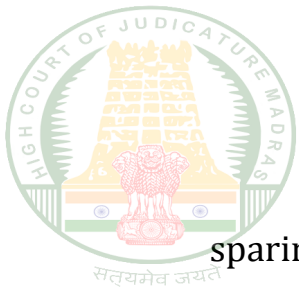
revision. Typed set of papers had been filed including the copies of documents that have been sought to be received in evidence.

4. Per contra, the learned counsel for the respondents contended that the impugned order is well reasoned and does not call for interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. It is not in dispute that the purpose of reopening and recalling is to mark the additional documents. The power of the court to recall and reexamine witnesses is spelled out in Order 18 Rule 17 of CPC. It states that the Court may recall and examine witness who has been examined at any stage of a suit (subject to the law of evidence for the time being in force), and may put such questions to him as the Court thinks fit.

7. The Hon'ble Supreme Court has repeatedly held that the power of the Court under Order 18 Rule 17 of CPC must be exercised



sparingly and in appropriate cases and not as a general rule merely on the ground that the recall and re-examination of the witness would not cause any prejudice to the parties. In the decision reported in **(2009) 4 SCC 410** (vide **Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate**), the Hon'ble Supreme Court held that 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, and that it is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. In a recent decision reported in **2025 INSC 628** (**Shubhkaran Singh vs Abhayraj Singh**), the Hon'ble Supreme Court held that this provision, read with Section 165 of the Evidence Act, makes it clear that the power to recall and re-examine a witness is exclusively that of the Court, and cannot be used to fill up the lacunae in a party's case.

8. In the present case, it is also categorically admitted by the revision petitioners herein that the evidence that they seek to introduce are not related to the suit schedule properties. In this



regard, the Court below has given a categorical finding that reopening and recalling PW2 would serve no purpose since the documents now sought to be introduced in evidence have nothing to do with the suit schedule properties. When the documents are unrelated to the suit properties, the Court below was justified in refusing their admission as irrelevant.

9.Since I am exercising revisional jurisdiction under Article 227 of the Constitution of India, only if I find that the order of the Court below suffers from any irregularity or perversity, I can grant relief by interfering and not otherwise. It is well settled that the power of superintendence of the High Court ought to be exercised cautiously and only if there is a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice. The view taken by the Court below cannot be said to be unsound or incorrect by any stretch of imagination. The Court below has rightly exercised its discretion to refuse exercise of its power under Order 18 Rule 17 of CPC keeping in mind its object. The impugned order does not call for interference.



WEB COPY

10. In this view of the matter, the orders impugned in the revision petitions are sustained. These civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.05.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

1. The Sub Judge,
Sathur.
2. The Revenue Divisional Land Acquisition Officer
cum Revenue Divisional Officer,
O/o.the Revenue Divisional Office,
Sivakasi Revenue Division,
Sivakasi,
Virudhunagar District.
3. The Tahsildar cum Land Acquisition Officer,
Sathur Taluk, Sathur, Virudhunagar District.
4. The Sub Registrar,
Sathur Sub Registrar Office,
Sathur, Virudhunagar District.



WEB COPY



9

C.R.P.(MD)No.2168 OF 2024

G.R.SWAMINATHAN,J.

PMU

C.R.P.(MD)Nos.2168 to 2170 of 2024

08.05.2025