
(2015) 02 MAD CK 0302

In the Madras High Court

Case No : C.R.P. P.D. (MD) Nos. 1620 and 1621 of 2013 and M.P. (MD) No. 1 of 2013

C. Jeyapandian and Others

APPELLANT

Vs

S.P. Balaganesan

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) 2 LW 47

Hon'ble Judges : Pushpa Sathyanarayana, J.

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; S. Subbiah, Advocates for the Respondent

Judgement

Pushpa Sathyanarayana, J.—These Civil Revision Petitions are directed against the orders dated 09.01.2012 passed in I.A. Nos. 1076 and 1077 of 2011 in O.S. No. 174 of 2011 by the Sub-Court, Thoothukudi. The respondent herein, who is the plaintiff in O.S. No. 174 of 2011 filed a suit before the Sub-Court, Thoothukudi, praying for a specific performance and for other reliefs. The petitioners are the defendants in the suit. They filed I.A. Nos. 1076 and 1077 of 2011 in O.S. No. 174 of 2011 before the Sub-Court, Thoothukudi, under Order 18, Rule 17, to re-open and recall the witness of the plaintiff/respondent herein. The trial has commenced and the plaintiff/respondent side evidence is over and it is posted for evidence of the defendants/petitioners side. At that stage, the aforesaid interlocutory applications have been filed to re-open and recall the witness of the The Law Weekly, 21.3.2015 plaintiff/respondent herein and to mark certain documents through him.

2. The case of the petitioners defendants/petitioners is that the income tax returns relating to the years 2006 to 2008 of the plaintiff/respondent were summoned earlier and the same was also produced by him before the Court below. However, for the best reasons known to him, he had not marked the same in the evidence. Therefore, the defendants/petitioners had taken out an

application to mark the said documents.

3. It is contended by the defendants/petitioners that being a suit for a specific performance, it is the burden of the plaintiff/respondent to establish that he had the wherewithal to purchase the property. To prove the said aspect, the income tax returns of the plaintiff/respondent were summoned. As they were not marked by him, the defendants/petitioners wanted to mark the same through the plaintiff by recalling him.

4. It was contested by the plaintiff/respondent that though the income tax returns produced before the Court as early as 29.06.2010, the defendants/petitioners had deliberately filed the application at a belated stage. Therefore, he prayed for the dismissal of the interlocutory applications filed by the defendants/petitioners.

5. After hearing the arguments, the Court below dismissed the interlocutory applications filed by the defendants/petitioners. Aggrieved over the same, the present Civil Revision Petitions have been filed.

6. No doubt, Order 18 Rule 17 enables the Court at any stage of the suit to recall a witness who had to be examined. Such power can be exercised by the Court either on its own or at the instance of the party by filing an application making such request. The said power is also discretionary which should be used sparingly in an appropriate case. It cannot be used to fill up lacunae nor any omissions. In this case, the income tax returns were summoned and produced by the plaintiff/respondent. But for the reasons best known to him, they were not marked through him. Therefore, before the commencement of the defendants/petitioners evidence, applications had been filed to mark the said documents. In a suit for specific performance, the means, readiness and willingness are the main ingredients, which has to be considered. Therefore, the documents now sought to be marked by the defendants/petitioners would be vital to agitate the suit for its proper perspective. However, the learned Sub-Judge, Tuticorin District, has not taken into consideration the said aspect and dismissed interlocutory applications, erroneously.

7. First of all, if the evidence of the plaintiff/respondent (P.W.I) is re-opened and recalled, no prejudice would be caused to him. Secondly, plaintiff/respondent will not be taken by surprise for marking those documents by the defendants/petitioners, as they were produced only by him. It is pertinent to point out that Order 18 Rule 17 enables the Court to permit the party to produce any evidence at a later stage, that is to say, even after the conclusion of the evidence, if a party satisfies the Court that he had such due diligence, it can be done so. As the plaintiff/respondent had not deliberately marked the income tax returns through him, no doubt, the defendants/petitioners are trying to do so. As already pointed out by me, no prejudice would be caused by allowing these Civil Revision Petitions. In such cases, the only thing that has to be borne in mind by this Court is that the other side has to be compensated sufficiently. Thus, both the Civil

Revision Petitions are allowed by setting aside the orders dated 09.01.2012 passed in I.A. Nos. 1076 and 1077 of 2011 in O.S. No. 174 of 2011 by the Sub-Court, Thoothukudi and consequently, permitting the defendants/petitioners to reopen and recall the evidence of the plaintiff/respondent, on payment of Rs. 2,000/- (Rupees Two Thousand Only) to him as costs. The said costs shall be paid to the plaintiff/respondent within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.