
(2015) 03 MAD CK 0453

In the Madras High Court

Case No : CRP. PD. Nos. 1092 to 1094 of 2015 and M.P. No. 1 of 2015

P. Vellingiri Gounder and Others

APPELLANT

Vs

Kannammal and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17

Citation : (2015) 03 MAD CK 0453

Hon'ble Judges : K. Kalyanasundaram, J

Bench : Single Bench

Advocate : S. Karthikei Balan, for the Appellant

Judgement

K. Kalyanasundaram, J.—These civil revision petitions are directed against the common order dated 23.04.2014 passed by the III Additional District Munsif Court, Coimbatore in I.A. Nos. 133, 134 and 135 of 2014 in O.S. No. 1230 of 1995.

2. The plaintiffs in O.S. No. 1230 of 1995 are the petitioners in these civil revision petitions. The suit was filed against the respondents for permanent injunction restraining the defendants, their men and agents from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. The petitioners have filed applications in I.A. Nos. 133, 134 and 135 of 2014 to recall the P.W.1 for letting in further evidence, to reopen the plaintiffs side evidence and permit the plaintiffs to mark the documents.

4. The petitioners have averred in the affidavit filed in support of these applications that during the preparation of arguments, it was found that certain vital documents were omitted to mark by mistake and by oversight and those documents are very much necessary to prove the case of the plaintiffs. The applications were opposed by the respondents stating that the documents were obtained by the plaintiffs one and half a year ago and they were not interested to get along with the suit with malafide intention. It is further stated that after

completion of the trial, the defendants have submitted their arguments, but the plaintiffs, without arguing their case, filed an application in I.A. No. 1026 of 2013 for amending the plaint, which was dismissed on 11.10.2013 and also filed another application in I.A. No. 1302 of 2013, which is also pending. The trial Court rejected that applications. Challenging the said order, the present civil revision petitions are filed.

5. Mr. S. Karthikei Balan, learned counsel for the petitioners submitted that the petitioners are the legal heirs of the first plaintiff and the applications were dismissed on the ground that the documents were obtained just prior to the filing of those petitions. The learned counsel further submitted that the documents could be traced by the petitioners only recently and therefore, there was no delay in filing the applications.

6. I would like to refer the following judgments of the Hon"ble Supreme Court.

"(i) In *Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate*, AIR 2009 SC 1604 : (2009) 7 JT 202 : (2009) 4 SCALE 90 : (2009) 4 SCC 410 : (2009) 3 SCR 1071 wherein, it has held as follows;

"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, 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. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

26. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settle that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination."

(ii) *K.K. Velusamy Vs. N. Palanisamy*, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 , wherein it has held as follows;

"8. Order 18, Rule 17 of the Code enables the Court, at any stage of a Suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the Court either on its own motion or on an Application filed by any of the parties to the Suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify and doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate, AIR 2009 SC 1604 : (2009) 7 JT 202 : (2009) 4 SCALE 90 : (2009) 4 SCC 410 : (2009) 3 SCR 1071). Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the Court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions."

Applying the said decisions of the Hon"ble Apex Court to the case on hand, I do not find any illegality or irregularity in the order impugned. No costs. Consequently, connected miscellaneous petition in M.P. No. 1 of 2015 in CRP 1092 of 2015 is closed.