

M. Parameshwari and Another Vs. M. Baskar and Others

M. Parameshwari and Another Vs. M. Baskar and Others

SooperKanoon Citation : sooperkanoon.com/1185973

Court : Chennai

Decided On : Jan-19-2017

Judge : The Honourable Mrs. Justice Pushpa Sathyanarayana

Appeal No. : CRP PD Nos. 4042 to 4044 of 2016 & C.M.P. No. 20424 of 2016

Appellant : M. Parameshwari and Another

Respondent : M. Baskar and Others

Judgement :

(Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 18.04.2016 passed by the learned District Judge, District Court-II, Kancheepuram in I.A.Nos.5, 6 and 60 of 2016 in O.S.No.48 of 2012.)

1. The plaintiffs are the revision petitioners.
2. Aggrieved by the order passed by the court below in allowing the applications filed by the fourth defendant, for re-open, recall and to receive the documents in O.S.No.48 of 2012 after the arguments of the plaintiff side was over, the above revisions have been filed.
3. The brief facts of the case would run thus:

(i) The fourth defendant/R1 herein filed applications before the court below for re-opening the evidence of DW3, recall and to receive certain additional documents. It is stated in the affidavit filed in support of those applications that the arguments of the plaintiffs were totally contrary to the plaint averments and factually they were incorrect. It was further stated that the father of the plaintiffs never sold any property of their grand father V.Perumal Reddy. The grand father also did not sell any property that was inherited by him. There was a pauper suit in O.S.No.150 of 1967 filed by D1/R2 herein seeking declaration that the alienations made by the defendants 2 to 15 therein are not binding on him and wanted partition of those properties. The said suit was dismissed for want of merits. Thus the alienations done by the father and the grand father had become final. But the present suit is filed for seeking declaration declaring that the sale deed executed by the third defendant in favour of the fourth defendant is illegal and as null and void and for permanent injunction. Between the plaintiffs and the defendants 1 and 2 there were several litigations in various courts and all the suits were with respect to the same property. The pleadings and the compromise decree in those suits are therefore, sought to be marked as additional documents, which are to be received in evidence for which purpose, the re-open and recall is also sought for.

(ii) The said applications were resisted by the plaintiffs/revision petitioners herein by contending that the said documents are in no way connected to the present suit; that the plaintiffs are unaware of the alleged proceedings in O.S.No.150 of 1967 and that the documents sought to be marked are irrelevant to the case. It was further contended that those documents now sought to be marked by the fourth defendant are not in connection with the suit properties and it is only to protract the proceedings, he has filed such applications. Accordingly, they sought for the dismissal of the said applications.

(iii) The court below after considering the submissions of both sides, allowed the said applications on terms. Hence, the revisions.

4. Heard both sides.

5. A perusal of the list of documents attached with the petition would go to show that all the documents, which are sought to be received as additional documents,

excepting the compromise decree are prior to the filing of the suit, but the trial judge has mentioned that the documents were received by the fourth defendant only during the period of December 2015 and therefore thought fit to allow the petitions to avoid multiplicity of proceedings and excepting the said fact, no other reason was assigned by the learned trial Judge for allowing the applications.

6. Order XVIII Rule 17 of the Code of Civil Procedure, enables the Court, at any stage of the suit, to recall any witness, who has already been examined for further examination. The said exercise can be done either by the Court on its own motion or in an application filed by any of the parties to the suit. The power is also discretionary and the same should be used sparingly in appropriate cases to get clarification of any doubts, the Court may have in that regard. However, the same should not be used for filling up the lacuna.

7. Order XVIII Rule 17 CPC primarily intended for the Courts to recall a witness for the purpose of clarifying any doubt by the Court itself in examining the parties. But in due course of practice, the said provision is being exercised at the instance of the parties to recall and reopen the case and to receive documents, if any, relating to the earlier proceedings between the parties.

8. The learned counsel for the revision petitioners placed his reliance on the judgment of this Court reported in 2000-1-LW 487 [Kandasamy vs. Palaniappan and Commissioner of Edapadi Municipality] to substantiate his contention that the trial court has not given any satisfying reason for allowing the applications. If satisfying reasons are not given, the applications have to be dismissed.

9. The next reliance placed is on the judgment of this Court reported in 2002-4-LW 278 [Marayammal vs. R.Kamalathal and another], which deals with the delay. The relevant portion is as follows:

"15. Though mere delay would not be a ground to reject the prayer, the impugned order can be sustained on the ground that the reasons given in the petition filed by the petitioner to re-open the case under Order 18 Rule 17 of CPC cannot be construed to be the proper and sufficient reasons for re-opening the case."

However, subsequently, the Hon'ble Supreme Court in the decision reported in 2011-3-LW-738 [K.K.Velusamy vs. N.Palanisamy] has extensively dealt with the powers of Court under Section 151 of the CPC to reopen the case and the powers of the Court under Order XVIII Rule 17 to recall a witness for any purpose. In para No.16 of the said judgment, it has been held as follows:

"16. 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 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. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application."

10. The trial court, on perusal of the materials available before it, has felt the necessity for re-opening and recalling the witness, for the purpose of marking the documents, which are related to the earlier suits. Mere allowing of the above

applications, does not take away the right of the plaintiffs excepting the fact that the judgment would get postponed. The trial court thus considering the same, had allowed the applications that too, only on terms.

11. In view of the above and also following the judgment of the Hon'ble Supreme Court in 2011-3-LW-738 [cited supra], I do not find any reason to interfere with the same. Accordingly, all these civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com