

V. Chandrakumar Vs. M. Rajathi

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Court : Chennai

Decided On : Jun-26-2012

Judge : V.Dhanapalan, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Order 7 Rule 14 (3); [Constitution of India](#) - Articles 226

Appeal No. : C.R.P. (P.D.) Nos: 1511 to 1513 of 2012

Appellant : V. Chandrakumar

Respondent : M. Rajathi

Advocate for Pet/Ap. : Ms. J. Nandagopal, Adv.

Judgement :

Civil Revision Petitions under Article 227 of the [Constitution of India](#) against the order and decretal orders dated 17.02.2012 made in I.A. Nos: 161, 159 and 160 of 2012 respectively in O.S. No: 105 of 2010 on the file of the Court of District Munsif, Tiruvarur.

ORDER

1. These three Civil revision petitions are filed challenging the orders dated 17.02.2012 made in I.A. Nos: 161, 159 and 160 of 2012, respectively to receive additional documents, to re-open the evidence and to recall P.W.1, in O.S. No:

105 of 2010 passed by the learned District Munsif, Thiruvarur.

2. The brief facts leading to the filing of these Revisions are :

"This Revision petitioner is the plaintiff who filed the suit in O.S. No: 105 of 2010 against the defendant seeking declaration and recovery of possession. The trial is complete and the suit is posted for arguments. At that stage, revision petitioner has filed three interlocutory applications to receive additional documents, to re-open the evidence and to recall P.W.1.

The trial Court, after taking into consideration the facts and circumstances of the case, has dismissed all the three interlocutory applications on 17.02.2012, by holding that Order 7 Rule 14 (3) of C.P.C. says that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. It gives a chance for the plaintiff to produce additional document which was not produced at the time of filing of the suit but it can be produced only with the leave of the Court. The trial Court has further held that the petitioner has not stated any reason in his affidavit as to why he could not produce the documents, which are sought to be filed as additional documents, at the time of filing the suit. The only statement made by the petitioner in his petition is that the revenue documents which is sought to be produced now are necessary for considering the case. Those documents were issued on 31.12.2011. The evidence on the side of the plaintiff was closed on 01.02.2011 and the evidence on the defendant's side was closed on 31.01.2012 and the case was posted for arguments on 08.02.2012 and then to 10.02.2012. According to the trial Court, the petitioner has not taken any steps to file those documents during the period from 31.12.2011 to 08.02.2012 and dismissed the said interlocutory application by concluding that the petitioner has not stated any proper reason for receiving the additional documents. Consequently, the other two applications to recall P.W.1 and to re-open his evidence were also dismissed. Aggrieved over the same, petitioner is before this Court in these revisions."

3. Mr. J. Nandagopal learned counsel appearing for the revision petitioner would contend that the documents which are sought to be filed as additional documents were revenue records which were not available at the time of filing the suit and that these are necessary documents to be taken into consideration by the trial Court for deciding the case on merits. He would further contend that the prayer made by the revision petitioner to receive the additional documents cannot be put against the petitioner. He relies on a judgment of the Supreme Court reported in the case of K.K. Velusamy vs. N. Palanisamy, reported in 2011 (3) C.T.C. 422. Paragraph 14 of the said judgment reads as under :

" 14. 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 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."

4. Heard the learned counsel appearing for the revision petitioner and perused the material documents made available on record.

5. Admittedly, revision petitioner is the plaintiff who filed the suit for declaration as well as recovery of possession. After completion of pleadings, the suit was taken up for trial. Evidence was let in. Plaintiff's side evidence was closed on 01.02.2011 and that of the defendant's side was closed on 31.01.2012 and the case was posted for arguments for 08.02.2012 and 10.02.2012. The documents which were sought to be marked as additional documents were obtained by the revision petitioner on 31.12.2011. It is seen that for the period from 31.12.2011 to 08.02.2012, the petitioner has not taken any steps to mark the documents. Moreover, the trial Court has stated that the petitioner has not stated any reason in his affidavit as to why he could not produce the documents along with the plaint. Therefore, the trial Court dismissed the application to receive the additional documents and consequently, the other two applications to recall and re-open P.W.1's evidence were also dismissed.

5. Though the learned counsel appearing for the revision petitioner relies on the decision of the Supreme Court reported in 2011 (3) C.T.C. 422 K.K.Velusamy vs. N. Palanisamy in support of his contention that the trial Court can exercise its discretionary power to recall the witness at any stage of the suit, the Supreme Court, in the very same judgment cited supra, held that the power to recall any witness under Order 18 Rule 17 is discretionary in nature and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties and the said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. It further held that 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. In the case on hand, it is not in dispute that the documents which were sought to be marked as additional documents were obtained by the revision petitioner on 31.12.2011. It is seen that for the period from 31.12.2011 to 08.02.2012, the revision petitioner has not taken any steps to mark those documents. Instead, when the matter is posted for arguments, the petitioner has filed these applications only to protract the proceedings. Therefore, the learned trial Judge has rightly dismissed the said applications.

6. Thus, looking into every aspect of the matter and taking into consideration the entire facts and circumstances of the case, it is clear that the orders in question does not warrant any scope for interference. Accordingly, all these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is also dismissed. There shall be no orders as to the costs.

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