

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4376 of 2015
and M.P.No.1 of 2015

P.Seralathan

.. Petitioner

(accepted the cause title vide order
of Court dated 12.10.2015 made in M.P.No.1/2015
in CRP.SR.No.81968 of 2015)

Vs.

1.Usharani

2.Jaisree

3.Jansirani

.. Respondents/

legal heirs of deceased 1st petitioner

Prayer:- Civil Revision Petition is filed under Article 227 of
Constitution of India, against the fair and decreetal order dated
03.08.2015 in I.A.No.222 of 2015 in O.S.No.961 of 2012 on the file
of the II Additional District Court, Coimbatore.

For Petitioner : Mr.E.K.Kumaresan

ORDER

Civil Revision Petition is filed against the fair and decreetal
order dated 03.08.2015 in I.A.No.222 of 2015 in O.S.No.961 of
2012 on the file of the II Additional District Court, Coimbatore.

2.The first respondent herein as a plaintiff filed a suit for partition before the District Court, Coimbatore. Thereafter, it was transferred to the Fast Track Court, Tiruppur and when examination of P.W.1 was in part, it has been transferred to the Sub-Court, Tiruppur and finally, it has been transferred to the II Additional District Court, Coimbatore, which has territorial jurisdiction. Even though the first respondent/plaintiff was served with notice, she has not appeared before the trial Court. Hence, plaintiff's side evidence has been closed. The second defendant was examined as D.W.1 and one Velumani was examined as D.W.2. After hearing arguments, the matter was adjourned for judgment. After that the husband of the first respondent/plaintiff has filed an application to reopen the case and recall D.W.1 and D.W.2 for cross-examination and the same was allowed. Thereafter, the revision petitioner/2nd defendant has come forward with an application in I.A.No.222 of 2015 under Order XIX Rule 2 C.P.C. for direction to the plaintiff to available for continuing the cross-examination on the side of the petitioner and other defendants and finish her side evidence first before going to cross of the defendants' side witness or decided to waive the plaintiff's right of evidence if they allowed to cross of defendant side witness. The

trial Court, after hearing both sides, dismissed the application, against which, the present revision petition has been filed.

3.Learned counsel for the revision petitioner submits that only after closing of the plaintiff's side witness, the defendants must be cross-examined, but that factum was not considered by the trial Court. Hence, he prayed for allowing the revision petition.

4.At the time of admission, argument of the learned counsel counsel for the petitioner is heard in length.

5.On perusal of the typed set of papers, it reveals that the sister has filed a suit against her own sisters and brother. Earlier, the suit was pending before the District Court, Coimbatore and plaintiff was examined as P.W.1 and when her cross-examination was in part, the suit has been transferred to various Courts and finally, it was transferred to the II Additional District Court, Coimbatore, which has both pecuniary and territorial jurisdiction. After renumbering, notice has been ordered to both the parties, but the first respondent/plaintiff has not appeared and hence, the trial Court closed the evidence on the side of the plaintiff/first

respondent and examined the second defendant as D.W.1 and one Velumani as D.W.2. After hearing arguments, the matter was posted for judgment. At this juncture, the respondent/plaintiff has filed an application for reopen and recall D.W.1 and D.W.2 and the same was allowed. Thereafter, the revision petitioner/2nd defendant has filed an application in I.A.No.222 of 2015 for direction to the plaintiff to available for continuing the cross-examination on the side of the petitioner and other defendants and finish her side evidence first before going to cross of the defendants' side witness or decided to waive the plaintiff's right of evidence if they allowed to cross of defendant side witness. But that application was dismissed by the trial Court.

6.The main grievance of the revision petitioner is that before cross-examination of D.W.1 and D.W.2, P.W.1 has to be cross-examined by the defendants.

7.Considering the aforestated circumstances of the case, once the plaintiff's side evidence has been closed by the Court, it is the duty of the defendants to file an application to recall PW.1 for cross-examination further. Instead of filing such application, the revision

petitioner filed the present application sought for further cross-examination of plaintiff before D.W.1 and D.W.2 subject to cross-examination. In the suit for partition, co-owners can be standing on the same footing. Merely because the plaintiff was not cross-examined fully, it will not be a reason for denying the cross-examination of D.W.1 and D.W.2. In para-7 of its judgment, the trial Court, after considering 'B' diary, held that even though several time has been given to the fifth defendant for cross-examination of P.W.1, as P.W.1 has not appeared before the trial Court, her evidence was closed. Further, defendants 1 and 2 were cross-examined in length and the subsequent purchaser/fifth defendant was not cross-examined. In my opinion, the order passed by the trial Court does not suffer any illegality or infirmity. However, an opportunity must be given to the revision petitioner. Therefore, he is directed to file an application before the trial Court for recall P.W.1 for cross-examination and the trial Court is directed to consider his application on merits and pass appropriate orders. The plaintiff is permitted to cross-examine D.W.1 and D.W.2 before filing the application to recall P.W.1.

8. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2015

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Index: Yes/No

Internet: Yes/No

To

The II Assistant Judge, City Civil Court, Chennai.

R.MALA,J.

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