



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/2/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.NPD(MD) No.265 of 2015

Ravichandran ... Petitioner

Vs

1. Sundara Kumar
2. Murugesan
3. Natesan
4. Sollin Selvan
5. Vivekandan
6. Suresh Anandan
7. Saravana Bhavani
8. Kesava Bama ... Respondents

Petition filed under Article 227 of the Constitution of India to set aside the order dated 12/11/2014 passed in O.S.No.61 of 2013 on the file of the I Additional District and Sessions Judge, Thoothukudi and allow the present CRP.

For petitioner ... Mr.R.Subramanian

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O R D E R

The revision is filed challenging the order of refusal to permit the petitioner to cross-examine the first plaintiff, who has not got into the box.

2. On 12/11/2014, witness summon was taken to the first plaintiff. But the plaintiffs side reported that the plaintiffs cannot be allowed to be examined as defendant side witness. Therefore, the permission was refused.

3. The learned counsel appearing for the petitioner contended that the lower Court ought to have permitted him to examine the first plaintiff to substantiate his case since he has not gone into the witness box. The first plaintiff had deliberately stayed away from the witness box during the trial which itself clinchingly would show that the settlement deed dated 25/10/2012 is a fraud on the part of the third defendant. It is further contended that mere examination of the first plaintiff will not in any way prejudice the case of the plaintiffs.



4. It is to be seen that under Order 16 Rule 21 of the Code of Civil Procedure emphasize that where any party to the suit is required to give evidence or to produce a document, provision as to witnesses will apply to him so far as they are applicable. If the first plaintiff is not appearing before the Court to get into the witness box, it is always open to the petitioner to invoke Order 16 Rule 21 of the Code of Civil Procedure. When there is a remedy available in the Code itself, without exercising the same, the petitioner cannot invoke the jurisdiction of this Honourable High Court.

5. In the result, this Civil Revision Petition is dismissed. No costs. It is open to the petitioner to file an application under Order 16 Rule 21 of the Code of Civil Procedure to examine the first plaintiff. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

Ist Additional District and Sessions Judge, Thoothukudi.

+One cc to M/s.R.Subramanian, Advocate, SR.No.7232

mvs
RL/3 c- 25/2/2015

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