

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4240 of 2015

and

M.P.No.1 of 2015

1. Jayanthi Raghavan

2. S.Raghavan

... Petitioners

Vs

V.Chinnaswamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 25.09.2015 passed in I.A.No.12561 of 2015 in O.S.No.519 of 2014 passed by the learned I Assistant City Civil Judge, Chennai.

For Petitioners : Mr.S.Ramesh

For Respondent : Mr.N.Karthikeyan

ORDER

The respondent has entered appearance through Counsel. The arguments advanced by Mr.S.Ramesh, learned counsel for the petitioners and by Mr.N.Karthikeyan, learned counsel for the respondent are heard. The copy of the impugned order, grounds of

revision and other materials placed before this Court in the form of typed set of papers are also perused.

2. The respondent is the plaintiff and the petitioners are the defendants.

3. The suit is in the part-heard stage. Both parties led evidence and the same was posted for hearing arguments. At that point of time, the respondent herein/ plaintiff filed an application to re-open the case and an application in I.A.No.12561 of 2015 to summon the first respondent herein / first defendant to be examined as a witness in the suit was filed. The first petitioner is none other than the wife of the second petitioner. The second petitioner entered the witness box and deposed as D.W1 both on his own behalf and on behalf of the second petitioner. Under the said circumstances, the respondent herein has chosen to file the said application to issue summons to the first petitioner for being examined as witness. It is not known as to on whose side he is to be examined.

4. The said petition was resisted contending that it was the prerogative of the petitioners herein / defendants to decide by what

evidence they have to prove the defence case and that the respondent herein / plaintiff could not dictate terms to them as to who were all to be examined on their side. Despite such an objection having been taken by the petitioners herein, the learned trial Judge chose to pass the impugned order dated 25.09.2015 allowing the said petition holding that the petitioners herein / defendants were not going to be prejudiced. It is as against the said order, the present Civil Revision Petition has been filed.

5. When a rival party in a civil suit does not want to get into the box to depose as a witness on his/her side, his/her opponent cannot compel such a party to figure as the witness in the said case. At the best, the other party can hand over interrogatories so as to elicit either an admission or denial of the facts pleaded by him. Apart from that he cannot dictate terms to his opponent as to who are all the persons to be compulsorily examined on his side. If at all a vital witness has not been examined, he can take advantage of the same and advance arguments. But, the fact that a witness vital for the defence case has not been examined shall not be the ground on which the Court can pass an order directing the defendant to come and depose at the instance of the plaintiff. The order of the trial Court

cannot

P.R.SHIVAKUMAR, J

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stands the scrutiny of this Court and the same deserves to be set aside.

6. Accordingly, the Civil Revision Petition is allowed. The order of the trial Court dated 25.09.2015 made in I.A.12561 of 2015 is set aside. I.A.No.12561 of 2015 shall stand dismissed. No costs. Connected miscellaneous petition is closed.

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Index: Yes/No
Internet: yes/No

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To

The I Assistant City Civil Judge, Chennai.

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