

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.189 of 2016

and

C.M.P.No.960 of 2016

P.Kumari

... Petitioner

vs.

A.Anandan

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the III Additional District Judge, Tiruvallur at Poonamallee dated 14.09.2015 made in I.A.No.235 of 2015 in O.S.No.193 of 2008.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.S.N.Ravikumar

ORDER

The respondent is represented by a counsel. The arguments advanced on both sides are heard. The facts leading to the filing of the present civil revision petition are as follows:

The respondent filed a suit against one N.D.Raman, who was shown as the sole defendant, for declaration of his title in respect of the suit property, recovery of possession and for recovery of damages for use and occupation. After the trial started and the witnesses on the side of the then sole defendant

were examined and after the evidence of DW2 examined on the side of the then sole defendant was closed, the respondent herein/plaintiff filed an application for impleading the revision petitioner as a party defendant and to rank her as second defendant. The said petition was allowed and the petitioner herein was impleaded and ranked as the second defendant.

2. Thereafter, she filed her written statement before leading evidence on her side. Since a person, who was a witness for the document relied on by the petitioner herein/second defendant was already examined as DW2, she wanted to recall him for further examination. For that purpose the petitioner herein/second defendant filed I.A.No.235/2015 under Order XVIII Rule 17 CPC. The learned trial Judge dismissed the said application holding that the petitioner herein/second defendant cannot examine a non-party witness on her side before ever she herself is examined as a witness on her side.

3. The peculiar circumstances under which the petitioner had to seek an order recalling DW2 was not properly appreciated by the court below, is the main contention raised by Mr.V.Raghavachari, learned counsel for the petitioner. A party who was impleaded subsequently, cannot be expected to ensure that no non-party witness was examined before his/her impleadment. In the case on hand, DW2 - non-party witness was examined when the petitioner herein/second defendant was not at all a party to the suit. However, it is a fact that has been brought to the notice of this court that the petitioner herein/second defendant and the first defendant are not having conflict of interest. Under the said circumstances, the petitioner also cannot claim that she will be given a chance to cross examine the witness examined on the side of the first defendant. Technically speaking though they may not have any

conflict of interest, a co-defendant, who contests the case separately, can seek the leave of the court to cross examine the witnesses examined by the other defendants. Had the petitioner adopted such a method, the court below would not have got the chance of passing the impugned order. However not intending to cross examine DW1 and to examine him as a witness in support of her defence also, the petitioner herein/second defendant wanted to recall DW2.

4. Order XVIII Rule 3A mandates that a party who wishes to appear as a witness in support of his/her case, shall so appear before any other witness on his/her behalf has been examined, with an exception that the court may, for reasons to be recorded, grant him permission to appear as a witness on his side at a later stage after the examination of other witnesses.

5. In this case, the petitioner/second defendant has not sought for any permission to examine herself as a witness after other witnesses on her side would be examined. When such is the case, the petitioner can now figure as a witness on her side in support of her case and summon the witnesses proposed to be examined on her side thereafter. In such an event, the mere fact that a witness sought to be summoned on the side of the petitioner herein has been already examined by another party to the suit, will not preclude the petitioner from summoning that person as a witness on her side. But since the said person has already figured as a witness, the proper course to be adopted shall be to recall the said witness for further examination, rather than examining such person for the second time as another witness, assigning a separate rank in the list of witnesses. Hence the dismissal of the petition to recall DW2 on the ground that the petitioner has not chosen to enter the box first can be sustained with a clarification that the dismissal of the petition, will

not in any way, bar the petitioner from summoning DW2 to be examined on her side and in such an event his evidence shall be recorded as continuation of the evidence already recorded as DW2.

With the above clarification, the civil revision petition is disposed of. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

19.02.2016

Index : Yes
Internet : Yes
asr

To

The III Additional District Judge, Tiruvallur at Poonamallee

P.R.SHIVAKUMAR, J.

asr/-

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