

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2-12-2016

CORAM

THE HON'BLE Mr.JUSTICE T. MATHIVANAN

CIVIL REVISION PETITION No.3189 of 2013

and
M.P.No.1 of 2013

1. Annamalai , (M/50)
S/o.Manika Pillai,
Nasal Village,
Vanur Taluk,
Villupuram District.

2. Dhanasekaran (M/46),
S/o. Manika Pillai,
Nasal Village,
Vanur Taluk,
Villupuram District.

... Petitioners / petitioners
/Defendants

vs

Subramania Pillai (M/65)
S/o. Madhava Pillai
Nasal Village,
Vanur Taluk,
Villupuram District

... Respondent/Respondent
/Plaintiff

WEB COPY

Civil revision petition filed under Article 227 of the Constitution of India, against the order of the Principal District Munsif Court at Vanur Taluk, Villupuram District, dated 12.7.2013 made in I.A.No.486 of 2010 in O.S.No.47 of 2004.

For Petitioners

: Mr.S.Subramanian

For Respondent

:

Mr.A.K.Kumarasamy

ORDER

The fair and decretal order dated 12.7.2013 and made in I.A.No.486 of 2010 in O.S.No.47 of 2004 by the learned Principal District Munsif , Vanur Taluk, Villupuram District is under challenge in this Civil Revision Petition.

2. The revision petitioners are the defendants in the suit, whereas the respondent is the plaintiff.

3. It is apparent from the records that the respondent/plaintiff had filed the above said suit in O.S.No. 47 of 2004 as against the revision petitioners and thereby sought the relief of declaration of his title to the suit property and for the consequential relief of permanent injunction.

4. The respondent has also filed another suit in O.S.No. 127 of 2007 as against the revision petitioners and both the suits were jointly tried before the learned District Munsif at Vanur, Villupuram District. In both the suits, the process of recording evidence of both parties was commenced and in so far as the suit in O.S.No.47 of 2004 is concerned already, the examination of witnesses on the side of the plaintiff was completed and thereafter the defendants' witnesses were examined.

5. It appears from the records that (1) Balasubramania Pillai, (ii) Ramamurthi and (iii) Rasu Pillai were examined as D.Ws.1 to 3. Under the said circumstances, the fourth defendant viz., Annamalai had filed his proof affidavit to examine himself as D.W.4. For this purpose he has filed an Application in I.A.No.486 of 2010 under Order XVIII Rule 3A of Code of Civil Procedure seeking permission of the Court to examine him as witness on his part after the examination of other witnesses.

6. This Civil Revision Petition was contested by the respondent/plaintiff and after hearing both sides, the said petition was dismissed by the Court below. Hence the revision petitioners being the defendants in the suit in O.S.No.47 of 2004 stand before this Court with this Civil Revision Petition.

7. It was contended on behalf of the revision petitioners that the respondent was a man of influence and that he would be able to prevent the witnesses from deposing in their favour. According to the revision petitioners, the Panchayath documents are all very vital, and unless the witnesses who were examined as D.Ws.1 to 3 were examined prior to his examination, definitely they would have been tampered by the respondent/plaintiff and the witnesses would have also been prevented from deposing in their favour. This was the only contention made on behalf of the revision petitioners. But the learned trial Judge had found that as contemplated under Order XVIII Rule 3A of Code of Civil Procedure, an Application seeking permission of the Court to examine him at the later stage after examination of other witnesses is directory in nature and since the revision petitioners had failed to file such an Application earlier, the present petition itself is not maintainable and therefore, the trial Court had proceeded to dismiss their petition.

8. Mr.S.Subramanian, learned counsel appearing for the revision petitioners has submitted that if the reason for examining the petitioners belatedly , after examination of other witnesses on his side is genuine, then there cannot be any impediment in granting permission to examine him as his own witness on his side ,after the examination of other witnesses.

9. Order XVIII Rule 3A of Code of Civil Procedure envisages that where the party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined , unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage.

10. Referring to this provision Mr.S.Subramanian, learned counsel appearing the revision petitioners has submitted that a reading of the provisions of Rule 3A of order XVIII of Code of Civil Procedure would make it clear that it is only a directory in nature and not mandatory in nature. If it is mandatory in nature, the latter portion of Rule 3A of Code of Civil Procedure would not be in favour of the persons, who is making the Application. The second portion of the said provisions reads that 'unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage, he cannot appear before any other witness, on his behalf, has been examined'.

11. In support of his contention he has also placed reliance upon the decision of a Division Bench of this Court reported in **Ravi and another V Ramar (2008 (1) CTC 36)**, wherein it is held that, " the real test is to find out whether there was a genuine cause for which the party was not examined as a first witness. If, for some genuine reasons which could not be foreseen initially, a party wants to examine himself, at a later stage, permission can be granted. Therefore, the overriding consideration is not whether the party makes the Application at the threshold or at the subsequent stage but whether for a genuine and germane



WEB COPY

reason the party is required to be examined at a later stage notwithstanding the fact that he was not examined as a witness at the beginning. This seems to be the essence of the different decisions of different High Courts. What would be the relevant facts and circumstances, obviously cannot be laid down in a strait-jacket formula and obviously it is for the Court concerned to deal with the matter in judicious manner.

12. In the light of the observations made by the Division Bench of this Court in the decision cited above, this Court is of view that the order impugned in this Revision Petition is not sustainable and therefore, the same is liable to be set aside.

13. In the result, this Civil Revision Petition is allowed and the impugned order, dated 12.7.2013 and made in I.A.No.486 of 2010 is set aside. Consequently, I.A.No.486 of 2010 shall stand allowed. M.P. No.1 of 2013 is closed. However, there will be no order as to costs.

सत्यमेव जयते

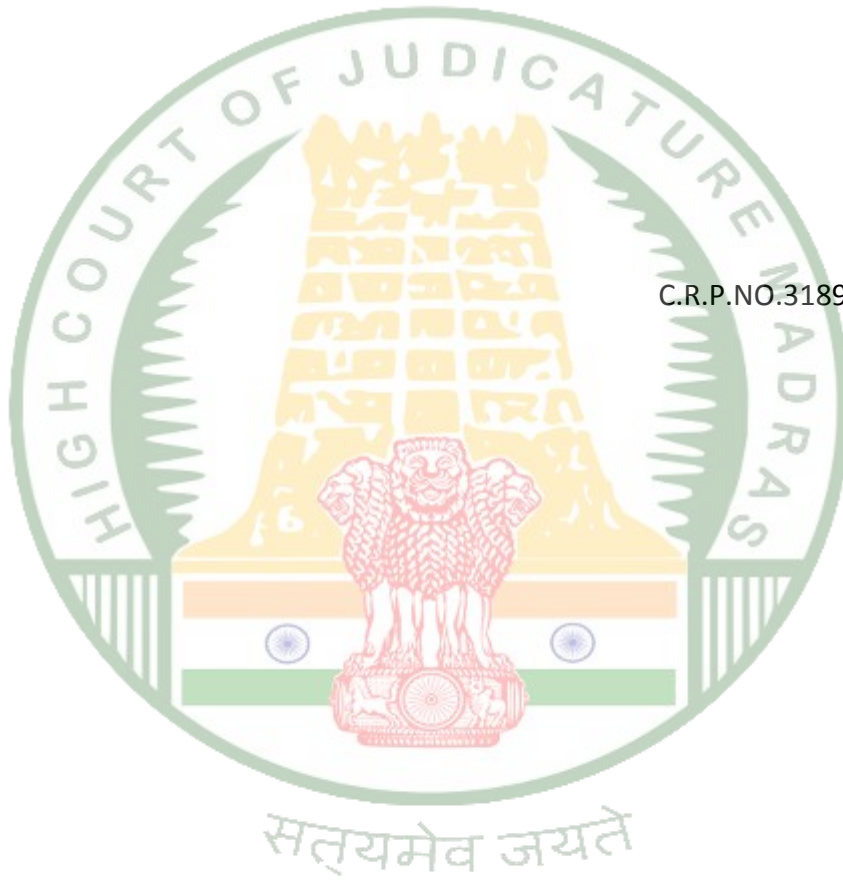
2.12.1016

Index: yes/No

Internet:- yes/no

WEB COPY

T.MATHIVANAN, J



C.R.P.NO.3189 of 2013

WEB COPY

2-12-2016