

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.2251 OF 2017
AND C.M.P.NO.10623 OF 2017

M.Mekala

...Petitioner

Vs.

1.N.Jayalakshmi

2.Pattammal

3.Chandrasekar

4.Selvadurai

5.Lokeshwari

6.Muralikrishnan

7.The Purasawakkam Permanent Fund Ltd.,

... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order in I.A.No.26 of 2017 in O.S.No.11985 of 2010 dated 11.04.2017 pending on the file of XIX Addl. City Civil Court at Chennai pending disposal of the Civil Revision petition on the file of High Court of Chennai.

For Petitioner : Mr.S.Sathish Kumar

For Respondents : Mr.Suraj Govindaraj

ORDER

The Civil Revision petition is directed against the order dismissing the prayer for examining a third party as witness. The fifth defendant has taken out an application to issue subpoena to call for the Company secretary/seventh defendant. The fifth defendant has not examined herself as a witness, instead at the threshold, he filed an application to call the third party as a witness. The application was vehemently objected by the plaintiff. The trial court has categorically held that the present application to examine the third party before the examination of petitioner / fifth defendant adducing evidence is not sustainable in law. It is also pertinent to note that the company Secretary, who sought to be examined as witness is none other than the husband of the plaintiff. The fifth defendant literally compels the husband of the plaintiff to give evidence on her side. The trial court has also considered the issue further and observed that the plaintiff can press upon the Court to take adverse inference for non-examination of the third party against the plaintiff and accordingly dismissed the petition, against which the petitioner/fifth defendant has filed the present civil revision petition.

2. The learned counsel for the petitioner relied upon the judgment rendered in **MINOR ARUMUGAM @ LOGESH AND ANOTHER /VS/ STATE BANK OF INDIA AND OTHERS [CDJ 2006 MHC 196]** wherein it is held as follows:

"Practice of calling the opposite party as a witness should not be countenanced as it is not in the interest of justice" where it is true that if a party refuses to voluntarily give evidence, he cannot be compelled to do so at the instance of the opposite party, as the court is always at liberty to draw an inference against the party, who refuses to give evidence voluntarily".

The court also went on to add that if parties are not the real opponents, then there may be relaxation for very good reasons for letting in evidence, but when they have conflicting interest, they cannot be compelled to give evidence.

3. In another Judgment rendered in **V.K.PERIASAMY @ PERIANNA GOUNDER VS. D.RAJAN [2001 (3) CTC 20]** it is observed

that if there are good reasons, the court may exercise its discretion in favour of the party seeking permission. In the very same Judgment, it is also observed that where a party, who avoids the witness box calls upon the other side to give evidence cannot be entertained. It is well settled that the parties have to prove their case with the pleadings and evidence and then take permission to examine third parties.

4. The learned counsel for the first respondent/plaintiff would submit that the petitioner/fifth defendant cannot examine a third party witness without examining herself as a witness. Unless and until the petitioner/fifth defendant allows herself to be examined and cross examined by the first respondent /plaintiff, she cannot be permitted to call third party witness, who is none other than the husband of the plaintiff.

5. The learned counsel for the petitioner would submit that the fifth defendant has no objection to examine herself and subject herself to the cross examination by the plaintiff before examining the third party. Since both the parties have arrived at a consensus, the Civil Revision Petition is disposed of on the following directions:

(i) At present, the seventh defendant is in the box. On completion of evidence of the seventh defendant, the Trial Court is directed to permit the fifth and sixth defendants to adduce evidence on their side and after cross examination by the plaintiff is over, the petitioner / fifth defendant is permitted to renew her request to call the third party to let in evidence.

(ii) The first respondent / plaintiff is agreeable for the request to be made by the fifth defendant after completion of her evidence.

(iii) A further direction is issued to the Trial Court to complete the trial and deliver judgment, within a period of three months from the date of receipt of a copy of this order.

6. With the above observation and direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2017

Internet : Yes /No
Index : Yes /No

Note : Issue order copy on 24.08.2017

vv/kas/tk

M.GOVINDARAJ, J.

vv/kas/tk

To

The XIX Additional Judge
City Civil Court
Chennai.



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