

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3914 of 2017

and

C.M.P.No.18302 of 2017

S.Suresh

..Petitioner

Vs.

1.K.Vijayalakshmi

2.R.Kaliappan

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Final Order dated 03.08.2017 in I.A.No.719 of 2017 in O.S.No.463 of 2014 passed by the Court of III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.A.Suresh Sakthimurugan

For respondents : Mr.P.Valliappan

ORDER

According to the petitioner, the petitioner has filed a suit

in O.S.No.463 of 2014 for specific performance against the respondent herein. Trial has been commenced and the evidence was concluded on both sides and posted for arguments. At this stage, the petitioner has filed the present application in I.A.No.719 of 2017 to re-open the suit for further examination of the attesting witnesses in the suit. The said application was dismissed. Hence, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the court below has not properly appreciated the case of the petitioner and erroneously dismissed the said application. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel for the caveators / respondents and perused the materials available on record.

4. On perusal of the records and the orders passed by the court below, the petitioner has filed the application to re-open the suit for further evidence. The court below dismissed this

application by stating that ample opportunity was given to the petitioner to produce further evidence and apart from that batta memo filed along with the petition shows that the petitioner is seeking to summon the second defendant as a witness on his side. Therefore, the said order and the contention of the petitioner would shows that the petitioner seeks to re-open the suit for examining the second defendant as attesting witness. It is clear that in the light of the decisions of this Court in the case of *D.Babu Vs. K.A.Dinachandran and Others* reported in 2013 (1) CTC 881 and in the case of *V.L.Ramanathan Vs. Salem Nagarathar Sangam* reported in 2014 (4) LW 174, wherein it has been held that *"the plaintiff cannot summon a contesting defendant and compel him to give evidence on his side. Even if the second defendant's evidence is relevant and necessary, he being a defendant contesting along with his wife namely the first defendant, the plaintiff may at the best demand that adverse inference be drawn against the defendants"*. Hence, in the light of the above said reasons, there is no error or illegality in the order passed by the trial court and the same is confirmed.

5. Hence, the Civil Revision Petition fails and the same is dismissed. However, it is open to the petitioner to file a fresh

D.KRISHNAKUMAR. J,

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application, if permissible under law. Consequently, the connected miscellaneous petition is closed. No costs.

27.10.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The III Additional District and Sessions Judge,
Coimbatore.



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