

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 13TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.5555 of 2017

IN

C.S.No.490 of 2006

G.Prakash,
K-91, Ground Floor,
14th Street, K Block,
Anna Nagar East,
Chennai 600 102

...Applicant/Plaintiff

-vs-

1. K.Chandramathi
35/77, Padavattamman Koil Street,
Kosapet, Chennai - 600 012.

2. G.Sarala Ramachandran
Mepparambath House,
Kaippamangalam Post,
Trichur - 680 681.

3. G.Kannadasan

4. G.Vinod Kumar
R3 & R4 at 35/77, Padavattamman Koil Street,
Kosapet, Chennai - 600 012.

...Respondents/Defendants

Application praying that this Hon'ble Court be pleased to summon the 3rd defendant-Shri.G.Kannadasan residing at No.35/77, Padavattamman Koil Street, Kosapet, Chennai 600 012 as a witness on behalf of the plaintiff.

This Application coming on this day before this court for hearing the court made the following order:-

This Application has been filed by the plaintiff to summon the 3rd defendant to depose before this Court.

2. The suit in C.S.No.490 of 2006 is a suit for partition, wherein, the plaintiff is claiming a share in the suit properties. The suit is being contested by the defendants raising various contentions, including the contention that one of the suit properties belong to the mother viz., the first defendant absolutely. Therefore, the same cannot be made the subject matter of partition.

3. It appears that the mother was examined as DW1 and the defendants have closed their evidence. It is thereafter, the plaintiff has now come forward with this application seeking the following prayer:

"This Hon'ble Court should not be pleased to summon the 3rd defendant Shri.G.Kannadasan residing at No.35/77, Padavattamman Koil Street, Kosapet, Chennai - 600 012 as a witness on behalf of the plaintiff? "

4. The learned counsel for the applicant would rely upon the judgment of Andhra Pradesh High Court reported in **2005 AHC 1059**, to contend that it is open to the plaintiff

to summon the defendant to be examined as his witness. Of course, considering the provisions under Order 16 Rule 14 of Civil Procedure Code, learned Single Judge of Andhra Pradesh has held that there is no legal impediment to the plaintiff to summon the defendant as witness.

5. On the other hand, the learned counsel appearing for the respondent would invite my attention to the judgment of the Division Bench of this Court made in OSA.Nos.246 and 247 of 2014 dated 03.11.2014, wherein, the Division Bench has held as follows:

"4. The conclusion reached by the learned Single Judge and in our opinion, rightly so, is that a party cannot be compelled to appear as a witness either on his own or on the motion of the other plaintiff has to prove it's own case and cannot compel an unwilling party to depose or elicit information from him. The provisions of Order XVIII Rule 17 of C.P.C have been rightly appreciated to conclude that the purpose is not to call a witness for the purpose of re-cross examination and that too at the sweet will of the opposite party."

6. The judgment of the Single Judge in Appln. No.620 of 2014 that was confirmed by the Hon'ble Division Bench in

OSA.Nos.246 and 247 of 2014 was rendered after referring the judgment of the Hon'ble Supreme Court in ***Municipal Corporation of Greater Bombay v. Lala Pancham***, reported in ***AIR 1965 Supreme Court 1008***. It is therefore clear that this Court had held that a party to proceeding cannot be compelled to give evidence that too at the instance of the opposite party.

7. In view of the above binding judicial pronouncement, I do not think the plaintiff can have the luxury of summoning the defendant as witness to depose in the case.

8.Hence, this Application is dismissed.

Sd/-R.S.M.J

13.12.2017

//Certified to be a true copy//
Dated this the day of 2018

JJ 04/05.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.