

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2555 of 2012
and
M.P.No.1 of 2012

1.Chinnathayee
2.Chinnathambi @ Mahalingam
3.Rajendran
4.Dhanasekaran
5.Duraisamy

.. Petitioners

vs

1.Kanakaraj
2.Ponnayee
3.Krishnan
4.Mailambal
5.Kandhasamy
6.Maheswari
7.Mariappan
8.Saradha
9.Chinnathayee
10.Ayyaemperumal
11.Palanisamy
12.Ganesan
13.Paramasivam
14.Ayyanthurai
15.Venkatachalam
16.Minor Kalaivanan
17.Minor Saravanan

(Minors rep. by their Court guardian
P.Amirtham, Advocate, Salem-7)



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18.Vaithi.

.. Respondents

Revision No.3640 of 2013 filed under Article 227 of Constitution of India against the order passed in I.A.No.113 of 2012 in O.S.No.427 of 2010, dated 12.04.2012 on the file of the Principal Subordinate Judge, Salem.

For Petitioners : Mr.C.Prabhakaran

For Respondents : No Appearance

ORDER

This revision is directed against the order and decretal order passed by the Principal Sub Judge, Salem in I.A.No.113 of 2012 in O.S.No.427 of 2010 dated 12.4.2012, dismissing the petition filed by the petitioners seeking to examine defendants 2, 3, 9 and 10 as plaintiffs' side witnesses.

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2. The petitioners are plaintiffs in the suit and they have filed the suit for partition of the suit properties into 28 equal shares and to allot 10 such divided shares and deliver possession of the same. The plaintiffs have also sought permanent injunction restraining the defendants 1 to 7 from creating any encumbrance over the suit

properties.

3. Resisting the suit, defendants 8 and 16 have filed the written statement.

4. Pending suit, plaintiffs have filed I.A.No.113 of 2012 under Order 16, Rule 14 C.P.C. seeking to examine defendants 2,3,9 and 10 as their side witnesses alleging that defendants 1 to 8 are the contesting defendants and since in their written statement they have stated that the suit properties belong to them as per the deeds in the year 1963 and 1965, the plaintiffs have filed I.A.No.332 of 2011 for production of those documents. Pursuant to the order of the Court, defendants 1 and 8 have produced documents pertaining to the years 1963 and 1965 on 22.08.2011 and the certified copies of those documents were marked as Ex.P6 and 33.

5. It is alleged that respondent No.8 claims that the suit properties are her properties and based on the document dated 19.05.1965, the defendants 1 and 8 have created some fraudulent documents. There is an issue framed in the suit that whether defendant No.8 purchased the suit property. Therefore, a duty is cast

upon the plaintiffs to disprove the contentions of the defendants 1 and 2. The executors of document dated 19.05.1965 namely defendants 2 and 3 are alive and they have been set ex parte on 03.06.2011. The legal heirs of Ayyasami Gounder, who was the vendee of the documents in the years 1963 and 1965 have been arrayed as defendants 9 and 10 in the suit and they will have to be examined as plaintiffs' side witnesses. Therefore, the petitioners have filed the petition seeking to examine defendants 2,3,9 and 10 as their side witnesses.

6. Denying the averments in the affidavit, the defendants 1 and 8 have filed counter stating that there is no necessity to examine defendants 2, 3, 9 and 10 as plaintiffs' side witnesses and prayed for dismissal of the petition.

7. Upon consideration of the rival submissions, the trial Court dismissed the petition filed by the plaintiffs. Aggrieved by the same, the plaintiffs have filed this Civil Revision Petition.

8. I heard Mr.C.Prabhakaran, learned counsel appearing for the petitioner. On the side of contesting defendants 1 and 8, there is

no appearance. Since the other defendants were already set ex parte in the trial Court, in the grounds itself, it has been stated that notice to defendants 2 to 7, 9 to 15 and 18 is dispensed with. Perused the materials available on record.

9. The learned counsel appearing for the plaintiffs submitted that the trial Court ought to have considered the scope of the provisions of Order 16, Rule 14 of C.P.C. which specifically stipulates that the Court on its own accord may summon the witness including the party to a suit to give evidence and to produce any document in their possession. He further submitted that in order to prove their case the plaintiffs have filed the application and therefore, it is just and necessary to examine defendants 2, 3, 9 and 10 who are parties to the documents pertaining to the years 1963 and 1965. He argued that the trial Court failed to note that there was no bar in entertaining the petition and the reasonings given by the trial Court are unsustainable.

10. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioner under Order 16, Rule 14 of C.P.C seeking to examine defendants 2,3,9 and 10 as plaintiffs' side witnesses.

11. Order 16, Rule 14 of C.P.C. provides as follows:

"14. Court may of its own accord summon as witnesses strangers to suit.-

Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.

12. As could be seen, Order 16 Rule 14 of the CPC empowers the Court to summon on its own any person to give evidence or to produce any document in his possession if the Court is satisfied that the evidence of such witness is necessary to arrive at a just conclusion. The said power includes to summon even a party to the proceedings. Though the language of Rule 14 shows that such discretion has to be exercised by the Court at its own motion, the law is well-settled that such a power can be exercised even on an

application made by a party to the proceedings, since the application if any, can be taken as an information to the Court.

13. Admittedly, in the case on hand, before the trial Court, the defendants 8 and 16 alone have filed the written statement. In the grounds, the plaintiffs have stated that defendants 2 to 7, 9 to 15 and 18 were set ex parte before the trial Court.

14. According to the plaintiffs, by referring the documents pertaining to the years 1963 and 1965, defendant Nos.1 and 8 have contended that suit properties belong to them. In the suit, the trial Court has framed a specific issue that whether defendant No.8 had purchased the suit properties. When such is the issue framed by the trial Court in order to prove the claim of the plaintiffs that suit properties are not the absolute properties of defendant No.8, it is necessary to examine defendants 2,3,9 and 10 on the side of the plaintiffs.

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15. It appears that the defendants 2,3,9 and 10 were set ex parte in the suit. Executors of the document dated 19.05.1965 are defendants 2 and 3 and defendants 9 and 10 are the legal heirs of

Ayyasami Gounder, who claimed right over the suit property through documents pertaining to the years 1963 and 1965.

16. Though the defendants 1 and 8 denied the averments in I.A.No.113 of 2012 before the trial Court, they have failed to show the prejudice to be caused, if defendants 2, 3, 9 and 10 are summoned and examined on the side of the plaintiffs. Since the defendants 2, 3, 9 and 10 have not appeared before the trial Court, the plaintiffs have every right to summon and examine them as their side witnesses to prove their case. I find that there is no strong denial in the counter filed by defendants 1 and 8 before the trial Court. However, the trial Court, dismissed the petition.

17. When the provisions of Order 16, Rule 14 C.P.C. clearly stipulate that the Court on its own accord may summon the witness, including the party to a suit, to give evidence and to produce any document in their possession, the trial Court ought to have consider the claim of the plaintiffs. The plaintiffs have established that the evidence of the defendants 2,3,9 and 10 are necessary on their side.

18. The plaintiffs have every right to examine the defendants

2, 3, 9 and 10 on their side witnesses in order to prove their case. Since defendants 2, 3, 9 and 10 have not appeared before the trial Court either to defend or support the case of the plaintiffs, it is just and necessary to examine them as witnesses on the side of the plaintiffs. If the defendants 2, 3, 9 and 10 were called and examined on the side of the plaintiffs, no prejudice would be caused to the contesting defendants 1 and 8. Therefore, the trial Court was not right in dismissing the petition filed by the plaintiffs and the same is liable to be set aside.

19. In the result,

- (a) this Civil Revision Petition is allowed, by setting aside the order passed in I.A.No.113 of 2012 in O.S.No.427 of 2010, dated 12.04.2012, on the file of the learned Principal Subordinate Judge, Salem;
- (b) the trial Court is directed first to examine the witnesses of respondents 2, 3, 9 and 10 and thereafter to examine the plaintiff;
- (c) the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the suit within a period of

three months thereafter. Both the parties are hereby directed to extend their fullest co-operation for early disposal of the suit. Consequently, connected miscellaneous petition is closed. No costs.

24.04.2017

Note: Issue order copy on 19.06.2018

vs

Index : Yes

Internet : Yes

To

The Principal Sub Judge,
Salem.



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M.V.MURALIDARAN, J.

VS



Pre-delivery order made in
C.R.P.(PD) No.2555 of 2012

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