

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4241 of 2008
and M.P.No.1 of 2008

J.Jagadeesan

.. Petitioner

Vs.

1.Minor Athirsta Sakhti
Rep.by her next friend & Mother
Bhuvaneswari
No.9, Salem Main Road,
Thottiyam Post & Tk,
Trichy District.

2.Jayaraman
3.Padma
4.Pavayee
5.Mekala
6.Kalaiselvi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.11.2008 passed in I.A.No.1053 of 2008 in O.S.No.23 of 2005 on the file of the Additional District Court, Fast Track Court No.1, Salem.

For Petitioner : Mr.C.Prakasam
For R1, R2,R5 & R6 : No Appearance
For R3 : Not ready in notice
For R4 : Died

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 04.11.2008 made in I.A.No.1053 of 2008 in O.S.No.23 of 2005 on the file of the Additional District Court, Fast Track Court No.1, Salem.

2. The petitioner is the first defendant, first respondent is the plaintiff and respondents 2 to 6 are the defendants 2 to 6 in O.S.No.23 of 2005 on the file of the Additional District Court, Fast Track Court No.1, Salem. The first respondent, who is the minor daughter of the petitioner, filed the said suit through her mother/next friend Bhuvaneswari for partition of the suit properties of the second respondent/grand father.

3. According to the first respondent, first item of the property was allotted to the second respondent by partition and second item

was purchased by him from his earnings from the joint family properties. According to the first respondent, she has 1/4th share in both the properties. During trial, the petitioner did not let in any evidence. The second respondent, who is the grand father of the first respondent was examined as D.W.1 and during his cross examination, he deposed that he does not know the address and status of the petitioner. In view of the said statement by D.W.1/ second respondent herein, the first respondent filed I.A.No.1053 of 2008 under Order XVI Rule 14 read with Section 151 of C.P.C., to issue summons to the petitioner and examine him as a Court witness. According to the first respondent, the petitioner deliberately did not give any evidence and the second respondent deposed evasively with ulterior motive.

4. The second respondent filed counter affidavit and the same was adopted by the petitioner and respondents 2 to 4 and opposed the said application.

5. The learned Judge allowed the application on the ground that to know the facts of the case, the petitioner must be summoned as a witness to give evidence. According to the learned

Judge, Order XVI is procedural law, under which the party can be summoned as witness.

6. Against the said order dated 04.11.2008 made in I.A.No.1053 of 2008, the petitioner has filed the Civil Revision Petition.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The Court as per the order XVI Rule 14 of C.P.C., has power to summon any person including a party to the suit to give evidence, if the Court thinks it necessary. Order XVI Rule 14 C.P.C. reads as follows:

Order XVI Rule 14 C.P.C.

“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 a 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.”

9. The Court has power under this rule to summon any person on its own motion. But the Court must be satisfied that the evidence of such person is necessary to decide the issue in the suit. In the present case, the suit is for partition of the ancestral properties in the hands of second respondent. According to the first respondent, the properties were allotted to the second respondent, who is the grand father of the first respondent and among family members of the second respondent. The second item of the property was purchased by the second respondent out of the joint family income.

10. In view of the above, the reasons given by the first respondent to examine the petitioner as Court witness with regard to his status and address are not valid. It is for the first respondent to prove that the properties in the hands of the second respondent are ancestral properties and petitioner and first respondent form a

joint family. To decide this issue, it is not necessary for the petitioner to give evidence, as the first respondent has not alleged that the petitioner also contributed for the purchase of the suit properties.

11. The contention of the learned counsel for the petitioner that address of the petitioner is already available on record and for that purpose, the petitioner need not be summoned to give evidence as witness and it is always open to the Court to draw adverse inference, if a party fails to appear and depose, has considerable force. It is well settled that a party to the suit cannot compel a opposite party to give evidence, when opposite party is denying the claim of the party, who is seeking permission to examine him. In such circumstances, when a party fails to give evidence, it is open to the Court to draw adverse inference against the party who fails to give evidence. The learned Judge has not properly considered the power conferred on him and committed irregularity by allowing the application.

12. In the result, the Civil Revision Petition is allowed by setting aside the fair and decretal order dated 04.11.2008 passed in

I.A.No.1053 of 2008 in O.S.No.23 of 2005 on the file of the Additional District Court, Fast Track Court No.1, Salem. Consequently, connected Miscellaneous Petition is closed. No costs.

26.10.2017

Index : Yes/No
dm/kj

To

The Additional District Judge
Fast Track Court No.1, Salem.

V.M.VELUMANI, J.

dm/kj

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