

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2618 OF 2017
AND CMP NO.12503 OF 2017

K.B.Mani

... Petitioner

Vs.

Deivanaiammal (Died)

- 1.V.Balusamy
- 2.Saraswathi
- 3.V.Murugasamy
- 4.Padmavathi
- 5.Ganesamoorthy
- 6.Jayalakshmi
- 7.R.Chinnayan
- 8.R.Krishnasamy
- 9.K.Subramaniam
- 10.Makkinar Jayaprakash
- 11.Makkinar Ramachandran
- 12.M.Ramasamy
- 13.Mukkanner Dhanabagyam
- 14.Manjinnar Narayanasamy
- 15.C.P.Devassy
- 16.Pempallar Padmavathi
- 17.Linketlar Damodaran
- 18.Ratnalar Palanisamy
- 19.V.Rajagopal
- 20.K.P.Thangavelu
- 21.Dhander Padmanabhan
- 22.C.Manickam

23.Marthar Ramachandran

24.R.Velusamy

25.George Augustine

26.Ranganayaki

27.The Executive Officer

Kannampalayam Town Panchayat

Kannampalayam Post,

Sulur Taluk,

Coimbatore - 641 402.

28.R.Govindaraj

29.P.Ashok Kumar

30.R.Vijayaraghavan

31.P.Muthusamy

32.P.Karunakaran

33.R.Sureshkumar

34.Anthoni Raj

35.M/s.Coimbatore Sowdambika Finance

Chits Pvt. Ltd.,

Rep. by its Managing Director

113, Oppanakkara Street,

Coimbatore.

36.S.Velusamy

37.K.Kathirvelusamy

38.K.Balasubramaniam

39.K.Palanisamy

40.K.Thangavel

41.N.Rajeshwari

42.A.Annapoorani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.04.2017 passed in I.A.No.1050 of 2014 in O.S.No.2012 of 2012 on the file of First Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition is directed against the order passed by the Trial Court permitting the witnesses to be examined without furnishing the list of witnesses and without getting permission from the Court and to expunge the evidence deposited by such witnesses.

2. The respondent is the propounder of the WILL. In order to prove the WILL, she sought the permission of the Court under Order 16 Rule 1-A of the Code of Civil Procedure to examine the only attester, who is alive, to be examined as witness. Later, the said petition was withdrawn and the respondent had produced witnesses directly to be examined before the Court. The Trial Court permitted the witnesses to let in evidence and recorded the same. Aggrieved over the same, the petitioner filed an application to expunge the evidence of D.W.3, as the same has been done without furnishing the list of witnesses and without seeking prior permission for production of such witnesses. Considering the factual situation, the Trial Court has dismissed the application for expunging the evidence of the said witness, as the same is under challenge here.

3. In a similar circumstance, the Hon'ble Supreme Court in **MANAGE RAM VS. BRIJ MOHAN AND OTHERS [AIR 1983 SC 925(1)]** has held as follows:

"11. The analysis of the relevant provisions would clearly bring out the underlying scheme under order XVI Rules 1 and 1A, and Rule 22 of the High Court Rules would not derogate from such scheme. The scheme is that after the Court framed issues which gives notice to the parties what facts they have to prove for succeeding in the matter which notice would enable the parties to determine what evidence oral and documentary it would like to lead, the party should file a list of witnesses with the gist of evidence of each witness in the Court within the time prescribed by sub-rule (1). This advance filing of list is necessary because summoning the witnesses by the Court is a time consuming process and to avoid the avoidable delay an obligation is cast on the party to file a list of witnesses whose presence the party desires to procure with the assistance of the Court. But if on the date fixed for recording the evidence, the party is able to keep his witnesses present despite the fact that the names of the

witnesses are not shown in the list filed under sub-rule (1) of Rule 1, the party would be entitled to examine these witnesses and to produce documents through the witnesses who are called to produce documents under Rule 1A. The only jurisdiction the Court has to decline to examine the witness is the one set out in proviso to Sec. 87 (1) of '1951 Act', the discretion being confined to refusing to examine witnesses on the ground that the evidence is either frivolous or vexatious or the evidence is led to delay the proceedings. Save this the Court has no jurisdiction to decline to examine the witness produced by the party and kept present when the evidence of the party is being recorded and is not closed, and the Court has no jurisdiction to refuse to examine the witness who is present in the Court on the short ground that the name of the witness was not mentioned in the list filed under sub-rule (1) of Rule 1 of order XVI. This scheme clearly emerges from the various provisions herein discussed.

12. If the scheme of the various provisions is as herein discussed, obviously, the order of the learned Judge is wholly unsustainable. He declined to examine the witness by accepting the submission of the returned candidate that

the names of the witnesses whom the appellant kept present in the Court were not mentioned in the list. This is the only ground on which the learned Judge declined to permit the appellant to examine his witnesses who were kept present in the Court and this ground is utterly unsustainable. Therefore, the order of the learned Judge had to be quashed and was accordingly quashed and the appeal was allowed."

From the scheme of sub-rule (1) of Rule 1 Order 16 of the Code of Civil Procedure, as held by the Hon'ble Supreme Court, parties are entitled to examine witnesses produced before the Court, as long as the evidence on the side of the party is not closed.

4. The above judgment of the Hon'ble Supreme Court squarely applies to the case on hand. The order passed by the Trial Court is a well considered order and is in conformity with the statutory provision and does not suffer any infirmity. Therefore, this Court is not inclined to entertain this Civil Revision Petition.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

23.03.2018

Index : Yes/No
Internet : Yes/No
TK

To

The First Additional District Munsif Court
Coimbatore.



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M.GOVINDARAJ, J.

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