

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.04.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

C.R.P.(PD)No.804 of 2017

and

C.M.P.No.3971 of 2017

P.Amutha

: Petitioner

Vs.

1.K.P.Manoharan

2.P.Kathirvel

3.P.Myilsamy

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 09.09.2016 made in I.A.No.929 of 2015 in O.S.No.92 of 2010 passed by the Camp Sub Court, Coimbatore.

For Petitioner

: Mr.S.Rajmakesh

For Respondent No.1

: Mr.MA.P.Thangavel

सत्यमेव जयते

ORDER

The present Civil Revision Petition is directed against the order passed in the Interlocutory Application to close the *suo motu* order for re-opening the evidence of D.W.2 for the purpose of cross-examination by the third defendant.

2. For the sake of convenience, the parties will be referred to as per their ranking before the Trial Court.

3. The petitioner is the third defendant and the first respondent is the plaintiff in the suit in O.S.No.92 of 2010 pending on the file of Camp Sub Court, Coimbatore. The issue revolves around the specific performance of the sale agreement. The plaintiff was examined as P.W.1 and he was cross-examined by the defendants' counsel. Thereafter, the petitioner/third defendant was examined as D.W.1 and she was cross-examined by the plaintiff's counsel. The first defendant was examined as D.W.2 and he was also cross-examined by the plaintiff's counsel. At that juncture, the third defendant made a mention before the Court for re-opening the evidence of D.W.2 for cross-examining him by her. The Court also *suo motu* re-opened the evidence of D.W.2/first defendant, facilitating the third defendant to cross-examine him.

4. It is the contention of the plaintiff that from the beginning, all the three defendants were sailing together. P.W.1 was cross-examined by the third defendant and it was adopted by the defendants 1 and 2. The same was a case in respect of cross-examination of D.W.2 also. The third defendant also filed a written statement sailing with the other two defendants. Therefore, it is clear that the defendants have been contesting the case against the plaintiff without any adverse claim. After the cross-examination of D.W.2 by the plaintiff, the request for cross-

examining by the third defendant is not sustainable. If at all the defendants had some adverse interests, the witness should have been cross-examined even before the cross-examination was done by the plaintiff's side. The co-defendant can cross-examine the other defendants as witnesses, when they are the real opponents. But, here, in the instant case, there is no adverse interest shown till the cross-examination of D.W.2 made by the plaintiff's side. In such circumstances, the request for cross-examining D.W.2 by the third defendant is not sustainable and the Trial Court has rightly found that it is improper to permit the third defendant to cross-examine the first defendant/D.W.2, after completion of cross by the plaintiff and thereby, allowed the Interlocutory Application filed by the plaintiff. Thus, the order passed by the Trial Court suffers no infirmity and accordingly, it is, hereby, confirmed.

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

28.04.2018

Index : Yes / No
Internet : Yes / No

SML

To
The Camp Sub Court,
Coimbatore.

M.GOVINDARAJ, J.

SML



Order made in
C.R.P.(PD)No.804 of 2017

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