



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.02.2018

DELIVERED ON: 28.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) Nos.200 & 201 of 2018 (NPD)

and

C.M.P. (MD) No.870 of 2018 in C.R.P. (MD) .No.200 of 2018

Pandi (Died)

1.Mookandi

2.Ganapathy

3.Subbaiah

4.Mariammal

5.Esakkiammal

6.Rathinam

: Petitioners/ Petitioners/ Respondents
in both the petitions
Petitioners 2 to 6 & 8 /Plaintiffs

vs.

1.Vasanthi
Petitioners

: 1st Respondent/ 1st Respondents/
in both the petitions /3rd Party /3rd Party

2.Selva Ganapathy @ Selva Ganapathy Raja

: 2nd Respondent in both the petitions/
2nd Respondent/ Defendant

3.Muppidathy

: 3rd Respondent/ Petitioners / Respondents /
in both the petitions/
7th Petitioner / Plaintiffs

[Petitioners did not seek any relief against the 3rd respondent.
Hence, the petitioners have given up 3rd respondent in the above
C.R.Ps.]

COMMON PRAYER : Civil Revision Petitions are filed under Section
115 of Civil Procedure Code, against the fair and decretal orders
passed in E.A.Nos.175 & 176 of 2017 respectively in E.A.No.110 of



2011 in E.A.No.76 of 2011 in E.P.No.37 of 2010 in O.S.No.56 of 2010 on the file of the Subordinate Court, Ambasamudram, Tirunelveli District, dated 06.01.2018.

For Petitioners in
both the petitions : Mr.Niranjana S Kumar

For 1st respondent in
both the petitions : Mr.G.Prabhu Rajadurai

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COMMON ORDER

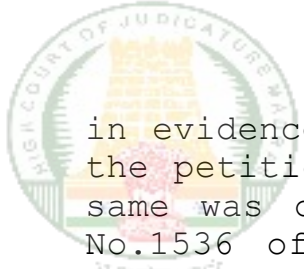
As the issue involved in both the cases are interrelated to each other, they were heard together and are disposed of by way of this common order.

2. These Civil Revision Petitions have been filed seeking to set aside the impugned common order, dated 06.01.2018, passed by the learned Subordinate Judge, Ambasamudram, in E.A.Nos.175 & 176 of 2017 in E.A.No.110 of 2011 in E.A.No.76 of 2011 in E.P.No.37 of 2010 in O.S.No.56 of 2010.

3. The brief facts, which are necessary to decide this revision petition, are as follows:

a) The suit in O.S.No.56 of 2010 was filed by the petitioners / plaintiffs against the second respondent / defendant for specific performance and for recovery of possession. On 23.09.2010, an ex-parte decree came to be passed and subsequently, E.P.No.37 of 2010 came to be filed by the petitioners / plaintiffs and the same was also ordered. Thereafter, the petitioners / plaintiffs have filed E.A.No.76 of 2011 for delivery of schedule of property, which was also ordered. Pursuant thereto, the petitioners / plaintiffs have filed E.A.Nos.102 & 103 of 2011, seeking police protection and seeking permission to break open the lock in the suit property respectively, which were also allowed. While so, the first respondent herein / 3rd party filed an obstruction petition in E.A.No.110 of 2011 under Order XXI Rule 97 CPC before the Execution Court stating that the second respondent / defendant has executed a sale deed on 18.10.2007 in her favour and from the date of purchase, she has been in possession and enjoyment of the same. The husband of the first respondent / 3rd party was examined as PW1. The brother-in-law of the first respondent / 3rd party, who is looking after the property, was examined as PW2 and another person living near the suit property was examined as PW3. Thereafter, PW1 to PW3 were cross-examined by the petitioners / plaintiffs.

b) Since a dispute arose with regard to the signature of the first respondent / 3rd party, she had filed an application in I.A.No.44 of 2017 seeking to reopen the main petition and to let



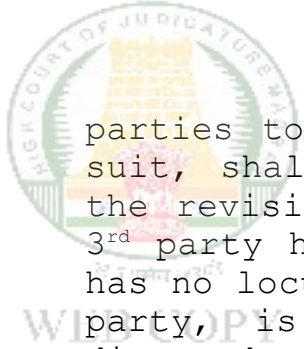
in evidence for a limited purpose with regard to the signature in the petition and vakalath, and to mark the flight ticket, and the same was dismissed by the Court below, against which C.R.P.(MD) No.1536 of 2017 was filed and this Court has allowed the said petition for the said limited purpose and also permitted the revision petitioners / plaintiffs to cross examine her. After examination of the first respondent / 3rd party as PW4, the petitioners / plaintiffs herein have filed E.A.Nos.175 & 176 of 2017 for reopen and recall the first respondent / 3rd party for elaborate cross examination. The Court below, after hearing both the sides, has dismissed the petitions, against which the present Civil Revision Petitions are filed by the revision petitioners / plaintiffs.

4. The learned counsel appearing for the petitioners / plaintiffs would submit that the husband of the first respondent / 3rd party, who was examined as PW1, is not the power agent of the first respondent / 3rd party and he did not produce any document to show that he is entitled to conduct the case or depose witness on her behalf. Therefore, it is necessary for the petitioners / plaintiffs to cross examine the first respondent / 3rd party in length. Thus, he prayed to allow both the revision petitions.

5. Per contra, the learned counsel appearing for the first respondent / 3rd party would submit that the first respondent / 3rd party has purchased the suit property from the second respondent / defendant by way of registered sale deed, dated 18.10.2007 and that the husband of the 1st respondent / 3rd party, who dealt with the purchase of the suit property and who has personal knowledge about the execution of the sale deed, was examined as PW1. He would further submit that the husband of 1st respondent / 3rd party knows the facts of the case very well, rather than her. The learned counsel would further submit that as per section 120 of the Indian Evidence Act, husband can be a competent witness in a suit, where wife is a party. He would further submit that a party can be cross examined only with respect to his chief examination and not more than that and therefore, there is no need to interfere with the order passed by the Court below. Thus, he prayed for dismissal of the revision petitions.

6. Heard the learned counsel appearing for the revision petitioners / plaintiffs and the learned counsel appearing for the first respondent / third party and perused the documents placed on record.

7. Admittedly, in this case, the husband of the 1st respondent / 3rd party was examined as PW1 and thereafter, he was also cross examined by the revision petitioners. As per Section 120 of the Indian Evidence Act, in all civil proceedings, the



parties to the suit and the husband or wife of any party to the suit, shall be competent witnesses. Therefore, the contention of the revision petitioners that the husband of the 1st respondent / 3rd party has not been appointed as power agent and therefore, he has no locus standi to examine on behalf of the 1st respondent / 3rd party, is rejected. The revision petitioners also has not disputed anything about the non examination of the first respondent / 3rd party. It is only at the instance of 1st respondent / 3rd party a petition has been filed to reopen the case and to permit the 1st respondent / 3rd party to mark certain documents. Though the Court below has dismissed the same, this Court has granted the relief for a limited purpose. It is seen that subsequently, the 1st respondent / 3rd party was examined and the revision petitioner also cross examined on the scope of chief examination.

8. It is well settled that a party can be cross-examined only in correlation with his/her chief examination and not more than that. More over, the husband of the first respondent / 3rd party and other witnesses on the side of the first respondent / 3rd party have already been cross examined in length by the revision petitioners. When that be so, the relief sought for by the revision petitioners to reopen the case and to permit them to cross examine the 1st respondent / 3rd party in extenso on all aspects, cannot be considered. Hence, this Court is of the view that the Court below has rightly dismissed both the applications. There is no reason to interfere with order passed by the Courts below.

9. In view of the above, both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Ambasamudram, Tirunelveli District.

+1CC TO M/S.NIRANJAN.S.KUMAR, ADVOCATE, SR NO.58847

+1CC TO M/S.G.PRABHU RAJADURAI, ADVOCATE, SR NO.59150

common order made in
C.R.P. (NPD) (MD) Nos.200 & 201 of 2018
28.03.2018