



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

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

C.R.P. (MD) (PD) No.767 of 2018

and

CMP (MD) No.3402 of 2018

1.Daisy Gnanammal

2.Masilamani Sundar Raj .. Petitioners/Petitioners/Defendants

VS

Ponnuthai .. Respondent/Respondent/Plaintiff

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, against the Fair order and Decreetal order passed in I.A.No.28 of 2018 in O.S.No.73 of 2013 dated 12.02.2018 on the file of the Principal Sub-Court, Tirunelveli is liable to be set aside.

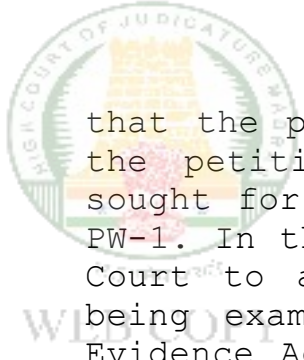
For Petitioners : Mr.J.John

For Respondent : Mr.S.P.Maharajan

ORDER

The petitioners are the defendants in O.S.No.73 of 2013 filed by the respondent herein for partition and separate possession before the learned Principal Sub-Court, Tirunelveli. They have filed an application in I.A.No.28 of 2018 to scrap the evidence of PW-1 under Order 18, Rule 3(A) read with Section 151 CPC, on the ground that the respondent herein filed the suit, whereas her husband Nallaiah was in witness box as PW-1 and for that the plaintiff has not obtained permission from the Court below.

2.The respondent herein opposed the said application by filing counter affidavit and contended that it is not necessary for the plaintiff to get permission from the Court to give evidence by her husband on her behalf. It is further contended



that the provision under Order 18, Rule 3(A) of CPC relied on by the petitioner will have no application at all to the prayer sought for in the above said application to scrap the evidence of PW-1. In this case, the plaintiff has not sought permission to the Court to appear herself as witness before any other witness is being examined on her side. Further as per Section 120 of the Evidence Act, the husband or wife of any party to the suit, shall be competent witnesses. Therefore, no permission is required to the husband of the plaintiff before entering into the witness box.

3. Upon hearing the arguments on either side, the trial Court by order dated 12.02.2018 dismissed the petition to scrap the evidence of PW-1. Feeling aggrieved over the same, the petitioners have come up with this Civil Revision Petition.

4. I heard Mr. J. John, learned counsel appearing for the petitioners and Mr. S. P. Maharajan, learned counsel appearing for the respondent and perused the entire records.

5. At the outset, it is to be noticed that in a Civil Suit, on behalf of wife, husband could adduce evidence or on behalf of the husband, wife could lead evidence and for giving such evidence, no permission is required from the trial Court. In the case on hand the Learned counsel for the petitioner argued that since no permission was obtained by the Plaintiff / Respondent herein for letting evidence by her Husband from the Court, PW-1's evidence has to be scrapped under Order 18, Rule 3(A) of CPC.

6. At this juncture it is to be seen that Order 18, Rule 3 (A) of C.P.C., contemplates the procedure to get permission by a party, if he/she wishes to appear as a Witnesses before any other witness is examined on his/her behalf. In this case, the plaintiff do not want to get into witness box and on her behalf, her husband was examined as PW-1.

7. Further, this Court has an occasion to deal with the very same issue in the case of *Shanmugathai -Vs- Kamalammal, Boopalan* in C.R.P. (MD) Nos. 4252 and 4253 of 2012 dated 09.01.2017, wherein I have held that the husband is having Locus Standi and every right to adduce evidence on behalf of wife. I have also dealt with Section 120 of the Indian Evidence Act, in the said Judgment. In view of the settled position of law, I do not find any merit in this civil revision petition and the impugned order of the order below is legally sound.

8. In view of the above, this Court is not inclined to accept the contention raised on the side of the petitioner and this Civil Revision Petition is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. Since the suit is pending from the year 2013 onwards, the trial Court is directed to dispose of the same within a period of three months from the date of receipt of this order. No costs.



Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Tirunelveli.

+ 1 cc TO Mr.S.P.Maharajan , Advocate in SR No. 66735
+ 1 cc TO Mr.J.John , Advocate in SR No. 66707

VSV
AE/JC/SAR4/11.06.2018/3P/4C

order made in
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and
CMP (MD) No.3402 of 2018
05.06.2018