



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 06.06.2018  
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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C.R.P. (PD) (MD) No.275 of 2018  
and C.M.P. (MD) No.1219 of 2018

V. Amalorpavarani

... Petitioner/Petitioner/Plaintiff

-vs-

1. A. Gnanasekar
2. A. Shanmugasundaram  
Gnanakumari (died)
3. R. Vanithamani
4. M. Kamala
5. R.S. Kannan
6. P. Chandrakumar
7. Saravanan
8. Vasanthi
9. Sumathi

... Respondents/Respondents/Defendants

(Except R6, all others are remained exparte before  
the Trial Court and notice to them may be dispensed with)

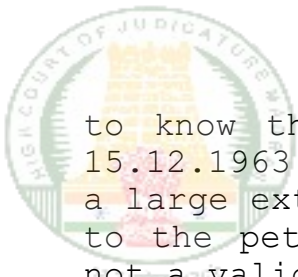
PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records pertaining to the fair and decreetal order dated 08.01.2018 in I.A.No.4 of 2018 in O.S.No.68 of 2012 on the file of the learned III Additional Sub-Judge, Madurai.

|                  |   |                  |
|------------------|---|------------------|
| For Petitioner   | : | Mr.D. Malaichamy |
| For R6           | : | Mr.A.Jeyaram     |
| R1 to 5 & 7 to 9 | : | Set Exparte      |

**ORDER**

The petitioner is the plaintiff in O.S.No.68 of 2012 on the file of the learned III Additional Sub-Judge, Madurai and in the suit, the plaintiff sought for declaration, permanent injunction, etc. During the pendency of the suit, plaintiff had filed an application in I.A.No,4 of 2018 for scrapping the deposition of DW2 along with Ex.B6 in the suit and the said application was dismissed by the Trial Court on the ground that the 6<sup>th</sup> respondent was not a summoned witness and Order 16 Rule 21 is applicable only to the summon witness alone. Challenging the said order, the plaintiff/petitioner is before this Court.

2. It is the case of the revision petitioner that the suit property was purchased by him on 30.11.1998 and since then, she is in enjoyment and possession of the property. Subsequently, she came



to know that on the strength of an alleged settlement deed dated 15.12.1963 executed by one K.A.S.Arumugam in favour of his children, a large extent of properties was sold to the 7<sup>th</sup> defendant. According to the petitioner, the alleged settlement deed dated 15.12.1963 is not a valid one, as the same does not contain a valid settlement.

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3. The revision petitioner states that on 11.12.2017, the 7<sup>th</sup> respondent produced a proof affidavit of 6<sup>th</sup> defendant, which was allowed as DW2 and the document has been marked as B6. Subsequently, it was found that DW2 is the 6<sup>th</sup> defendant, who remained exparte and despite suppression of the said fact, the proof affidavit was received. Though the petitioner sought time to file counter, without giving an opportunity, the proof affidavit was received, which is illegal and has no sanction of law.

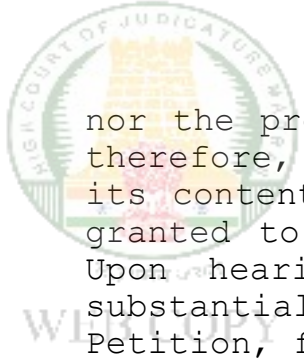
4. Learned counsel for the 6<sup>th</sup> respondent has submitted that it is a settled law that the contesting defendant is entitled to examine the defendant, who was set exparte to prove his case and the petitioner, after receipt of the proof affidavit of D.W.2 without any objection, subsequently objected to the same by quoting some provisions, which is not at all relevant to the facts of the present case. Therefore, the present petition is a vexatious one and is liable to be dismissed at the threshold.

5. Heard the learned counsel for the petitioner and the learned counsel for the 6<sup>th</sup> respondent and perused the material documents available on record.

6. It is seen that the trial in the suit was commenced on 03.04.2017 and on 16.08.2017 the plaintiff's evidence was closed after examination of P.W.3 and since the defendant failed to examine his witness, his evidence was closed on 13.09.2017. Subsequently, he filed an application to reopen the evidence, which was allowed on 08.11.2017 and after examination of D.W.1 the matter was posted for further evidence on 06.12.2017. Thereafter, on 11.12.2017, D.W.2's proof affidavit was received and the document has been marked as B6.

7. When the matter stood thus, the plaintiff raised an objection as to the receipt of proof affidavit of D.W.2 and Ex.B6, stating that D.W.2 was already the 6<sup>th</sup> defendant and set exparte and his evidence along with document cannot be received, which was filed on suppression and such act will amount to defeat the rights of the plaintiff.

8. There is force in the contention raised by the petitioner and if the evidence is not scrapped, the petitioner would be seriously prejudiced. Moreover, the petitioner has raised the plea of suppression and the Trial Court has not considered the said aspect. It is to be noted that the party approaching the Court must come with clean hand and it is stated by the petitioner that since the list of witnesses of the defendants was neither filed in advance



nor the proof affidavit was served to the plaintiff in advance and therefore, he received the affidavit without protest to note as to its contents. It is also stated by the petitioner that no time was granted to file counter to the application in I.A.No.562 of 2017. Upon hearing the submissions on either side, in order render substantial justice, I am inclined to allow the Civil Revision Petition, finding merit in the contention of the petitioner.

9. In the result,

- a) this Civil Revision Petition is allowed;
- b) the order dated 08.01.2018 made in I.A.No.4 of 2018 in O.S.No.68 of 2012 by the learned III Additional Sub-Judge, Madurai is hereby set aside and the matter is remanded back to the Trial Court for fresh consideration;
- c) the Trial Court is directed to issue notice to the 6<sup>th</sup> respondent, afford an opportunity to file counter to the petitioner/plaintiff and thereafter, dispose of I.A.No.4 of 2018 in O.S.No.68 of 2012 on merits and in accordance with law, within a period of one month from the date of copy of receipt of this order. Till such time, the proceedings in the suit are stayed.
- d) After passing appropriate orders in the said application, the Trial Court is further directed to dispose of O.S.No.68 of 2012, within a period of three months thereafter (as the suit is of the year 2012) without giving any unnecessary adjournments to either parties and the parties are directed to give their fullest cooperation for early disposal of the suit.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

- 1. The III Additional Sub Judge,  
Madurai.
- 2. The Record Keeper,VR Section,  
Madurai Bench of Madras High Court, Madurai. **(2 copies)**

+1CC to Mr.D. Malaichamy, Advocate, SR.No.67100

C.R.P.(PD) (MD) No.275 of 2018

06.06.2018

KSA

<https://heservices.ecourts.gov.in/hcservices/>  
ES/SKN/RSK/SAR 1/19.09.2018/3P/5C