

7HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.1527 of 2018

Order:

Aggrieved by the manner in which the Trial Court dealt with an application under Order XVIII, Rule 3A CPC, the 1st defendant in a suit for partition has come up with the above civil revision petition.

2. Heard Mr. M.Radha Krishna, learned counsel for the petitioner and Mr. Venkateswarlu Chakkilam, learned counsel appearing for the 1st respondent.

3. The 1st respondent herein filed a suit for partition and separate possession. When the suit was taken up for trial, the plaintiff examined himself as P.W.1. The General Power of Attorney of the plaintiff was examined as P.W.2.

4. Thereafter, the suit was posted for evidence on the side of the defendant. The petitioner herein being the 1st defendant was obliged to go to the witness box. But on the night of 01-10-2017, the petitioner suffered a set back in his health. He got admitted to a hospital on 02-10-2017 for a cardiac ailment. Since he got admitted in the hospital, the 1st defendant (petitioner in this revision) filed an application under Order XVIII, Rule 3A CPC to permit him to examine other witnesses before examining himself. Though this application was allowed, the Trial Court adopted an impractical approach by directing the Affidavits in chief-examination of all witnesses to be filed together. Therefore,

despite his petition being allowed, the petitioner has come up with the above revision.

5. Order XVIII, Rule 3A CPC obliges the party who wishes to appear as a witness, to appear before any other witness on his behalf is examined. But it is subject to any order to be passed by a Court. The Court is entitled to permit a party who wishes to appear as a witness, to appear after he examined other witnesses.

6. It is left to the discretion of the Court to allow such an application for reasons to be recorded. But once the application is allowed, the question of asking all witnesses to file Affidavits in chief-examination together does not arise. The filing of Affidavit in lieu of chief-examination was introduced with a view to avoid wastage of time. It is actually in lieu of chief-examination. Chief-examination of several witnesses cannot take place simultaneously. Asking a party to file the Affidavits in chief-examination of all witnesses together would tantamount to putting all witnesses in the witness box at the same time and recording chief-examination.

7. Therefore, that portion of the impugned order which offends the above rule deserves to be set aside. Hence, the civil revision petition is allowed, setting aside only one portion of the order of the Trial Court where the Trial Court has issued a direction to the petitioner to file Affidavits of all the witnesses. The petitioner shall first file the Affidavit of the

witness whom he wishes to examine first. After that witness is examined, the petitioner can file the Affidavit in chief of the next witness and so on and so forth.

8. The civil revision petition is allowed to the extent indicated above. The interlocutory applications, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

27th April, 2018.
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