



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD) No.1582 of 2014

and

M.P. (MD) No.1 of 2014

C.V.Rambabu,
S/o.Late C.P.Venkatajalapathy,
Rep. by his wife C.R.Lalitha, Power Agent
Door No.54, New No.135,
South Perumal Maistry Street,
Madurai Town. : Petitioner/Petitioner/Plaintiff

.. Vs ..

1.V.S.Chandrasekaran
2.Aswin Rani
3.V.C.Vijay
4.V.C.Saraswathi Preetha Rani : Respondents/Petitioners 2-5/
Defendants 2-5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.12.2013 passed in I.A.No.44 of 2013 in O.S.No.421 of 2009, on the file of the II Additional Subordinate Judge, Madurai and allow the present Civil Revision Petition.

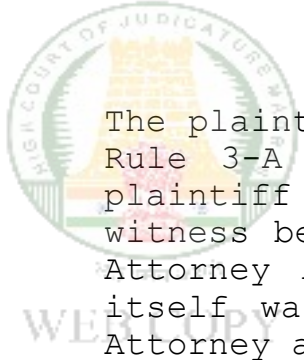
For Petitioner : Mr.M.Saravanan
For Respondents : Mr.M.Rajaraman

ORDER

This Civil Revision Petition is preferred by the plaintiff in the suit in O.S.No.421 of 2009 on the file of the II Additional Sub Judge, Madurai.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioner, as plaintiff, filed the suit in O.S.No.632 of 2001 originally on the file of the District Munsif Court, Madurai Town. The same has now been transferred to II Additional Subordinate Court, Madurai and re-numbered as O.S.No.421 of 2009. The said suit was for a declaration that the sale deed executed by the plaintiff in favour of the first defendant on 05.11.1990 in respect of the suit property is sham and nominal and consequential permanent injunction restraining the first defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The suit is also for injunction restraining the first defendant from alienating the suit property.



The plaintiff filed a petition in I.A.No.44 of 2013 under Order 18, Rule 3-A and Section 151 of C.P.C. to grant permission to the plaintiff to examine his mother Smt.Mahalakshmi as the first witness before examining plaintiff's wife who is also his Power of Attorney Agent as a witness. It is to be noted that the suit itself was filed by the plaintiff through his wife as Power of Attorney agent.

2.2.The said application in I.A.No.44 of 2013 was opposed by the second defendant mainly on the ground that permission cannot be granted as the plaintiff/petitioner has filed the petition after the examination of P.W.1 on his side. It is not in dispute that the mother of the plaintiff was examined as P.W.1. Accepting the contention of the respondents that the application filed after the examination of P.W.1 is not maintainable, the lower Court dismissed the petition. Aggrieved by the order of the lower Court, the above Civil Revision Petition has been preferred by the plaintiff.

3.A perusal of the order passed by the lower Court in I.A.No.44 of 2013 shows that the application under order 18, Rule 3-A of CPC was dismissed only on the ground that the said application has been filed after examining the plaintiff's mother as P.W.1 on the side of the plaintiff on 06.12.2012. The lower Court further observed that the plaintiff has examined other witness even before obtaining permission from the Court and that therefore, there is no question of granting any permission in the circumstances of the case. Sum and substance, the trial Court was of the view that the petition has become infructuous.

4.This Court is unable to subscribe to the view expressed by the lower Court in dismissing the Interlocutory Application in I.A.No.44 of 2013. The lower Court has not understood the scope of Order 18, Rule 3A of C.P.C. and the inherent power of Court under Section 151 C.P.C. In the present case, the suit is filed by the plaintiff through his wife as Power of Attorney Agent. The plaintiff has filed a petition under Order 18, Rule 3A of C.P.C. and simultaneously made P.W.1 available for examination. Therefore, when the petition was presented, already P.W.1 was examined after filing of proof affidavit. P.W.1 is the mother of plaintiff and mother-in-law of the power of attorney agent of the revision petitioner. The object of permitting the plaintiff or defendant to examine any other witness before examining the party himself or herself as a witness is for convenience of parties and no strict formula need to be prescribed. Though a party himself is required to appear as a witness, the Court can permit any one of the parties to appear as his own witness at a later stage. The lower Court has dismissed the application without an application of mind as to the objects and purpose of such enabling provision. The Hon'ble Supreme Court and this Court has held in several cases that the procedure prescribed under the Civil Procedure Code are handmade to attain justice and that they are not supposed to be given primacy in all cases. The Court can give permission to a



party to the suit to examine himself at a later stage even if no such permission was sought for at the beginning.

5. The learned Counsel appearing for the revision petitioner relied upon a judgment of the Division Bench of this Court in **Ravi and another v. Ramar** reported in **2008 (1) CTC 36** wherein the Hon'ble Division Bench of this Court after referring to several precedents has held as follows:

"18. A perusal of the decisions of different High Courts indicate that the provision contained in Order 18 Rule 3(A) has been considered to be directory in nature. Even the provision itself contemplates that as a general rule, if the party wants to examine himself as a witness, he should be examined before other witnesses are examined. However, on the basis of an application of the party, he can be permitted to be examined as a witness after examination of other witnesses. While granting permission, the court is required to indicate reasons in writing. However, the question is: whether as an inexorable rule such permission has to be sought for at the beginning before any other witness is examined on behalf of the party or whether even at a subsequent stage after examination of some or all the witnesses the party himself can seek for permission?.

19. As observed in the various decisions and more particularly in the decisions of the Division Benches of Punjab & Haryana, Jammu & Kashmir, Patna and Orissa High Courts, what is necessary is that before giving such permission, the court is required to give reasons and obviously the reasons must be relevant. However to lay down as an inexorable rule that in no case such an application can be filed after the examination of any other witness may result in injustice.

20. Keeping in view the principle that procedural rules are normally considered as directory unless the consequence of not following the procedure is specifically indicated, it would be appropriate to hold that the Court can give permission to the party to examine himself at a later stage even if no such permission had been sought for at the very threshold. As a matter of fact, save and except in one or two decisions of the single Judges of the Madras High Court, most of the High Courts, including many of the Judges of Madras High Court, have preferred to follow a more liberal path of laying down the proposition that even where such permission has not been sought for at the threshold, such permission can be granted for relevant reasons at a later stage. This is not to suggest that as and when such petition is filed the Court is bound to grant such permission merely for the asking. Obviously, the Court is required to consider the matter in its proper perspective and is required to find out as to why the party could not



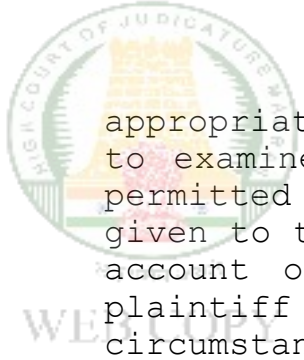
examine himself at the beginning and also as to why the application for seeking such permission was not filed at the threshold. If the Court finds that the party deliberately held himself back with a view to fill-up the lacunae in the evidence at a later stage, obviously such permission is to be refused irrespective of the fact whether permission is sought for at the threshold or at a later stage. If convinced on such aspects, the Court may permit the party to examine himself as a witness at a later stage. What is important is recording of reasons and obviously it means reasons which are germane to the matter, that is to say, relevant for the purpose."

6.The judgment of the Division Bench of this Court cited above squarely applies to the case on hand. Hence, the Civil Revision Petition is liable to be allowed.

7.The learned Counsel appearing for the respondentS, however, pointed out that the suit has been filed by the plaintiff through his wife who is the power of attorney agent of the plaintiff. It is also stated that in the application filed before the lower Court the affidavit and petition was filed by the power of attorney agent and the prayer was to grant permission to the petitioner to examine her mother in law Smt.Mahalakshmi. This is only a mistake by inadvertence.

8.The prayer in I.A.No.44 of 2012 would certainly indicate that permission was sought for to examine the power of attorney agent of the plaintiff who is none else than the wife of the plaintiff. The learned Counsel for the respondents submitted that the wife who is only a power of attorney agent of the revision petitioner cannot be permitted to depose on behalf of her husband as she does not intent or establish that she is conversant with the facts. Since the law is settled that a power of attorney agent cannot depose on behalf of his or her principal, the learned Counsel for the revision petitioner on instructions submitted that the plaintiff should be permitted to examine him as a witness on the side of the plaintiff in stead of his wife. Though such a plea is not taken before the trial Court, this Court is inclined to accept the case of the revision petitioner for more than one reason. It is now brought to the notice of this Court that after dismissal of I.A.No.44 of 2013, the plaintiff has not examined any one other than P.W.1. It is further submitted that the defendants have also examined their witnesses. In view of the dismissal of the application in I.A.No.44 of 2013, the petitioner could not examine himself or his wife as P.W.1 as prayed for by the revision petitioner.

9.As a result, the position as on date is that the application in I.A.No.44 of 2013 is dismissed. The plaintiff will also loose the opportunity of examining any further witness. In such circumstances, in the interest of justice, it would be more



appropriate to allow I.A.No.44 of 2013 and to permit the plaintiff to examine himself as plaintiff witness. Since the plaintiff is permitted to lead further evidence, an opportunity should also be given to the respondents to give further evidence if they desire on account of the fact that permission has now been given to the plaintiff to examine himself further. In view of the facts and circumstances, this Civil Revision Petition is allowed and the order passed in I.A.No.44 of 2013 is set aside and I.A.No.44 of 2013 stands allowed. It is made clear that the plaintiff can examine himself as P.W.1 and not his wife. No order as to costs. Consequently, the connected miscellaneous petition is closed.

10. In view of the fact that the suit is of the year 2001, the lower Court is directed to expedite the trial and dispose of the suit within a period of five months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

SRM

To

1. The II Additional Subordinate Judge,
Madurai.

COPY TO

The Section Officer,
V.R. Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.M.RAJARAMAN, Advocate Sr. No.51236

+1CC TO MR.R.SUBRAMANIAN, Advocate Sr. No. 51246

C.R.P (PD) (MD) No.1582 of 2014

01.03.2019

GRC (CO)

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