



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.R.P(PD) (MD)No.1200 of 2019

Ramaiyan
Through his Power Agent
Kumarakuruparan

... Petitioner/Petitioner
1st Defendant

vs.

1) Venugopal

... 1st Respondent / 1st Respondent
Plaintiff

2) Valayammal @ Valambal
3) Thiagaraj
4) Rani
5) Papathi
6) Selvaraj
7) Mahadevan
8) Petchai
9) Meenakshi
10) Anandhavalli
11) Subha

... Respondent 2 to 11
Respondents 2 to 11/Defendants 2 to 11

Petition filed under Article 227 of the Constitution of India, against the order and decree passed dated 06.03.2019 made in I.A.No.36 of 2019 in O.S.No.74 of 2015 on the file of the learned Additional District Judge (Fast Track Court), Kumbakonam.

For Petitioner : Mr.G.Gomathi Sankar

ORDER

Against the dismissal of the petition to examine a person as a court witness, this revision petition is filed.

2.The revision petitioner is the 1st defendant in the suit filed by the plaintiff who is the brother of the petitioner's father. According to the revision petitioner, the plaintiff filed the suit leaving out certain properties and he filed I.A.No.36/2019 to examine one Mahalakshmi who is none other than the wife of the plaintiff, as court witness contending that there was a family partition and suppressing the same, the plaintiff filed the present suit and therefore, the petitioner has filed the present petition when the suit was posted for arguments.



3. The case of the 1st respondent/plaintiff is that summoning a person to give evidence as a court witness is the discretion of the court under Order 16 Rule 14 CPC and therefore, the petitioner cannot file the present petition to summon Mahalakshmi who is a third party to the suit, to give evidence as a court witness. Further, the petitioner has not stated as to the relevancy of the property purchased in the name of Mahalakshmi, with the present suit. The petitioner cannot claim any right by invoking benami transaction and relied on a judgment reported in 1971 AIR (SC) 1949.

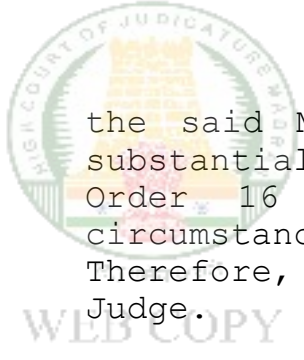
4. Heard the learned counsel for the petitioner.

5. Perusal of record shows that the revision petitioner relied on a judgment before the trial Court in P.S.Chetty vs. K.E.Reddy, 1988 (1) ALT 279 and contended that after scanning of the entire evidence, if the Court feels that summon has to be issued to a person to give evidence as a court witness, the court has power to do so even in the application filed by one of the parties to the suit. Whereas, the 1st respondent relied on a judgment in Biswanantha Rai vs. Sachhidanand Singh, 1971 AIR (SC) 1949 and contended that summoning a person who could depose about validity of documents, as a court witness after the closure of evidence cannot be done.

6. It is relevant to extract below Order 16 Rule 14:-

'Court may of its own accord summon as witnesses strangers to suit:- Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.'

7. A reading of the above provision would make it clear that summoning a stranger to the suit to give evidence as a witness, is purely the discretion of the Court. In this case, the petitioner sought to examine the wife of the 1st respondent to prove that a property was purchased in her name through the income derived from the joint family properties which according to the petitioner is suppressed by the 1st respondent/plaintiff in the plaint. According to the petitioner, pursuant to the partition of family properties, the alleged property was purchased in the name of the 1st respondent's wife and to prove the said defence, the petitioner can very well produce document regarding the alleged partition and the copies of sale deed etc. Without doing so, filing a petition to re-open the case to summon the said Mahalakshmi to give evidence as a court witness, is construed to be a misconception of the procedure tainted with mala fide intention. If the Court deems it fit that



the said Mahalakshmi has to be examined as a witness to render substantial justice, it has got ample powers to do so by invoking Order 16 Rule 14 CPC, but in this case, considering the circumstances of the case, such a situation does not arise. Therefore, there is no infirmity in the order passed by the learned Judge.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad-I)

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Judge
(Fast Track Court),
Kumbakonam.

+1 CC to Mr.G.GOMATHI SANKAR, Advocate SR-78670.

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