

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1389 of 2015

and

M.P.No.1 of 2015

Vijayalakshmi

... Petitioner

Vs.

1.Raji

2.Bali

3.Jayanthi

4.Sarathkumar

5.Periyaraja

6.Muniammal

7.Satishkumar

8.The Proprietor,

Gerbira Estate Private Limited,

4th Floor, 15 Benergatta Road,

J.P.Nagar, 3rd Part,

Bangalore.

9.T.Shetty

10.T.Mathu

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 09.02.2015 passed by the Principal Subordinate Judge, Krishnagiri in I.A.No.592 of 2014 in O.S.No.1 of 2009.

For Petitioner : Mr.G.Surya Narayanan
For Respondents :
For R1 to R7 : No appearance
For R8 to R10 : Mr.K.A.Mariappan

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of her application in I.A.No.592 of 2014 in O.S.No.1 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri dated 09.02.2015.

2. The petitioner herein has filed a suit in O.S.No.1 of 2009 on the file of the Principal Subordinate Judge, Krishnagiri for partition and other reliefs. During trial, the 9th and 10th defendants have paid batta for issuing summons to the Sub Registrar, Shoolagiri without filing any application under Order 16 Rule 1 of CPC and the trial court also has passed an order to issue summons to the said witness. Aggrieved by the same, the petitioner herein/plaintiff has filed an application in I.A.No.592 of 2014 under Section 151 of CPC requesting the court not to permit the defendants to summon irrelevant witnesses without adhering the provisions of CPC. The learned Sub Judge by the order dated

09.02.2015 has dismissed the said petition. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3. Heard Mr.G.Surya Narayanan, the learned counsel for the petitioner and Mr.K.A.Mariappan, the learned counsel for the respondents 8 to 10.

4. The learned counsel for the petitioner/plaintiff by drawing attention of this Court to the provisions of Order 16 Rule 1 of CPC contended that the parties should have filed an application for summoning the witnesses and if any such application is filed, the other side will have an opportunity to oppose the said application, but, in this case, the defendants 9 and 10 without filing any such application, straight away paid the batta and based on the same, the learned Sub Judge has passed an order to issue summons to the Sub Registrar, Shoolagiri. He further submitted that the procedure followed by the learned Sub Judge is against the provisions of law and hence, the petitioner/plaintiff has filed the application in I.A.No.592 of 2014, but the learned Sub Judge without considering the aforesaid facts has erroneously dismissed the said petition. Therefore, he requests to allow the Civil Revision Petition and

set aside the order passed by the Sub Judge, Krishnagiri in I.A.No.592 of 2014 and allow the said petition.

5. Per Contra, the learned counsel for the respondents 8 to 10 has submitted that the Provision under Order 16 Rule 1 of CPC is not mandatory, it is only directory in nature. In such a case, the petitioner has to show what is the prejudice caused to her by issuing summons to the Sub Registrar, Shoolagiri for examining him as witness. He further submitted that in order to avoid the delay, the defendants have straight away paid the batta and accepting the same, the trial court passed the order to issue summons to the said witness. He further submitted that even if the petitioner is aggrieved by the said order, she should have filed an application to re-call the said order and instead of that she cannot file a petition totally preventing the defendants from taking summons to any of the witnesses and taking into consideration of the aforesaid facts, the learned Sub Judge has rightly dismissed the said petition and in the said order, this Court need not interfere and therefore he prayed to dismiss the Civil Revision Petition.

6. The prayer made in I.A.No.592 of 2014 in O.S.No.1 of 2009 is extracted here under:

“ For the reasons more fully stated in the accompanying affidavit, the petitioner/plaintiff humbly prays that the Honorable Court may be pleased, not to permit the defendants from summoning irrelevant witnesses unnecessarily, after the lapse of 7 years (seven) from the closing of their side (defendants) evidence in the year 2007, and after re-calling and re-examining all the defendant's side witnesses by the plaintiff without adhering provisions of CPC, which prolongs the trial and defeat the interest of justice and thus render justice”.

7. A bare reading of the aforesaid prayer made by the petitioner clearly shows that she requests the court to prevent the defendants from summoning any witness. The said prayer cannot be entertained. The Court cannot pass any such kind of omnibus order totally prohibiting the parties from summoning the witnesses. The Court has to decide whether summons has to be issued or not depending upon the facts of the particular case. Each and every petition has to be decided on its own merits. If the petitioner feels that the trial court has issued summons to the Sub Registrar, Shoolagiri without following the provisions of law, she should have filed an application to re-call the said order, instead of

that, she cannot file this kind of petition. Hence, this Court does not find any infirmity in the order passed by the learned trial judge.

8. In the result, this Civil Revision Petition is dismissed. However, it is open to the petitioner to file proper application to recall the order which was passed by the trial court to issue summons to the Sub Registrar, Shoolagiri. No costs. Consequently, connected miscellaneous petition is closed.

07.10.2020

Vv

Index : Yes/No

Internet : Yes/No

To

The Principal Subordinate Judge,
Krishnagiri.

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CRP (PD).No.1389 of 2015

P.RAJAMANICKAM.J.,

Vv



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