

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD). No.127 of 2018

Bharanitharan

.. Petitioner

Vs.

Vijaya

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the order passed by the learned Additional District Munsif, Tiruvannamalai made in I.A.No.583 of 2016 in O.S.No.54 of 2012 dated 11.09.2017.

For Petitioner : Mr.P.Dinesh kumar

For Respondent : Mr.K.Venkatasubban for
M/s.Sarvabhauman Associates

ORDER

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The plaintiff in O.S.No.54 of 2012 has come up with this revision, challenging an order made in I.A.No.583 of 2016, permitting the defendant

to be examined as a witness after the examination of her husband as DW1 in the suit. Though the application was filed under Order 16 Rule 1 of Code of Civil Procedure, it was treated as one under Order 18 Rule 3 (A) of the Code of Civil Procedure and allowed.

2. The suit is one for declaration of title and permanent injunction. The plaintiff claims title to the suit properties under a Settlement deed said to have been executed by his grandfather Kannu pillai in the year 2007. It is not in dispute that the properties belonged to a common ancestor by name Annamalai Naicker. At a partition between his two sons Kannu Naickar and Sundaram Naicker, the properties were divided in the year 1961 and patta was granted as per the enjoyment of the parties. While the plaintiff claims under the elder son Kannu Naicker, the defendant claims title under the younger son Sundaram Naicker.

3. The defence is that at the partition in 1961, the properties were divided as northern and southern portion in each of the items and the suit properties that were allotted to Sundaram Naicker was sold by Sundaram

Naicker and his son to the father of the defendant namely Mannu pillai who in turn executed a settlement deed on 09.04.2000 in favour of the defendant. After the completion of the plaintiff's evidence, the husband of the defendant who also happens to be the son of the vendor Sundaram Naicker was examined as DW1. On completion of his examination, the present application came to be filed seeking permission to examine the defendant as DW2.

4. No doubt Order 18 Rule 3 (A) of the Code of Civil Procedure enables a party to examine himself or herself after examining some of the witnesses. But the Rule requires such party who seeks to examine himself or herself after the witnesses to give sufficient reason for such examination.

5. In the affidavit filed in support of the application, it is stated that since the defendant was unwell and her husband being the son of the vendor of her father was also acquainted with the facts, he was examined and after this examination, the need has arisen to examine the defendant.

6. The trial Court, however, concluded that the defendant should be given an opportunity to examine herself and allowed the application. Aggrieved, the plaintiff has come up with this Civil Revision petition.

7. I have heard Mr.P.Dinesh kumar, learned counsel for the petitioner and Mr.K.Venkatasubban, learned counsel appearing for M/s.Sarvabhauman Associates, for respondent.

8. Mr.P.Dinesh kumar, learned counsel appearing for the petitioner would vehemently contend that even though Order 18 Rule 3 (A) of Code of Civil Procedure enable a party to depose after examining a witness on his or her side, such party must show that such examination is not an attempt to fill up the lacuna in the evidence. He would also submit that the trial Court had not adverted to a specific plea that the defendant now seeks to examine herself only to fill up the lacuna and to nullify certain vital admissions that have been extracted during the cross examination of her husband as DW1.

9. Contending contra, Mr.K.Venkatasubban, learned counsel appearing for the respondent would submit that the husband of the defendant was examined as DW1 only because the defendant was unwell and now that she is alright, she would like to let in evidence and the Court should not shout out evidence.

10. I have considered the rival submissions.

11. No doubt Order 18 Rule 3 (A) of the Code of Civil Procedure enables a party to depose after examining some witnesses on his or her side. But it is an enabling provision and it cannot be used to fill up the lacuna in the evidence or to nullify certain vital admissions that had been obtained in cross examination. A perusal of the evidence of DW1 in the case on hand would go to show that DW1 has in fact conceded the case of the plaintiff during cross examination and it is because of such vital admissions that have been elicited from DW1 during the cross examination, the defendant now wants to get into the box to either explain away such admission or to nullify the effect of such submission. The very object of Order 18 Rule 3

(A) of Code of Civil Procedure is to prevent such filling up of the lacuna or withdrawal of admission. By adopting a liberal approach like what the Trial Court has done in this case, the Court would be enabling what the Code of Civil Procedure intended to disable.

12. Even in the opening paragraph of the evidence in cross examination, DW1 has deposed that the defendant is alright and she can come and depose before the Court. Therefore, the reason given for examination of DW1 ahead of the defendant itself appears to be false. I am convinced that this attempt is only to get over certain vital admissions that have been made in the cross examination of DW1. Unfortunately, the trial Court has not adverted to the evidence of DW1 before deciding to allow the application.

13. No doubt, evidence should not be shout out. But at the same time, the Court should be cautious of dubious methods being used by the parties to fill up the lacuna in the evidence. Hence, I find that the order of the trial Court needs to be interfered with and the same is accordingly set

aside. This Civil Revision petition will stand allowed and the application in I.A.No.583 of 2016 will stand dismissed. Now that the defendant's evidence is being recorded and the trial Court is directed to dispose of the suit within a period of four month from the date of commencement of physical hearing in the Court at Thiruvananthapuram. No costs.

26.08.2020

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Index: Yes/No

Speaking order / Non speaking order

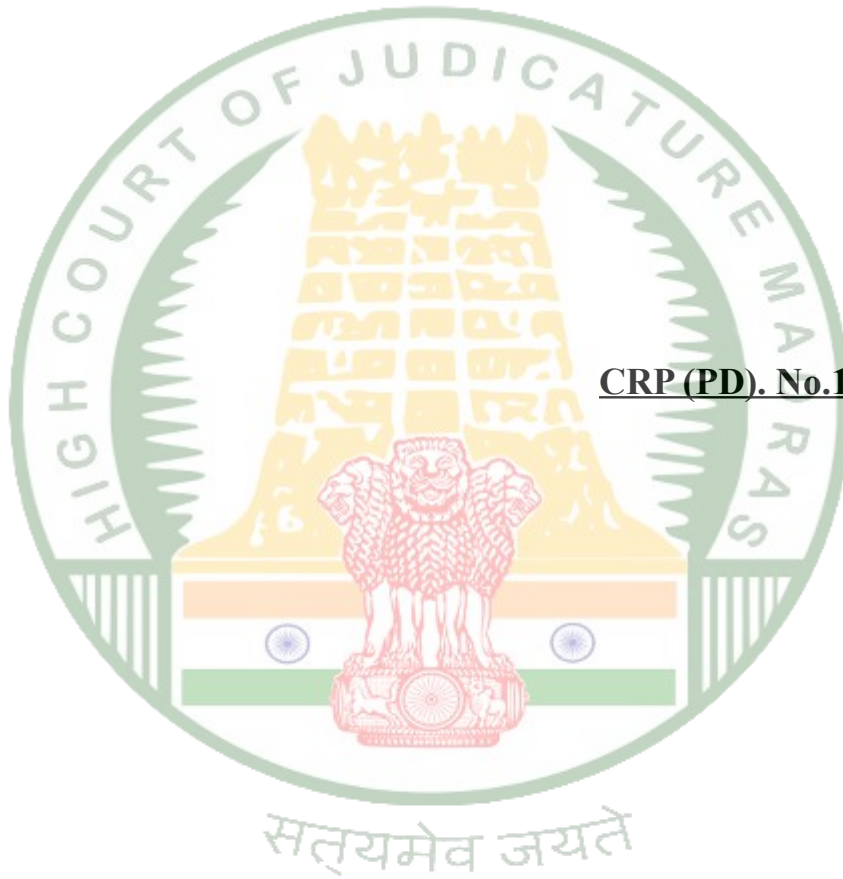
To

1. The Additional District Munsif,
Thiruvannamalai

2. The Section Officer,
VR Section,
Madras High Court,
Chennai

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R.SUBRAMANIAN, J.
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