

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2394 of 2018

K.Ramasamy ...Petitioner/Plaintiff
Vs.

1.R.Muthusamy
2.K.Ponnusamy
3.M.Sivanantham ...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order in I.A.No.283 of 2018 in O.S.No.29 of 2017, on the file of the District Munsif Court, Sathiyamangalam and dated 20.03.2018.

For Petitioner : M/s.R.Poornima
For Respondents : Mr.M.Roshan Atiq for R1 & R3

O R D E R

The plaintiff in the suit in O.S.No.29 of 2017, has filed the present Civil Revision Petition challenging the dismissal of an application filed by him under Order 16 Rule 1 of the Code of Civil Procedure, seeking issuance of summons to the second defendant in the suit to depose as a plaintiff's witness. The second defendant in the suit is the vendor of the first defendant. This application was opposed by the first defendant contending that the plaintiff cannot seek issuance of summons to the opposite parties in the suit. The second defendant remained ex parte in this application. The Trial Court dismissed the application on the ground that the plaintiff cannot seek summons to the defendants in the suit to depose on his side.

3. Heard, Ms.R.Poornima, learned counsel appearing for the petitioner and Mr.M.Roshan Atiq, learned counsel appearing for the respondents 1 and 3.

4. Ms. R.Poornima, learned counsel appearing for the petitioner would vehemently contend that the Trial Court was not right in dismissing the application. According to her, the second defendant had remained exparte in this application

therefore, there is no bar in summoning him as a witness on the plaintiff's side.

5. Contending contra, Mr.M.Roshan Atiq, learned counsel appearing for the respondents 1 and 3 would submit that the second defendant being the vendor of the first defendant cannot be summoned to speak against the recitals in the sale deed which was executed in favour of the first defendant. He would also submit that such examination would cause considerable prejudice to cause of the first defendant. He would also draw the attention of this Court to the judgment of the Hon'ble Division Bench in this Court in C.Bakthavachalam & Co., Vs. C.Abdul Rahman & Co., reported in 2016 (3) CTC Page 1, wherein the Hon'ble Division Bench has rejected the claim of the first defendant to have the chartered accountant of the plaintiff examined as a witness on their side. He would also rely upon another judgment of this Court reported in 2005 (3) Law Weekly Page 453, wherein this Hon'ble Court had concluded that an opposite party cannot be summoned as the witness on the side the plaintiff or the defendant.

6. Considering the facts and circumstances of the case, I find considerable merit in the objection raised by the learned counsel for the respondents 1 and 3. As seen from the records the second defendant is the vendor of the first defendant. The first defendant claims a right of pathway on the basis of the sale deed executed by the second defendant.

7. It is the contention of the plaintiff that the second defendant had no right over the pathway. Even if summoned, the second defendant cannot depose against the recitals in the sale deed in his favour. I therefore, do not find any merit in the submissions of the learned counsel for the petitioner. The order of the Trial Court cannot be said to be erroneous or materially irregular in order to enable me to interfere with the same.

8. Hence, this Civil Revision Petition fails, and it is accordingly dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The District Munsif Court, Sathiyamangalam.

C.R.P.No.2394 of 2018

SPD (CO)
RV (18/09/2020)



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