

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP.No.3035 of 2018

and

CMP No.17635 of 2018

1. Sathiyanantham
2. Sakthi
3. Minor Apurvan,
S/o. Sivanandam
reprd. by his mother and
natural guardian Kalairasi ...Plaintiffs/Petitioners
/Petitioners

Vs

1. Murugavel
2. Periyasamy ...Defendants/Respondents
/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order in I.A.No.106 of 2018 in O.S.No.54 of 2014 on the file of the Principal District Munsif Court, Ulundurpet dated 05.03.2018.

For Petitioner : Mrs. Poornima

For Respondent : No Appearance

सत्यमेव जयते
O R D E R

This Revision is by the plaintiffs in O.S.No.54 of 2014 challenging an order made in I.A.No.106 of 2018, an application filed by them to strike off the proof affidavit filed by DW3 in the said suit.

The suit is one for Permanent injunction restraining the defendant from interfering with the plaintiff's possession. When the suit went for trial, the first defendant was examined as DW1. Thereafter, a third party to the suit, one Mayavan, was examined as DW2. After the examination of DW2, the second defendant had filed a proof affidavit as DW3. The plaintiffs filed instant application to reject the proof affidavit. This

was resisted by the defendant claiming that he should be treated as a third party witness. The learned trial Judge dismissed the application holding that the provisions of Order 18 Rule 3(a) are not mandatory and there is no total prohibition under Order 18 Rule 3(a) of the Code of Civil Procedure for a party to the suit to depose after examination of the witnesses, who are not parties to the suit. I am unable to sustain the view of the trial Court. Order 18 Rule 3(a) provides that if a party seeks to examine himself or herself after examination of a non-party witness, permission of the Court should be sought for. There was considerable debate on the stage at which such permission should be sought for, i.e., whether it should be before or after the examination of a non party witness. A Division Bench of this Court had held that permission can be obtained even after the examination of a non party witness. But, the requirement of permission has been sustained by the Division Bench also. Therefore, a party, who seeks to examine himself or herself after examination of a non-party witness has to obtain the permission of the Court. The requirement of permission has not been dispensed with. It is only clarified by the Division Bench that permission can be obtained even after examination of such non party witness. I am therefore of the opinion that the order of the trial Court is liable to be set aside. It is accordingly set aside the proof affidavit of the second defendant filed seeking to depose as DW3 is struck off. Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp

To

The Principal District Munsif, Ulundurpet.

+1cc to Mrs.R.Poornima, Advocate, S.R.No.32226

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PVS (CO)
KKV/09/12/2020