



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM:

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD)No.1260 of 2013

1.S.E.Arumugam Pillai
2.S.E.Krishan Pillai
3.S.E.Sivakumar
4.S.E.Karthikeyan

...Petitioners/Defendants 3 to 6

vs.

1.Lakshmi
2.Swarna Latha
3.Uma
4.Ramadhas (died)
5.Eswaradhas
6.Nagarajan
7.Arumughaprasad
8.B.Maheswari
9.M.R.Babu

... Respondents 1 to 3/Plaintiffs

..Respondents

(Respondents 8 to 9 are brought on record as legal heirs of the deceased fourth (R7 already on record) vide order dated 11.06.2015 made in M.P.(MD)Nos.1 to 3 of 2015)

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in the depositions of P.W.3 in O.S.No.70 of 2009 on the file of the Additional District Munsif, Eranil and set aside or expunge the last two paragraphs, starting from the permission granted for treating the witness as Hostile and ending with the cross examination done by the respondents / plaintiffs on the said witness.

For Petitioners : Mr.C.Dhanaseelan

For R1 to R3 : Mr.K.Sreekumaran Nair

For R7 to R9 : Mr.Mr.N.Balakrishnan
for Mr.S.Sivakumar

For RR5, 6 & 8 : No Appearance

ORDER

This revision petition is at the instance of the defendants 3 to 6 in O.S.No.70 of 2009 on the file of the Principal District

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Munsif cum Judicial Magistrate, Eraniel complaining against the procedure adopted by the learned District Munsif in allowing cross examination of P.W.3 by the plaintiffs.

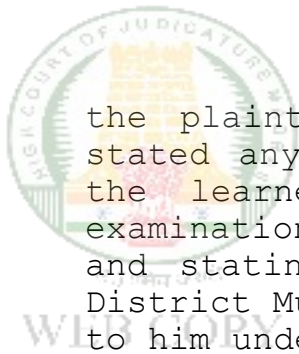
2. The suit in O.S.No.70 of 2009 was filed by the plaintiffs seeking permanent injunction restraining the defendants from interfering with their possession of A, B and C shedule properties. The claim of the plaintiffs is based on a Will said to have been executed by one Arumugam Pillai on 14.06.2006. The said Arumugam Pillai died on 06.04.2009. Almost immediately after his death, the suit came to be filed. The plaintiffs chose to examine one Kandhakumar, who is shown as scribe of the Will. In his chief examination, P.W.3 had deposed that the testator was in a good state of mind and he read the Will before signing it. It was his further evidence that he was present at the time when the testator and witnesses signed the Will. The order in which witnesses signed the Will was also stated by him in his chief examination. He would also state that the testator gave him instructions to write the Will.

3. But during cross examination, the witness almost turned hostile and deposed totally against his chief examination. In cross examination, he had stated that he had prepared the Will under instructions of Maideen. He had not seen the testator and the witnesses who signed the Will. The Will was signed at the residence of Arumugam Pillai and brought to the Register Office.

4. The learned District Munsif, found that this deposition of P.W.3 in cross examination is wholly against the previous statement in the chief examination and chose to put questions to him. Even during such questioning by the Court, P.W.3 maintained that whatever he has stated in cross examination is correct. Thereafter, the plaintiffs sought for permission to cross examine P.W.3 treating him as hostile witness. The said permission was granted by the Court after recording the reasons. While recording reasons, the Learned District Munsif found that since P.W.3 had spoken totally against his chief examination in his cross examination on very vital aspects regarding execution of Will, it will be in interest of justice to allow the plaintiffs to cross examine him. Upon such permission being granted, the plaintiffs also cross examined P.W.3. It is this procedure, that was adopted by the learned District Munsif permitting the plaintiffs to cross examine P.W.3 is challenged in this revision.

5. I have heard Mr.C.Dhanaseelan, learned counsel for the petitioners, Mr.K.Sreekumaran Nair, learned counsel for the respondents 1 to 3 and Mr.N.Balakrishnan, learned counsel for Mr.S.Sivakumar, learned counsel for the seventh and ninth respondents.

6. The learned counsel for the petitioner would strenuously contend that the learned District Munsif was not right in allowing



the plaintiffs to cross examine P.W.3, more so when he had not stated anything contrary to his previous statement. According to the learned counsel for the petitioners, admissions in cross examination are result of witnesses succumbing to cross examination and stating the truth. Therefore, according to him the learned District Munsif was not right in exercising the discretion available to him under Section 154 of the Evidence Act to allow the plaintiffs to cross examine their own witness.

7. He would also draw my attention to the judgment of **Allahabad High Court in Yusuf vs. State of Utrapradesh [1973 Cr1.L.J. 1220 (V 79 C 371)**, wherein the Allahabad High Court had dealt with the scope of the discretion available to the Court under Section 154 of the evidence Act. While doing so, the Allahabad High Court, pronouncing upon the scope of the Section 154 had observed as follows:-

".....

23..... A witness cannot be treated as hostile merely because his evidence is favourable to the other side. A hostile witness is one, who from the manner in which he gives evidence, shows that he is not desirous to give the truth to the Court. The fact that the witness was willing to go back upon his previous statement would be one of the circumstances which may lead to that conclusion. But the mere fact that the evidence of a witness tends to be favourable to the accused of what is elicited by the defence in cross-examination would not be a valid ground to declare such a witness as hostile.

....."

8. The learned counsel for the petitioners would also draw my attention to the judgment of the Hon'ble Supreme Court in **Rabindra Kumar Dey vs. State of Orissa [AIR 1977 Supreme Court 170]**, wherein the Hon'ble Supreme Court had dealt with the scope of the discretion available to the Court under Section 154 of the Evidence Act. The Hon'ble Supreme Court had in the said judgment observed as follows:-

"....

10.....Thus it is clear that before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross examine its own witnesses cannot be allowed. In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the Court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell



.....”

9. In the very same decision, the Hon'ble Supreme Court had held that mere fact that the witness is allowed to be cross examined under Section 154 of the Evidence Act does not make him an unreliable witness, so as to exclude his evidence from consideration altogether. In ***R.Srinath Vs. The State by the Inspector of Police*** [CrI.O.P.No.25787 of 2010), this Court had after referring to the judgment of the Hon'ble Supreme Court and the Alagabad High Court reiterated the same position.

10. Section 154 of the Evidence Act, which empowers the Court to allow the witnesses to be cross examined by the person, who had called him as witness, reads as follows:-

“154. Question by party to his own witness:-The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.”

11. A reading of Section 154 of the Evidence Act in the light of the law laid down by the Hon'ble Supreme Court and the Alagabad High Court would show that the discretion that is available to the Court under Section 154 of the Act is wide, and it has to be exercised judiciously. The Court must be satisfied that the witness is not speaking the truth or he has got personal animus against the parties for whom he is deposing. If it is so satisfied, the Court has discretion to allow the witness to be cross examined by the person, who has called him as witness.

12. The learned counsel for the petitioners has taken me through the entire evidence of P.W.3. A reading of the evidence would clearly show that the witness namely P.W.3 had clearly retracted from what he has sated in chief examination during the Course of his cross examination. It is not a case, where the witness had in an unguarded moment spoken the truth or stated something, which is mere feasible to the defendants. A reading of the evidence very clearly shows that there is an attempt by P.W.3 to screen away the truth from the Court. The learned District Munsif, who had the benefit of observing the demeanor of the witness had exercised his discretion in a particular manner and allowed the plaintiffs to cross examine the witnesses.

13. I do not see any illegality or irregularity in the procedure adopted by the learned District Munsif in order to enable me to interfere with the same particularly in a revision. I however make it clear, as pointed by the Hon'ble Supreme Court in the decision referred to supra, that the mere fact that P.W.3 was allowed to be cross examined by the plaintiffs would not make his evidence totally unworthy or unreliable. His evidence will be looked into and it is for the trial Court to analyse the entire



evidence that is already on record and the evidence that is to be let in and decide on the basis of the evidence without being influenced in any manner by the observations made in this order. This Civil Revision Petition is therefor dismissed. No costs.

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Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Additional District Munsif, Eranil

+1 CC to Mr.K.SREE KUMARAN NAIR, Advocate (SR-8629[F] dated 27/02/2020)

+1 CC to Mr.C.DHANASEELAN, Advocate (SR-9080[F] dated 28/02/2020)

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26.02.2020

VB(13.03.2020) 5P 4C