



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P.(PD) (MD)No.861 of 2014

and

M.P.(MD)No.1 of 2014

Parimaladevi : Petitioner/Respondent/Defendant

Vs.

S.Palanisamy : Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set side the fair and decreetal order, dated 15.07.2013 in I.A.No.603 of 2013 in O.S.No.590 of 2009 on the file of the Additional District Munsif Court, Karur.

For Petitioner :Mr.K.Govindarajan
For Respondent :Mr.N.Shanmugaselvam

ORDER

This revision has been filed by the defendant in O.S.No.590 of 2009 challenging the order made in I.A.No.603 of 2013.

2.The said application was filed under Order XVIII Rule 3(A) CPC seeking permission to examine the plaintiff in the suit as PW-2 after the examination of the Power Agent of the plaintiff as PW-1. The reason assigned for such request is that the defendant had objected to the examination of the Power Agent as PW-1.

3.The said petition was opposed by the respondent contending that the attempt is made only to fill up the lacuna in the evidence of PW-1 and though Order XVIII Rule 3(A) CPC has been held to be directory, the plaintiff will have to satisfy the Court for not having examined himself or herself prior to the examination of witnesses. It is also specifically alleged in the counter affidavit that when an objection was taken to the examination of Power Agent as PW-1, the Counsel for the plaintiff had stated that he is not going to examine the plaintiff in the suit.



4.The Trial Court without going into the merits or demerits of the application, held that since Order XVIII Rule 3(A) CPC has been held to be directory, the petition can be allowed.

5.The said disposal is wholly unsatisfactory. No doubt, Order XVIII Rule 3(A) CPC has been held to be directory and not mandatory. But, at the same time, the party, who seeks permission of the Court to examine himself or herself after the examination of the witnesses, must make out a cause for their non-examination earlier. The trial Court also chose to ignore the averments in the counter affidavit, which claims that the Counsel for the plaintiff had declared that he does not intend to examine the plaintiff. The order of the trial Court is, therefore, liable to be interfered with and it is accordingly set aside and I.A.No.306 of 2013 is remitted to the trial Court to be heard and disposed of strictly in accordance with the requirements of Order XVIII Rule 3 (A) CPC.

6.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Additional District Munsif, Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-3103[F] dated 03/02/2021)

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NA (CO)

TR(17.02.2021) 2P 5C