



C.R.P.(PD) No.466 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2022

Pronounced on : 27.05.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.466 of 2020

Muthu Babu Reddiar (Died)

1.S.Rukmani Ammal

2.S.Muthuraman

3.S.Sambasivan

4.S.Dhandapani

....Petitioners / Petitioners 2 to 5 / Defendants

Vs

P.K.Krishnamoorthy

.... Respondent / Respondent / Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order made in I.A.No.4 of 2019 in O.S.No.990 of 2009 pending on the file of the Subordinate Judge at Madurantakam.

For Petitioners : Mr.N.Jothi, Senior Counsel
for Mr.S.Vinod

For Respondent : Mr.M.Sivavarthan



C.R.P.(PD) No.466 of 2020

WEB COPY

ORDER

The present revision is filed by the defendant in O.S.No.90 of 2009 on the file of Subordinate Court, Madurantakam, challenging an order of dismissal passed in I.A.No.4 of 2019 filed by the defendants 2 to 5 / revision petitioners herein to reject the affidavit of chief examination of P.W.2 for non compliance of mandatory provision under Order 16 Rule 18 of C.P.C.

2.The situation arises on the following way:

- The suit property originally belonged to a certain Sivaraman. According to the plaintiff, on 07-11-1968 the said Sivaraman had executed a General Power of Attorney constituting three persons as his Power holders. One among them was one Muthu Babu. Thereafter, on 20-07-1992, he cancelled the said Power of Attorney, and executed another Power of Attorney document, this time nominating one Ramalingam and another Jawahar Mani as his power-holders. While so on 05-04-1995, Jawahar Mani, one of the Power-holders of Sivaraman had executed a sale deed in favour of the plaintiff and conveyed the suit property to the latter. It is his further case that long after the cancellation of the first mentioned Power of



Attorney dated 07-11-1968, the second defendant claimed to have purchased the same property under a sale deed executed by Muthu Babu, the first defendant, on the strength of the Power of Attorney that has since been cancelled. And subsequently the first defendant had executed a settlement deed transferring the suit property to defendants 2 to 5.

- Be that as it may, the plaintiff has appointed a certain Baburaj as his Power of Attorney, and the has laid the suit through the said Power of Attorney for declaration of his title and also for cancellation of the sale deed and the settlement deed under which the defendants claim title.
- The suit is resisted by the defendants. Indeed, the third defendant had filed the written statement, which the other defendants have adopted.

3. The suit is now being tried. The plaintiff has examined himself as P.W.1 he is in the process of examining Sivaraman as P.W.2. He is stated to be the original owner of the suit property as P.W.2. Sivaraman's affidavit of chief examination has been filed too. At this juncture the defendants 2 to 5 would file I.A.4/2019 for rejecting the said affidavit on the ground that he is being examined without furnishing a list



of witness or notifying to the defendants the purpose for which Sivaraman is proposed to be examined. While the affidavit filed in support of the application refers to Order XVI Rule 18 CPC, the appropriate provision is Order XVI Rule 1(1) and (2) CPC. The plaintiff has filed their counter in which it was contended that Order XVI Rule 1A CPC enables examination of witnesses without filing a formal list of witnesses.

4. The trial court dismissed this application. And, it drew support to its view from the ratio in ***Mange Ram Vs Brij Mohan & Others*** [(1983)4 SCC 36]. And the trial court also has observed that after the filing of the affidavit of chief examination of P.W.2 after serving an advance copy thereof to the defendants, the defendants sought time at least on two occasions for cross examining P.W.2, and were even slapped with costs before they have come up with the present application. This order is now under challenge.

5.1. Heard both sides. Relying on several authorities to fortify his contentions, Mr. N. Jothi, the learned senior counsel appearing for the revision petitioners, argued that complying with Order XVI Rule 1 CPC requirement is mandatory and cannot be breached, and added that when it is not even the case of the plaintiff that



they had furnished the list of witnesses which he proposes to examine, the trial court should have appreciated the prejudice that would be caused to the defendants.

5.2 The counsel for the plaintiff/respondent justified the line of reasoning of the trial court.

6. The point is, was there a breach of Order XVI Rule 1(1) and (2) CPC requirements, and if there is one, does it disable a party from examining a witness whose name is not listed in the list of witnesses proposed to be examined by the said party? The Hon'ble Supreme Court in *Mange Ram Vs Brij Mohan & Others* [(1983)4 SCC 36] has settled the issue where it has held that the Court should not refuse to examine a witness merely because his/her name does not figure in the list of witnesses produced before the Court. Here the majority of the authorities which the counsel for the revision petitioner relied on are essentially relate to the procedure for summoning a witness, and they do no violence to the ratio in *Mange Ram case*. It is precisely for this reason this Court does not consider it necessary to discuss the various authorities cited by the counsel for the revision petitioner.



WEB COPY

7. A combined reading of Order XVI Rule 1(3) with Rule 1A does enable examining a witness present in the court. And, this grants discretionary space to the trial court to let an unnamed witness in the list of witnesses to be examined by him or her during trial. When this discretion is exercised by the Court applying its mind to it, it cannot be the subject matter of a challenge unless it is demonstrated that it has caused substantial prejudice to the other side. After all, procedural law is a rule book on fairness, and when rules of fairness is not shown to have been breached as to prejudice the right of the other side, there can be no grievance. And, so far as the present case goes, the trial court has observed that the defendants have taken two adjournments for cross examination of P.W.2, and in one of such instances they have even paid cost, and this implies that the present application is bereft of any bonafide. It should not be forgotten that the one who the plaintiff now examines is stated to be the very owner of the property originally, and the present attempt of the defendants 2 to 5 only appears to be a statement of their anxiety to keep this valuable evidence away.

8. This Court does not find any demerit in the order of the trial court as to warrant an interference under Article 227 of the Constitution. Accordingly, the revision is dismissed. However, the learned Sub Judge, Madurantakam, is directed to



C.R.P.(PD) No.466 of 2020

complete the trial and dispose of the suit within a period of four months from the date of communication of this order. No costs.

27.05.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

ds

To:

The Subordinate Judge
Madurantakam.



WEB COPY



C.R.P.(PD) No.466 of 2020

N.SESHASAYEE.J.,

ds

Pre-delivery Order in
C.R.P.(PD) No.466 of 2020

27.05.2022