



CRP (PD) No.914 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.914 of 2021 and
CMP No.7448 of 2021

1.A.M.Bhoopathy
2.Malarvizhi

... Petitioners

Vs

1.Siva Kumar
2.Yamuna Rani
3.Nithiyanandham
4.Devasena
5.Viswanathan
6.Vijaya Kumar

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.03.2021 passed in I.A. No.3 of 2021 in O.S. No.155 of 2015 on the file of District Munsif of Vaniyambadi.

For Petitioners : Mr.S.Subbiah, Senior Counsel
for Elizabeth Ravi

For Respondents : Mr.M.Premkumar



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ORDER

Challenge in this revision is to the order of the trial court, allowing an application in I.A. No.3 of 2021 taken out by the plaintiffs in O.S. No.155 of 2015 seeking to issue summons to the second defendant in the suit to adduce evidence.

2. This application was resisted on the ground that the court cannot compel a defendant to depose at the instance of the plaintiff.

3. The learned trial Judge, however, allowed the application on the conclusion that DW1 has admitted that only DW2 knows the details of the proceedings. That by itself cannot be a reason for enabling the opposite party in a legal proceedings to summon the other side to give evidence. That would amount to forcing the other side to give evidence.

4. This court has in *Babu vs. K.A. Dinachandran and others* reported in **2013 (1) MLJ 24** has held that the court cannot issue summons to



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a defendant to prove the plaintiffs case. A Division Bench of this court in

G.Bakthavatchalam & Co. and others vs. C.Abdul Rahman & Co ant

others reported in ***2016 (3) CTC 1***, has held that the party to a suit cannot seek summons to even examine the auditor of the opposite party.

5. In view of the law so declared by this court, I am unable to uphold the order of the trial court allowing the application for issuing summons to the second defendant to adduce evidence.

6. The revision is allowed. The order impugned is set aside. However there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28.01.2022

Asr
Index:No
Speaking order

To:

1.The District Munsif,
Vaniyambadi

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2. The Section Officer,
VR Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.

Asr

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