



C.R.P.No.3594 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3594 of 2022

and

C.M.P.No.19075 of 2022

N.Balaji

... Petitioner

Vs.

1.Bhuavenshwari
2.M.Devika
3.M.Natarajan
4.N.Balamurugan
5.S.Chitra

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and final order of the IV Additional City Civil Court, Chennai, dated 24.03.2022 and made in I.A.No.2 of 2020 in O.S.No.952 of 2018.

For Petitioner : M/s.T.Gowthaman
For Respondents : M/s.B.Pavalavannan
for Caveator

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking to eschew cross examination of P.W.1 by the 3rd defendant.



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2. The respondents 1 and 2 filed a suit for partition against the petitioner and other respondents. According to the petitioner, the suit was contested by him. The other defendants namely respondents 3 to 5 had taken a collusive stand supporting the case of the respondents 1 and 2 /plaintiffs. The trial in the suit had already commenced. The 2nd plaintiff was examined as P.W.1. He was cross examined by the petitioner /2nd defendant. After completion of the cross examination of petitioner, 3rd defendant who is the 4th respondent in this revision cross examined witnesses and the same was recorded without any objection. Thereafter, the petitioner has filed this instant application seeking to eschew cross examination of the P.W.1 by the 4th respondent/3rd defendant. The said application was dismissed and aggrieved by the same, the petitioner/2nd defendant is before this Court.

3. The learned counsel for the petitioner submitted that the allegations found in the plaint was not at all controverted by the 4th respondent/3rd defendant. When they failed to controvert the plaint pleadings in their written statement, it is not open to them to cross examine plaintiff's side witnesses and consequently the cross examination conducted by the 4th respondent should be eschewed. I am not attracted by the argument made by the learned counsel for the petitioner, being the defendant in the suit, it is always open to all the defendants to cross examine the witnesses of



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the plaintiff. Especially in a suit for partition, the defendants are also treated as plaintiffs. Therefore, it is not open to the petitioner to say that the 4th defendant are not entitled to participate in the trial either by examining their own witnesses or by cross examining witnesses of any of the parties. Further, when 4th respondent herein cross examined P.W.1, the petitioner herein did not make any objection. Hence it is too late for him to raise his little finger against the cross examination, which had been completed. However, it is open to the petitioner to make his submission at the time of final disposal that any evidence let in by the parties are not supported by their pleadings. With these clarifications, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.11.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

jai

To

The IV Additional City Civil Court,
Chennai.



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S.SOUNTHAR, J.

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