



C.R.P. No. 753 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. No. 753 of 2023

and

C.M.P.No. 5848 of 2023

B.Senguttuvan,
S/o. Balakrishnan

... Petitioner

Vs.

S.Karthikeyan,
S/o. Late Subramani

.. Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the order dated 11.11.2022 made in Memo in O.S.No. 2521 of 2019 on the file of Hon'ble III Addl. Judge, City Civil Court, Chennai by allowing this Civil Revision Petition.

For Petitioner : Mr. Adeesh Anto for
Mr.K.Ashok Kumar

For Respondent : Mr.R.Ramanlaal



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ORDER

Challenging the impugned order passed by the trial judge in a memo filed by the plaintiff, the revision petitioner/defendant preferred this Civil Revision Petition.

2. Originally, the suit in O.S.No. 2521 of 2019 on the file of III Addl. City Civil Court, Chennai was filed by the respondent/plaintiff for the relief of damages for demolishing the building and for cancellation of document dated 24.11.2016 as null and void. The said suit was contested by the defendant by filing his written statement and now the suit is posted for trial. P.W.1 was examined and during the examination of P.W.2, the learned counsel appearing on behalf of plaintiff filed a memo stating that he came to know that the alleged sale agreement Ex.B1 was drafted by Mrs.D.Vijayalakshmi, having Enrolment No.2286/2013 and the said advocate is also now appearing on behalf of defendant, besides she is acting against the interest of her client/plaintiff and her conduct is also against the Code of Professional Conduct and ethics as prescribed under Bar Council of India Rules and there is a breach of faith on her as an advocate. Hence, he prayed to struck off her vakalat dated 2/12



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23.01.2020, which was filed on behalf of defendant. The learned counsel, who is appearing for defendant also raised objection stating that the counsel, who is appearing on behalf of him not acting against the plaintiff and she is only attesting witness to the sale agreement Ex.B1, on the other hand, she has drafted the said agreement as per the instruction given by the defendant and not by the plaintiff. So, there is no relationship of client and advocate with the plaintiff and Mrs.D.Vijayalakshmi, learned counsel, who is appearing for the defendant. On considering both side submissions, the trial judge elaborately discussed about the role of advocate by relying number of authorities and finally held that the act of learned counsel for the defendant, who has drafted and signed in the impugned document dated 24.11.2016, continuing as an advocate for the defendant, when she is likely to be called as a witness at a later stage, which would cause embarrassment both to the counsel for the defendant, parties and the court also. So, the memo filed on the side of plaintiff was allowed and the name of Mrs.Vijayalakshmi was ordered to be struck down from the vakalat dated 23.01.2020 filed on behalf of defendant. Challenging the said order, the present Civil Revision Petition has been filed.



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3. The learned counsel for Revision Petitioner by relying the decisions argued that the plaintiff has not raised any objection with regard to Mrs.D.Vijayalakshmi, Advocate, who is appearing for defendant at the earlier point of time and only at the time of examination of P.W.2, he filed such a memo, as such, is not acceptable one. Furthermore, the plaintiff has submitted the list of witnesses without citing her name before the trial court, without which, he is not entitled to raise objections at the trial stage. But, the trial judge without appreciating all these legal aspects, allowed the memo filed on behalf of plaintiff, which is totally unfair and the same is liable to be set aside. To support his contentions, he relied on the decision reported in **2011 (12) SCC 600**, in the case of **Kokkanda B. Poondacha and others vs. K..Ganapathi and another**, wherein Apex Court held in para 16 to 18 as follows :-

“16. If the prayer made by the respondents for being allowed to cite Shri N. Ravindranath Kamath as a witness is critically scrutinised in the backdrop of the above noted statement on the duties of an advocate towards his client, we have no hesitation to hold that the same was not only misconceived but was mischievous ex facie. Neither in the written statement nor the



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additional written statement filed by them before the trial court, the respondents had attributed any role to Shri N. Ravindranath Kamath in relation to the appellant/plaintiffs in 1996 i.e. almost 11 years prior to the filing of application by the respondents under Order 16 Rules 1(1) and (2) read with Sec.151 of C.P.C. During this long interregnum, the respondents never objected to the appearance of Shri N.Ravindranath Kamath as an advocate of the suit. Notwithstanding this, the respondents cited him as a witness in the list filed along with the application. The sole purpose of doing this was to create a situation in which the advocate would be forced to withdraw from the case.

17. Luckily for the appellants, the trial court could see the game plan of the respondents and frustrated their design by partly dismissing the application. The learned single judge ignored that the respondents had included the name of Shri N.Ravindranath Kamath in the list of witnesses proposed to be summoned by them with an oblique motive of boarding him out of the case and passed the impugned order by recording a one line observation that the respondents were not required to give reasons for summoning the particular person as a witness.



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18. *We may add that if the parties to the litigation are allowed to file the list of witnesses without indicating the purpose for summoning the particular person as witness, the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness.*”

He has further relied on the judgment of **Kerala High Court** dated **24th February 1995** in the case of **N.Yovas and another vs. Immanuel Jose and others**, wherein it has been held as follows :-

“An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact he should not continue to appear as an advocate if he can retire without jeopardising his client's interest.



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Here, of course, the test is whether the advocate concerned would be “a witness on a material question of fact. A learned single Judge of this court has considered the implications of the said rule in a particular contest (vide Marikag (Motors) Ltd. v. Ravikumar (1988) 2 Ker. Lt. 986 : (AIR) 1989 Kerala 244). We are in agreement with the following observations of the learned single judge (at p. 246 of AIR)

If the court or the authority concerned, after enquiry finds that an examination of the advocate as a witness is indispensable and hence the disengagement of the advocate from the case would not jeopardise the interest of the part for which he appears, then the court or the authority concerned, can ask the advocate to relinquish the vakalath”

4. The learned counsel for revision petitioner further argues that an advocate Mrs.D.Vijayalakshmi has appeared on behalf of the defendant and she has not been cited as a witness on the side of plaintiff and without indicating the purpose for summoning him, the court ought to have insisted the party to indicate the purpose of summoning the particular person as a witness. However, no such reason is assigned on the side of plaintiff, and without which the vakalat filed by the defendant counsel ordered to be struck off, which is totally unfair and the same is liable to be set aside.



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5. By way of reply, the learned counsel for respondent would submit that the plaintiff herein is living in an orphanage and he lost his parents and he is residing with his paternal aunt. In order to change his father name of the property, he approached the defendant Senguttuvan, who is an advocate by profession and subsequently, manipulating the document, the said advocate executed a sale agreement as if the plaintiff has agreed to sell the property and executed the sale agreement dated 23.04.2016, but the plaintiff never intends to sell the property and not intended to execute the sale agreement, however, without getting his consent and knowledge, the alleged sale agreement was executed. When it came to the knowledge of plaintiff, he issued the notice dated 21.12.2017 to him and even as per the terms of agreement, the alleged period of three years was much prior to two years back, but the defendant has not taken any steps to execute the alleged sale agreement. Immediately, he filed a suit to cancel the sale agreement and now he came to know that the person, who has drafted the sale agreement is the junior of the said defendant and she also now appeared on behalf of defendant to contest the suit. In order to prove



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his case, he has intended to examine the said Vijayalakshmi as one of the witness, since she said to be drafted the agreement is a person appropriate to prove the sale agreement. Hence, he filed a memo to struck off the vakalath and the same was rightly appreciated by the trial judge, which needs no interference.

6. Heard and considered rival submissions of learned counsel for Revision Petitioner as well as respondent and perused the records.

7. On a bare perusal of sale agreement, it would reveals that at the time of the execution of alleged sale agreement, the plaintiff was only aged about 20 years and the said agreement was drafted by an advocate Vijayalakshmi and she is now appearing on behalf of defendant. As per the plaintiff's contentions that she is junior of defendant Senguttuvan, who is also an advocate by profession. Now, the learned counsel appeared on behalf of defendant said that she is not a junior to him and independently practising as advocate. However, on perusal of records, it would reveals that even assuming that the sale agreement is executed by the plaintiff, so far, no action on the side of defendant



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calling the plaintiff to execute the sale agreement, on the other hand, the plaintiff has filed a suit to declare the sale agreement as null and void. Now, he filed a memo to examine Mrs.D.Vijayalakshmi as a witness to the document and to struck off the vakalath. He has also taken a stand denying the execution of sale agreement, but the alleged sale agreement was executed only at the instigation of defendant Senguttuvan. The plaintiff is the owner of the property and as a owner, he is bound to prove his case that the sale agreement was not executed within his own knowledge. In order to prove his case, he now inclined to examine her as a witness. If she appears on behalf of defendant, his valid defence would be defeated. Thus, the learned trial judge has rightly analysed entire facts and ordered to struck off the vakalat, which needs no interference. Moreover, before the Bar Council of Tamil Nadu, action was also taken against the defendant and the same was remitted back to Bar Council as per order of Bar Council of India. So, though the ratio laid down in the authority is not applicable to the facts of the present case for the reason that the said person, who said to have executed the sale agreement is aged about 20 years at that time, besides he lost his parents and living with his paternal aunt. So, the conduct of defendant is to be taken note of and it needs detailed



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investigation. Furthermore, the decisions relied on by the revision petitioner is not applicable to the facts of the present case. Accordingly, this Civil Revision Petition is dismissed as no merits. No costs. However, the trial court is directed to complete the trial and dispose the case as early as possible. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

The III Addl. Judge,
City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

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