



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.354 of 2015

and

M.P.No.1 of 2015

1. Kaliasammal (Died)

2. Venkatasamy

3. Dhavamani

4. Amaravathi

.....

Petitioners

Vs

1. Subbathal (Died)

2. Chellammal

3. Ganesan

4. Chandrasekaran

5. Sampath Kumar

6. Gopal

7. Sarojini

8. Amudhakumari

9. Radhamani

10. Maragatham

11. Malarvizhi

12. Easwari

13. K.R.Ramesh

14. S.Srinivasan

15. R.Bhaskaran

.....

Respondents



Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.11.2014 made in I.A.No.665 of 2012 in O.S.No.996 of 1996 on the file of the III Additional District Munsif, Coimbatore.

For Petitioners : Mr.L.Mouli

For R1 : Died

For R2 to R12 : Notice served

For R13 to R15 : Mr.E.K.Kumaresan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 11.11.2014 made in I.A.No.665 of 2012 in O.S.No.996 of 1996 on the file of the III Additional District Munsif, Coimbatore, thereby dismissing the petition filed under Order 18 Rule 3A of CPC.

2. The petitioners are the plaintiffs and the respondents are the defendants. Pending suit, original plaintiff was examined as P.W.1 and other third party was examined as P.W.2. Thereafter, the original plaintiff died. The petitioners herein impleaded themselves as legal heirs in the partition suit. The first respondent is the sister of the deceased first plaintiff and the respondents 2 to 9 are the legal heirs and the respondents 10 to 15 are the subsequent purchasers of the suit property. Therefore, the first



petitioner filed an application under Order 18 Rule 3A of CPC to grant permission to the 1st petitioner to adduce further evidence as P.W.3. It was dismissed. Aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioners would submit that they had filed a suit for partition and it is necessary to adduce evidence as P.W.3. Since pending suit, one the suit property was sold out from the hands of the 4th plaintiff, the first petitioner filed a petition to transpose the 4th plaintiff as one of the defendant. However, it was dismissed for the reason that the main suit itself was partitioned and as such, there is no need to transpose the 4th plaintiff as one of the defendant. Therefore, it is not to fill up any lacuna but in the interest of justice, the first petitioner has to be examined as P.W.3.

4. He further submitted that the provision under Order 18 Rule 3A has to be mandatory in character, since Rule 3A expressly provides that, if a party wishes to appear as a witness, then he shall so appear before any other witness on his behalf has been examined. If he wants to reserve himself as a witness that he proposes to examine himself after other witnesses are



examined, that is undoubtedly permissible but he has to obtain previous permission of the Court and the Court has undoubtedly the discretion to grant such permission. Therefore, the issue was referred before the Hon'ble Division Bench of this Court reported in **2008 (1) CTC 36** in the case of **Ravi and another Vs. Ramar**, which is held as follows :

“18. A perusal of the decisions of different High Courts indicate that the provision contained in Order 18, Rule 3-A has been considered to be directory in nature. Even the provision itself contemplates that as a general rule, if the party wants to examine himself as a witness, he should be examined before other witnesses are examined. However, on the basis of an Application of the party, he can be permitted to be examined a witness after examination of other witness. While granting permission, the Court is required to indicate reasons in writing. However, the question is whether as an inexorable rule such permission ha to be sought for at the beginning before any other witness is examined on behalf of the party or whether even at a subsequent stage after examination of some or all the witnesses the party himself can seek for permission.

19. As observed in the various decisions and more particularly in the decisions of the Division Benches of



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Punjab & Haryana, Jammu & Kashmir, Patna and Orissa High Courts, what is necessary is that before giving such permission, the Court is required to give reasons and obviously the reasons must be relevant. However to lay down as an inexorable rule that in no case such an application can be filed after the examination of any other witness may result in injustice.

20. Keeping in view the principle that procedural rules are normally considered as directory unless the consequence of not following the procedure is specifically indicated, it would be appropriate to hold that the Court can give permission to the party to examine himself at a later stage even if no such permission had been sought for at the very threshold. As a matter of fact, save and except in one or two decisions of the Single Judges of the Madras High Court, most the High Courts, including many of the Judges of Madras High Court, have preferred to follow a more liberal path of laying down the proposition that even where such permission has not been sought for at the threshold, such permission can be granted for relevant reasons at a later stage. This is not to suggest that as and when such petition is filed the Court is bound to grant such permission merely for the asking. Obviously, the Court is required to consider the matter in its proper perspective and is required to find out as to why the party could not



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examine himself at the beginning and also to why the application for seeking such permission was not filed at the threshold. If the Court finds that the party deliberately held himself back with a view to fill up the lacunae in the evidence at a later stage, obviously such permission is to be refused irrespective of the fact whether permission is sought for at the threshold or at a later stage. If convinced on such aspects, the Court may permit the party to examine himself as a witness at a later stage. What is important is recording of reasons and obviously it means reasons which are germane to the matter that is to say, relevant for the purpose.”

5. In the case on hand, a perusal of the affidavit filed in support of the petition under Order Rule 18 Rule 3A reveals that the petitioners filed I.A.No.57 of 2009 to transpose the 3rd petitioner herein as one of the defendant in the main suit and the same was disposed of with the observation that the 3rd petitioner herein has deposed as P.W.1, there is no possibility of him being transposed as one of the defendant. The suit itself is filed for partition and other defendants stood in the foot of the plaintiff and vice-versa. Subsequent to the said order, the 3rd petitioner herein filed a Memo impleading the other parties, who are the subsequent purchasers of



the suit property. Therefore, it is just necessary to examine the 1st petitioner as P.W.3 in the suit. Hence, the 1st petitioner stated sufficient reason to examine himself as P.W.3, after examining the other witnesses. Hence, this Court finds there are sufficient reasons to examine the 1st petitioner herein as a witness at a later stage and it would not amount to fill up the lacuna.

6. In view of the above, the order dated 11.11.2014 made in I.A.No.665 of 2012 in O.S.No.996 of 1996 on the file of the III Additional District Munsif, Coimbatore, is hereby set aside. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The III Additional District Munsif,
Coimbatore.



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