



WEB COPY



CRP.No.2912 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2912 of 2016 and
CMP.No.14875 of 2016

S.Jayachandran

... petitioner

Vs.

1.Srinivasa Nadar

2.J.Surender

3.J.Jeevanandham

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 26.04.2016 in IA.No.7046 of 2015 in OS.No.9366 of 2010 on the file of the Court of XIII Assistant City Civil Judge at Chennai.

For Petitioner : M/s.K.Ramya

For Respondents

For R2&3 : Mrs.R.T.Shymala

ORDER

This civil revision petition has been filed to set aside the order dated 26.04.2016 in IA.No.7046 of 2015 in OS.No.9366 of 2010 on the file of the Court of XIII Assistant City Civil Judge at Chennai, thereby allowed the petition filed



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under Order VI Rules 1 & 2 of CPC to issue witness summons to the first defendant / the petitioner herein.

2. The second and third respondents are the plaintiffs and the petitioner and the first respondent are the defendants. Respondents 2 & 3 filed suit for permanent injunction in respect of the suit 'B' schedule property. When the suit was posted for defendants' evidence, the first respondent herein filed application to issue witness summons to the petitioner herein to depose before the trial court on the ground that the said suit was filed under collusion with son and father i.e. the respondents 2 & 3 who are the sons of the petitioner herein. In order to prove the foul game played by them, the first respondent filed application to examine the petitioner to bring out the truth and the same was allowed.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as the first defendant in the suit. No party to the suit can be compelled to give evidence in the suit. In fact, the petitioner filed his written statement independently and he vehemently contested the suit. Therefore, he cannot be compelled to appear as witness before the trial court. In support of her contention, she relied upon the judgment of this Court in the case of ***Mahendra World City Developers Ltd Vs. Pownammal and others*** reported in ***2009 (5) CTC 417***,



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wherein it is held that there is no bar on the right of a party to summon another party to give evidence as a witness under Order 16 Rule 21 of CPC. But, except for very good reasons, the party cannot compel the opposite party to be present in the Court to give evidence. Further, the trial court allowed the application on the ground that the petitioner also did not file any written statement in order to contest the suit. Whereas on perusal of records, the petitioner filed written statement on 09.02.2011 and vehemently contested the suit. While it being so, it cannot be said that he colluded with his two sons and failed to contest the suit. Therefore, there is absolutely no sufficient reasons to compel the petitioner to depose before the trial court. As such, this Court finds infirmity in the order passed by the court below and the same is liable to be set aside.

4. Accordingly, the order dated 26.04.2016 in IA.No.7046 of 2015 in OS.No.9366 of 2010 on the file of the Court of XIII Assistant City Civil Judge at Chennai is set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

31.01.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To
The XIII Assistant City Civil Judge at Chennai

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