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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12.09.2023

+ CM(M) 46/2023 & CM APPL. 40448/2023

PRADEEP AND ORS.

..... Petitioners

Through: Mr. Praveen Suri, Advocate (Through
VC) with Ms. Kaberi Sharma,
Advocate

versus

SAVITRI SIDANA AND ORS

..... Respondents

Through: Ms. Nupur Sachdeva and Mr. A.N.
Aggarwal, Advocates for R-1

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution impugns the order dated 07.11.2022 passed in CS SCJ No. 990/2017, titled as ***Smt. Savitri Sidana v. Pradeep Kumar & Ors.***, by Civil Judge-03, District-South West, Dwarka Courts, New Delhi ('Trial Court') in so far as it allows the application filed by the Respondent under Order XVIII Rule 3-A of the Code of Civil Procedure, 1908 ('CPC'), seeking permission of the Court to permit the husband of the Respondent i.e., Mr. D.R. Sidana to be examined as a witness on behalf of the Respondent.

1.1. The Petitioner herein is the defendant and the Respondent is the plaintiff in the suit. The suit has been filed for declaration as well as permanent and mandatory injunction with respect to the property bearing No.



RZH 876, Old Plot No. 14, Khasra No. 56/12, situated at Gali No. 13, Raj Nagar-II, Palam Colony, New Delhi ('suit property').

2. The Trial Court *vide* impugned order dated 07.11.2022, after taking note of the contentions of the Respondent that she is old, ailing and a senior citizen as well as the fact that it is her husband Mr. D.R. Sidana, who is taking care of the suit property since its purchase, allowed the application and permitted that the Respondent will examine her husband as the first witness.

3. The learned counsel for the Petitioner states that Petitioner filed this petition aggrieved by the said order, as in terms of the Order XVIII Rule 3-A CPC, where the party wishes to examine itself as a witness, he/she shall appear before any other witness on his/her behalf is examined.

3.1. He states that in view of the provisions of Order XVIII Rule 3-A CPC, the Respondent's husband could not have been permitted to be examined before she has herself stepped into the witness box.

4. In reply, the learned counsel for the Respondent states that Respondent is suffering from cancer and is, therefore, not in a physical condition to depose as a witness in the trial and she, therefore, does not propose to examine herself as a witness and her husband Mr. D.R. Sidana will be examined as a witness on behalf of the Respondent.

4.1. She states that in view of the said statement made by the Respondent on 08.08.2023, the objection, if any, of the Petitioner stands addressed and the suit, which was filed in 2017 and at the stage of the recording of evidence may be permitted to be proceeded at trial.

4.2. She states that *vide* order dated 12.01.2023, the proceedings before the Trial Court have been deferred and she therefore, prays that taking her statement on record, the present petition be disposed of.

5. In response, learned counsel for the Petitioner states that the statement



made by the Respondent before this Court on 08.08.2023 is a subsequent event.

6. This Court has considered the submissions of the parties and perused the record.

7. The provisions of Order XVIII Rule 3-A CPC reads as under:

“3A. Party to appear before other witnesses: Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded permits him to appear as his own witness at a later stage.”

(Emphasis supplied)

8. On plain reading of the said provision, it is apparent that the said provision applies where the party wishes to examine himself/ herself as a witness at the trial.

9. In view of the statement made by the learned counsel for the Respondent as recorded in the order dated 08.08.2023, the objections of the Petitioner do not survive for consideration and accordingly, binding the Respondent to her statement recorded on 08.08.2023, the present petition is accordingly disposed of and the Trial Court is requested to proceed with the recording of evidence of the Respondent's husband Mr. D.R. Sidana and the remaining evidence of the plaintiff.

10. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 12, 2023/rhc/sk

Click here to check corrigendum, if any