



C.R.P.(PD).No.508 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.508 of 2019
and CMP.No.3322 of 2019

- 1.V.Janakiammal
- 2.V.Rajadurai
- 3.V.Arumugam
- 4.V.Subramani
- 5.V.Kalaiselvi

... Petitioners

vs.

- 1.Ganesa Udaiyar
- 2.G.Prakash @ Balan
- 3.V.Ilavarasi
- 4.K.Venkatraman
- 5.R.Babu
- 6.Government of Tamil Nadu,
Rep by District Collector,
Office of Vellore District Collector,
Sathuvachari, Vellore, Vellore District.
- 7.Sub Collector,
Office of Sub Collector,
Thirupathur, Vellore District.
- 8.Tahsildar,
Office of the Tahsildar,
Vaniyambadi, Vellore District.
- 9.Urban Land Surveyor,
Municipality Office, Vaniyambadi,
Vellore District.

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 11.10.2018 in I.A.No.347 of 2018 in O.S.No.96 of 2016, on the file of the District Munsif Court, Vaniyambadi and allow the above Civil Revision Petition.

For Petitioners	: Mr.R.Subramanian
For Respondents	: Mr.Pa.Sudesh Kumar for R3 to R5 Mr.V.Jeeva giridharan Additional Government Pleader for R6 to R9 No Appearance for R1 and R2

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the petition filed by the petitioners/plaintiffs seeking to call Revenue Divisional Officer, Tirupathur, as a Court witness to enable the petitioners to cross examine them with regard to some of the documents filed by the petitioners as exhibits. The petitioners herein filed a suit against the respondents for declaration that the order passed by 8th respondent herein granting patta No.93 in favour of respondents 3 to 5 as null and void and for other incidental reliefs. The witness sought to be



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summoned by the petitioners for cross examination is the 7th defendant in the suit. The petitioners/plaintiffs already marked certain documents relating to the proceedings of the 7th respondent as Exs.A6, A7, A9, A10, A12, A18 to A23. In order to the cross examine the 7th respondent with regard to the documents marked by the petitioners on their behalf, the instant application has been filed seeking to issue witness summon to the 7th respondent for examining him as a Court witness.

2. The instant application has been filed by the petitioners under Order XVI Rule 1(2) of CPC. Under the said rule, the petitioners can issue witness summon to a person whom they want to examine as their witness. In the case on hand, as per the prayer found in the petition, petitioners want to examine the 7th respondent as a Court witness to enable them to cross examine. Therefore, the provision of law under which the petitioners have filed this petition is not correct. Anyhow, mentioning wrong provision is not a ground to reject prayer.



3. The learned counsel appearing for the petitioners submitted that the petition can be treated as the one filed under Order XVI Rule 14 of CPC and an opportunity may be given by the petitioners to cross examine the 7th respondent by examining him as a Court witness. In support of his contention, the learned counsel for the petitioners relied on the following judgments:

(i) *National Insurance Company Limited and others Vs. M/s.Susru Sea Foods* reported in *2005(1) A.P.L.J. 71 (HC)*;

(ii) *Pratap Singh Vs. Rajinder Singh and another* reported in *(1975) 1 SCC 535*;

(iii) *R.M.Seshadri Vs. G.Vasantha Pai* reported in *(1969) 1 SCC 27*;

(iv) *Bishwanath Rai Vs. Sachhidanand Singh* reported in *AIR 1971 SCC 1949*;

(v) *T.Narayana Reddy Vs. Patan Razak Khan and another* reported in *2008 SCC Online AP 365*



4. The learned counsel further submitted that if the Court is satisfied, a party to the proceeding who has not been examined as a witness is required to be examined, the Court can always summon him as a Court witness.

5. In the case on hand, as per the affidavit of the petitioners, the purpose for calling 7th respondent as a Court witness is to enable the petitioners to cross examine him with regard to the documents already marked by the petitioners. The 7th respondent is a party defendant in the suit, if he failed to appear as a witness, the petitioners can take advantage of the same and request the Court to draw adverse inference. Instead of adopting such course the petitioners are not entitled to compel an opposite party to subject himself for cross examination.

6. It is no doubt true, in the facts and circumstances of the case, if the Court is satisfied a party to the suit or any other 3rd person required to be examined in order to throw more light on the issues involved in the suit, it can call him as a Court witness. However, the Court cannot exercise its



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power under Order XVI Rule 14 of CPC, just to enable one of the party to the litigation to cross examine the opposite party who has not chosen to enter the box. The documents in question were already marked by the petitioners and if the 7th defendant failed to appear as a witness, the petitioners can request the Court to take adverse inference against the 7th respondent. However, the petitioners cannot insist that the 7th respondent must enter box and subject himself for cross examination. In the light of the decisions relied on by the learned counsel for the petitioners, there is no doubt, the Court is conferred with jurisdiction to examine any party as a Court witness by exercising power under Order XVI Rule 14 CPC. The said power of the Court is based on the satisfaction of the Court. The relevant observation of High Court of Andhra Pradesh at Hyderabad in *National Insurance Company Limited and others Vs. M/s.Susru Sea Foods* reported in *2005(1) A.P.L.J 71 (HC)* reads as follows:

"17. This Court in Kosuru Kalinga Maharaju v. Kosuru Kaikamma and Ors., reported in 2000(2) ALT 409 , while considering the scope of Order XVI Rule 14 of the Code of Civil Procedure, observed:

"A reading of Rule 14 of Order 16 would leave no doubt in the mind to say that "either party to the suit proceedings can



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summon a person including a party to the suit who is not called as a witness by a party to the suit, as a witness".

*Legislature has felt the need for a direct provision enabling the Court to summon a party for giving evidence as a witness to help curbing the malpractice of a party not appearing as a witness and forcing the other party to call him as a witness, and adjudicate the issues properly. What is **laid down in** the above provision is that if the Court is satisfied about such a necessity to cause any person to be examined as a witness, Court can summon such person as a witness. The emphasis is laid on the subjective satisfaction of the Court. However, this power is to be exercised by the Courts guardedly and not as a matter of routine."*

7. Therefore, before summoning a party to the suit or a stranger as a Court witness, Court must be satisfied that he shall be examined as a Court witness. In the case on hand, the petition filed by the revision petitioners was dismissed by the trial Court on the ground that the documents relied on by the petitioners were already marked and hence there is no need to call the 7th respondent to clarify about the documents. When Court is of the opinion that the 7th respondent need not be called, especially when the documents were already marked, the petitioners cannot insist that the opposite party shall be



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called just to enable them to cross examine him with regard to the documents already marked. As I mentioned earlier, if the 7th respondent failed to examine himself, the petitioners are always entitled to request the Court to take adverse inference. Hence, the dismissal of the petition would not cause any serious prejudice to the petitioners. In view of the same, this Court is not inclined to exercise its revisional jurisdiction and interfere with the order passed by the trial Court.

8. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court,
Vaniyambadi.



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S.SOUNTHAR, J.

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