



C.R.P.(PD).No.1639 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.R.P.(PD).No.1639 of 2023

and

C.M.P.No.10696 of 2023

P.Arumuga Gounder ... Petitioner

Vs.

Sivasamy ... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order dated 29.03.2023 passed in I.A.No.1 of 2023 in O.S.No.367 of 2015 on the file of the Additional District Munsif, Pollachi and prays for setting aside the same.

For Petitioner : Mr.C.Veera Raghavan

For Respondent : Mr.S.Prabhu



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ORDER

This Civil Revision Petition is preferred by the sole defendant against the order dated 29.03.2023 made in I.A.No.1 of 2023 in O.S.No.367 of 2015, on the file of the Additional District Munsif Court, Pollachi.

2. Heard Mr.C.Veeraraghavan, learned counsel appearing for the petitioner and Mr.S.Prabhu, learned counsel appearing for the respondent.

3. One Sivasami S/o.Tvl.Muthusamy Gounder of Rangampudhur, Pollachi Taluk, filed a suit in O.S.No.367 of 2015 on the file of the Additional District Munsif Court, Pollachi, against the revision petitioner Arumuga Gounder, for the relief of declaration with respect of cart track and for other reliefs.

4. During the trial, when the suit was posted for examination of defendant's side witness, an application was taken up by the defendant/revision petitioner under Order XVIII Rule 3(A) of the Code of



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Civil Procedure, seeking permission to examine his son, instead of himself, on the ground that he was aged about 92 years and he was not in a position to attend the Court.

5. The respondent counteracted by filing counter stating that the revision petitioner was in good health and he was able to conduct the case and sought for dismissal.

6. For better understanding, Order XVIII Rule 3(A) CPC, is extracted hereunder:

“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.”

7. Order XVIII Rule 3(A) CPC would denote that when the party intends to examine himself after the examination of witness/witnesses, in that situation, it is necessary that permission has to be sought for by invoking Order XVIII Rule 3(A) of the CPC.



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8. On a careful perusal of the affidavit details in the petition, it explicates that as the petitioner was aged about 92 years and due to his old age, he was not in a position to walk and therefore, he sought for permission to examine his son as a witness, instead of examining himself. As per the provision of Order XVIII Rule 3 (A) CPC, in the case of necessity, the Court may permit the party to examine him at a later stage. The said provision is directory in nature. So there is no impediment for the petitioner to file an application and he is at liberty to examine the witness straight-away without filing any application. Therefore, I am of the considered view that there is no perversity or infirmity in the orders passed by the learned trial Judge.

9. Based on the aforesaid observations, this Civil Revision Petition stands dismissed. Consequently, the connected Civil Miscellaneous Petition is also closed. There is no order as to costs.

10. In consideration of the fact that the suit was filed in the year 2015, the trial Court shall dispose of the case within a period of four months from the date of receipt of a copy of this order.



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Index : Yes / No

Speaking Order / Non-Speaking Order
ars

To

The Additional District Munsif,
Pollachi.

R.KALAIMATHI, J.,

ars

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