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C.R.P.(PD).No.2782 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 05.08.2024

Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(PD). No.2782 of 2024 &  
C.M.P.No.14738 of 2024

C.S.Dhanapalan

... Petitioner

-Versus-

G.Krishnamurthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 26.03.2024 passed in I.A.No.2 of 2022 in O.S.No.2573 of 2018 by the learned III Assistant (FAC), IV Assistant City Civil Court at Chennai.

*For Petitioner*

: *Mr.G.Ilamurugu*

**ORDER**

This civil revision petition arises against the order by the learned IV Assistant City Civil Judge, Chennai in I.A.No.2 of 2022 in O.S.No.2573 of 2018 dated 26.03.2024.

2. I.A.No.2 of 2022 is an application presented under Order XVIII Rule 3A read with Section 151 of the Code of Civil Procedure to reject the proof affidavit filed by one G.K.Mohamed Sahil on 03.02.2021. O.S.No.2573 of 2018



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is a suit, that has been filed for the relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the property except otherwise in accordance with law.

3. On service of summons, the defendant filed a detailed written statement. Thereafter, the issues were framed and the matter was listed for trial.

4. At that stage, one G.K.Mohamed Sahil filed his proof affidavit in support of the plaintiff's case, though the plaintiff is one G.Krishnamoorthy. G.K.Mohamed Sahil, who is none else than the plaintiff's son, who had subsequently embraced Islam.

5. On filing of the proof affidavit, the defendant took out an application in I.A.No.2 of 2022 seeking to eschew the same. The ground for rejection/eschewing the evidence is that the plaintiff did not enter the witness box and the proof affidavit was filed by his son which is in contravention of Order XVIII Rule 3A. The said application came to be dismissed, against which the present revision.

6. I have heard Mr.G.Ilamurugu for the petitioner. He would rely upon Order XVIII Rule 3A of the Code and Section 120 of the Indian Evidence Act to state that only a husband can be examined as a witness on behalf of his wife and vice versa. He adds, if a party wants to examine any other persons other



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than himself, then he must obtain prior permission from the Court. He has stated that since neither of the two have been carried out, the evidence of G.K.Mohamed Sahil deserves to be eschewed.

7. Taking up the first argument on Order XVIII Rule 3A of the Code of Civil Procedure, it no doubt states that a party to a suit must examine himself before he examines any other witnesses on his behalf. Originally this Court had taken a view that the provision under Order XVIII Rule 3A is mandatory. Subsequently, on reference, a Division Bench headed by Justice P.K.Mishra in clear and categorical terms held that it is only directory and not mandatory. See, ***Ravi and another vs. Ramar, (2007) 6 MLJ 1119(DB)***. Therefore, it is always open to the party to examine any other person other than himself or herself before examining himself or herself. It can always be obtained at a later stage.

8. Insofar as Section 120 of Evidence Act is concerned, I am not able to understand how it is applicable to the facts of the present case. Under section 120 of the Indian Evidence Act, a husband can examine himself on behalf of his wife in civil or criminal proceedings and vice versa. Section 120 deals with competency of witnesses and not with relevancy.



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9. The argument of G.Ilamurugu that the evidence of G.K.Mohamed Sahil, who is his son, is not covered under Section 120 and therefore, the fact that he cannot be examined certainly does not appeal to me. It is always open to a party to a proceeding, to examine any witness that he deems fit in order to prove his case in case the witness is not incompetent or the evidence is irrelevant.

10. It is for the adversarial party to take advantage of the same, at the time of final disposal. In fact, if the plaintiff does not examine himself, it is for the defendant to draw adverse inference for the same and not seek for eschewing /rejecting the evidence of the witness examined by his opponents. If adversarial party were to be given a power to eschew the evidence of the other side, then no suit will go for trial because one party after the other will move such applications to eschew the evidence of the other side.

11. I find no reason to interfere with the civil revision petition. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

05.08.2024

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Index : Yes/No



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Speaking Order/Non-speaking order  
Neutral Citation : yes/No

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To

1.The III Assistant (FAC), IV Assistant City Civil Court at Chennai.



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V.LAKSHMINARAYANAN, J.

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