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C.R.P.(PD)No.2900 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2900 of 2022

and

C.M.P.No.15741 of 2022

1.A.Ravi

2.A.Sekar

3.S.Malleeswari

.. Petitioners

Vs.

Punitha

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1 of 2022 in O.S.No.18 of 2013 dated 29.06.2022 by the Additional Sub Judge, Ponneri.

For Petitioners : Mr.D.Jayakumar

For Respondent : Mr.R.Munusamy

ORDER

This Civil Revision Petition arises against an order passed in I.A.No.1 of 2022 in O.S.No.18 of 2013, dated 29.06.2022.

2. O.S.No.18 of 2013 is a suit for partition.



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3. In the said suit, defendant Nos.2, 3 and 6 took out an application that the 5th defendant, who had remained *ex parte*, must be summoned to the Court to depose evidence regarding the suit property on the side of the defendants. This application was opposed by the respondent stating that the defendants have already entered the witness box and examined themselves as D.W.1 and D.W.2 and also to the fact that the defendants cannot compel a person, who was not appearing before the Court, to depose evidence on his behalf.

4. Heard Mr.D.Jayakumar appearing for the petitioners and Mr.R.Munusamy appearing for the respondent.

5. A perusal of the paper shows that the 5th defendant/Radhakrishnan before filing of the present suit had initiated a suit in O.S.No.334 of 2009 on the file of the District Munsif Court at Ponneri. In that suit, the plaintiff as well as the defendants are parties. Subsequent to filing of a suit in O.S.No.334 of 2009, the defendants therein filed a suit in O.S.No.18 of 2013 before the learned Additional Subordinate Judge at Ponneri.



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6. In the suit filed in O.S.No.18 of 2013, the 5th defendant/Radhakrishnan had remained *ex parte*. The allegation of the defendants is that, the present suit has been instituted on account of the collusion between the plaintiff herein and the 5th defendant/Radhakrishnan. This factum can be brought forth by them in their evidence before the Court. It has been treated as a bad practice right from the time of Privy Council that it is impermissible for one litigant in a suit to summon another litigant in the very same suit as a witness on his behalf.

7. Order XVI Rules 1 and 7 of the Code of Civil Procedure are not meant to aid one party to violate the lines of division between the plaintiff and the defendants and the defendants *inter se*. In this case, the 5th defendant having been remained *ex parte* in the suit shows that he is unwilling to contest the claim of the plaintiff. If he does not appear, then, it is always open to the Court to draw adverse inference as against him as regards the positive evidence that might have been let in by the plaintiff or the defendants as against the interest of the 5th defendant.

8. However, the Code of Civil Procedure does not empower the Court



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to summon one defendant to depose evidence on behalf of the other. When the 5th defendant does not want to contest the proceedings and when the learned Additional Subordinate Judge at Ponneri has given convincing reasons to dismiss the application, I do not find any reasons to interfere with the same order.

9. Accordingly, this Criminal Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.04.2024

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The Additional Sub Judge,
Ponneri

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and

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