



C.R.P(MD)No.96 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.96 of 2019
and
C.M.P(MD)No.481 of 2019

J.Selvareka

... Petitioner/Respondent
Plaintiff

Vs.

1.C.K.Murugan Transport,
Represented by its Managing Partner,
Senthilvel Pandiyarajan,
Office at Door 4/323-A, Sarojini Street,
EB Colony, Iyyerbunglow,
Madurai.

2.M.Ramesh Babu

3.M.Ravichandran

4.M.Kulanthaivel Raja

5.M.Senthilvel Pandiyarajan

... Respondents/Petitioners
Defendants



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PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 09.11.2018 made in I.A.No.982 of 2018 in O.S.No.82 of 2010 on the file of the VI Additional District Judge, Madurai and the Civil Revision Petition is to be allowed.

For Petitioner : Mr.P.Rajagopal

For R-1, R-4 &
R-5 : No appearance

For R-2 : Mr.V.S.Kishok Kumar

For R-3 : Mr.G.Prabhurajadurai

ORDER

The present Civil Revision Petition has been filed by the plaintiff in O.S.No.82 of 2010 on the file of the VI Additional District Court, Madurai, challenging an order, wherein the Trial Court had directed the plaintiff's husband to appear as a witness on the side of the defendants.

2. The revision petitioner herein as plaintiff has filed a suit for recovery of the advance amount paid towards sale consideration of purchasing a bus. Pending suit, the plaintiff was examined as P.W.1,



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wherein she had narrated that some of the incidents would be known to her husband. Based upon her statements made in cross-examination, the defendants had filed I.A.No.982 of 2018 to call the plaintiff's husband as a witness on the defendants side. This application was stoutly resisted by the plaintiff. However, the Trial Court has proceeded to allow the application. Challenging the same, the present Revision Petition has been filed.

3. According to the learned Counsel appearing for the revision petitioner, a party cannot be called as a witness by the other side. In this case, though the wife is the plaintiff in the suit, the husband of the plaintiff cannot be called as a witness in the present suit. Hence, he prayed for allowing the revision petition.

4. Per contra, the learned Counsels appearing for the respondents had contended that during cross-examination, the plaintiff has specifically admitted that some of the facts are known only to her husband and she is ready to examine her husband as one of the witnesses.



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He further contended that the plaintiff's side evidence has already been closed and on the side of the defendants, D.W.1 to D.W.3 have already been examined. At this stage, the present application has been filed.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. The defendants had filed an application in I.A.No.982 of 2018 under Order XVI, Rule 1 of CPC [wrongly quoted as Order XVIII, Rule 16 of CPC] to summon the plaintiff's husband as a witness on the side of the defendants. The suit is for recovery of advance amount. The entire burden is upon the plaintiff to establish her case. In case if the Court feels that the non examination of the husband of the plaintiff would be fatal, it is for the Court to decide the same after the trial is over. That apart, one of the parties cannot call the other party or the spouse of the other party as their witness. Therefore, the Trial Court was not right in allowing the said application.



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7. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

10.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The VI Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.96 of 2019

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