



C.R.P.(MD)Nos.1851 and 1852 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.1851 and 1852 of 2024

and

C.M.P.(MD)No.10507 of 2024

Mariyappan

... Petitioner / Petitioner / Plaintiff

in both CRPs

Vs.

1.M.Poongodi

2.M.Sakthikumar

3.The Village Administrative Officer,
M.Kalathur Village,
Thottiyam Taluk,
Trichy District.

4.The Tahsildar,
Thottiyam Taluk Office,
Thottiyam Taluk,
Trichy District.

5.The Revenue Divisional Officer,
Musiri Taluk,
Trichy District.

6.The District Collector,
Collector Office,
Trichy District.



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7.The Sub Registration,
Sub Registrar's Office,
Kattuputhur, Thottiyam Taluk,
Trichy District.

8.The Assistant Electrical Engineer,
Tamil Nadu Electricity Board,
Elurpatti Village,
Thottiyam Taluk,
Trichy District.

9.The Executive Engineer,
Tamil Nadu Electricity Board,
Mettupatti Village,
Musiri Taluk,
Trichy District.

... Respondents / Respondents / Defendants

in both CRPs.

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in I.A.Nos.1 & 2 of 2024 in O.S.No.634 of 2023 on the file of the learned Subordinate Judge, Musiri dated 01.04.2024.

For Petitioner : Mr.Chamundi Bose

For Respondents : Mr.K.Balasubramani
Special Government Pleader for R3 to R7

(in both CRPs) : Mr.B.Ramanathan for R8 & R9

COMMON ORDER

Heard the learned counsel appearing for the revision petitioner.



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2. The petitioner herein filed O.S.No.261 of 2008 on the file of the Sub Court, Trichirappalli seeking the relief of declaration and permanent injunction. The said suit was transferred to the Subordinate Judge, Musiri and re-numbered as O.S.No.634 of 2023. The case is posted 'for argument'. At this stage, the plaintiff filed I.A.Nos.1 & 2 of 2024 for re-opening the defendants side and for causing examination of the first defendant. Both IAs were dismissed vide order dated 01.04.2024. Challenging the same, these civil revision petitions came to be filed.

3. The learned counsel appearing for the petitioner relied on the decision reported in *2001 (3) CTC 20 (V.K.Periyasamy @ Perianna Gounder Vs.D.Rajan)* and contended that there is no bar for summoning the defendant to be examined as witness for the plaintiff. The Court below had considered the aforesaid precedent and noted that it may not be applicable to the facts and circumstances of this case. If there are multiple defendants and some of them are non-contesting defendants, it may be possible to examine the opposite party as one's witness. If there is direct conflict of interest, the opposite party cannot be summoned. The whole thing turns on whether the party sought to be examined as a witness is on the same page.



4. In the Privy Council decision reported in **1908 SCC OnLine PC 21**

(Kishori Lal vs Chunni Lal), Lord Atkinson lamented as follows:

“In India it is one of the artifices of a weak and somewhat paltry kind of advocacy for each litigant to cause his opponent to be summoned as a witness, with the design that each party shall be forced to produce the opponent so summoned as a witness and thus give the counsel for each litigant the opportunity of cross-examining his own client. It is a practice which all judicial tribunals ought to set themselves to render as abortive as it is objectionable. It ought never to be permitted in the result to embarrass judicial investigation.”

5. In **Pirgonda v. Vishwanath (AIR 1956 Bom 251)**, Gajendragadkar J. has also observed that normally a party to the suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness box, it would be open to the trial Court to draw an inference against him. He held that ***“If a party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by the issue of a witness summons”***. In **Mallangowda v. Gavisiddangowda (A.I.R. 1959 Mysore 194)**, it was observed that the practice of calling the opposite party as a witness on his side should not be countenanced as it is not in the interests of justice. A Division Bench of the Lahore High Court in **Biram Das v. Mangal Singh (A.I.R. 1929 Lahore 868)** regarded the practice of parties examining



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each other as witness on their own behalf as highly objectionable and embarrassing. It was reiterated that such a practice has been repeatedly condemned by their Lordships of the Privy Council and should be discontinued by the legal profession.

6. In the present case, the first defendant whom the plaintiff wants to be examined as witness on his side had filed the written statement opposing the case of the plaintiff. But she did not choose to enter the witness box. In light of the categorical pronouncements mentioned above, this cannot be a ground for summoning the first defendant to be examined as plaintiff's witness. The Court below rightly dismissed both the IAs. Interference is not warranted. Since the case is of the year 2008, the learned Sub Judge, Musiri is directed to dispose it of on merits and in accordance with law within a period of three months.

7. These Civil Revision Petitions are dismissed with the aforesaid direction. Consequently, connected miscellaneous petition is closed. No costs.

07.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.R.SWAMINATHAN, J.

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