



CRP.No.88 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 27.06.2025

Order pronounced on : 18.07.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.88 of 2025
& CMP.No.782 of 2025

Chinnathambi

..Petitioner

Vs.

1.Chennakesavan
2.C.Anbalagi
3.H.Arul Prasad
4.D.Henry Chandra Prasad

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 16.08.2024 passed in I.A.No.9 of 2024 in O.S.No.139 of 2017, on the file of the Principal Subordinate Court, Krishnagiri.

For Petitioner : Mr.T.S.Baskaran
For Respondents : Mr.S.Rajendran

ORDER

The plaintiff in a suit for partition is the revision petitioner herein. The respondents/defendants 1, 6 to 8 took out an interlocutory application in I.A.No.9 of 2024, for permitting the 6th defendant to be examined as D.W.4,



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despite contest by the plaintiff, the Trial Court has allowed the application, as against which, the present revision has been preferred.

2.I have heard Mr.T.S.Baskaran, learned counsel for the petitioner and Mr.S.Rajendran, learned counsel for the respondent.

3.The learned counsel for the petitioner would submit that the Trial Court has violated the mandate of Order XVIII Rule 3A of CPC and that the 6th defendant ought to have invoked Rule 3A of CPC even prior to examination of a third party witness on her side. He would further submit that the 6th defendant is only attempting to fill up the lacuna and the same is not permissible in view of the settled judicial pronouncements of Hon'ble Supreme Court and as well as this Court. He would further submit that the witness who was examined as D.W.1 was the 1st defendant who had not even filed the written statement and therefore, the 6th defendant ought to have been vigilant in taking out an application under Order XVIII Rule 3A to resolve her right to depose after D.W.1. He would also point out that not only D.W.1 but also D.W.2 and D.W.3 have been examined before the 6th defendant and therefore, the Trial Court ought to have dismissed the application without holding that the plaintiffs have a right to cross-examine the 6th defendant.



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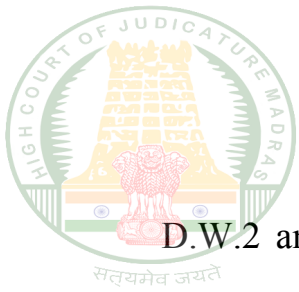
4. In support of his contention, the learned counsel for the petitioner would place reliance on the following decisions:

1. *Ravi and another Vs. Ramar* ((2008) 1 CTC 36).
2. *Lakshmi Vs. K. Umamaheswari and Others* (2016-2-L.W.145).

5. Per contra, Mr. S. Rajendran, learned counsel for the respondents would submit that the suit is only for partition and therefore, the question of filling up any lacuna does not arise. He would further contend that the provisions of Rule 3A of Order XVIII of CPC are not mandatory but only directory and hence, there is no perversity in the findings rendered by the Trial Court in permitting examination of the 6th defendant. He would therefore pray for dismissal of the revision.

6. I have carefully considered the submissions advanced by the learned counsel on either side.

7. Admittedly, the suit is one for partition and the 1st defendant has been allowed to be examined as a witness, namely D.W.1, without even his opting to file a written statement. Thereafter, two other witnesses have been examined as



D.W.2 and D.W.3. At this juncture, the 6th defendant has sought to examine

herself and took out an application in I.A.No.9 of 2024. It is seen that though the written statement appears to have been filed on behalf of the defendants 1, 6 and 8, on a perusal of the written statement, it is noticed that only the defendants 6 and 8 have signed the said written statement. I also do not find any memo of adoption filed by the 1st defendant and the defendants 6 and 8 alone have verified the said written statement as well. While seeking to examine herself, the 6th defendant has stated that she intends to examine herself as D.W.4 and that being a Teacher in a Government School at Chennai, she was unable to follow up the suit in Krishnagiri. In order to establish that the father's share was set apart for this maintenance was allotted to the 6th defendant, she intended to lead evidence. The said application was opposed on the ground that it was only to fill up the lacuna and reasons assigned for not entering into the witness box earlier are all false. The Trial Court has permitted the 6th defendant to lead evidence as defendant's witness, D.W.4. Insofar as the Rule 3A of Order XVIII of CPC, it reads as follows:

“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.”



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8. The interpretation of the said Rule as to whether being mandatory or directory has been settled by the Division Bench judgment of this Court in *Ravi and Another's case*, where it has been held that the Rule is only directory in nature and the Court can give permission to the party to examine himself at a later stage, even if no such permission has been sought for at the very threshold. In the light of the pronouncement of the Division Bench, there can be no quarrel with regard to maintainability of the application for permission sought for by the 6th defendant to examine herself as D.W.4, after examination of third party witnesses. However, whether the jurisdiction exercised by the Trial Court in granting such such permission is proper or not has to be still tested. Even in the said Division Bench judgment, this Court held that the Court has to consider why the party could not examine himself at the beginning and as to why no application was filed at the threshold and that if the Court finds that the party deliberately held himself back to fill up the lacuna in the evidence at a later stage, then such permission has to be refused, irrespective of the fact whether such permission is sought for at the threshold or at a later stage. This Court also held that what is important was recording of reasons for granting permission and the same being germane to the matter that is relevant by the purpose.



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9. In *Lakshmi's case*, following the ratio laid down by the Hon'ble Division Bench, this Court dismissed the revision on the ground that Article 227 of Constitution of India cannot be invoked in a routine manner and that there was no error in the findings of the Trial Court that the application taken out under Order XVIII Rule 3A of CPC was only to fill up lacuna. In the present case, the Trial Court has found that the 6th defendant was entitled to enter the witness box, after the witnesses had been examined. The affidavit of the 6th defendant seeking such permission has been accepted and the averments made therein have been found to be reasonable and not an attempt to fill up lacuna as claimed by the revision petitioner.

10. Further, the Trial Court has also found that no prejudice would be caused to the plaintiff, if the 6th defendant is examined as D.W.4. The Trial Court has also rightly held that the plaintiff would have ample opportunity to cross-examine the 6th defendant. The suit is only for partition which is for declaration of right of the parties in immovable properties. Therefore, the 6th defendant being admittedly one of the Class-I legal heirs of the original owner of the property, Chinna Chennan, there is no infirmity in the decision of the Trial Court to give an opportunity to the 6th defendant, a co-sharer, to put forth her case in trial.



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11. In view of the above, I do not find any infirmity or illegality in the order of the Trial Court permitting the 6th defendant to be examined as D.W.4. In fact, even in the decision that has been relied on by the learned counsel for the petitioner in *Laskhmi's case*, this Court held that when the Trial Court has assigned reasons and come to a conclusion, the same cannot be termed as wrong, erroneous or perverse, warranting interference in exercise of powers of superintendence under Article 227 of Constitution of India. In view of the above, I do not find any requirement to interfere with the order of the Trial Court. However, it is made clear that, in view of the categorical pronouncement of the Hon'ble Division Bench, the 6th defendant who is seeking to examine himself as D.W.4 shall not be permitted to fill up the lacuna.

12. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

18.07.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The Principal Subordinate Court, Krishnagiri.

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P.B.BALAJI.J.

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Pre-delivery order made in
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