

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
08.04.2025

PRONOUNCED ON
07.07.2025

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THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.No.1451 of 2025
in C.S.No.68 of 2021

M/s. Ramaniyam Real Estate Pvt Ltd,
Rep. By its Managing Director Mr.V.Jaggannathan,
Door No.17/35, 2nd Main Road Gandhi Nagar, Adyar,
Chennai 600 020. Applicant(s)

Vs

1.Mrs.Gunda Ramani
2.Mrs.K.Rangavalli,
3.Mrs.Pathi Lakshmi Kiran,
4.Mr.Karthick Chander,
5.The Sub-Registrar,
Sub-Registrar- Adyar,
Kamaraj Avenue 2nd Street, Adyar,
Chennai- 600 020. Respondent(s)

For Applicant(s) : Mrs.S.Vaitheeswari
for Mr.S.Sundaresan for the Applicant

For Respondent(s): Mr.S.K.Rahul Vivek for RR1 to 4.



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ORDER

This application is filed by the plaintiff to issue subpoena to first and third defendant to attend and give evidence in the suit C.S.No.68 of 2021.

2. Heard Mrs.S.Vaitheeswari, learned counsel for the Mr.S.Sundaresan, learned counsel for the Applicant and Mr.S.K.Rahul Vivek, learned counsel for the Respondents 1 to 4.

3. Mrs.S.Vaitheeswari, the learned counsel appearing for the applicant/plaintiff would submit that the suit had been filed for a specific performance of the contract. The parties had produced the list of witnesses, documents and schedule for recording of evidence. However, the defendants had not produced their list of witnesses and affidavit of documents, but, they had filed an application to recast the issue by framing additional issues which was allowed on 29.10.2024. Hence, the additional documents and the list of witnesses were filed by the plaintiff and in that list, the first and third defendants were shown as witnesses to be examined on the side of the plaintiff.

4. It is the case of the learned counsel for the applicant that even though



the agreements were entered into by the defendants 1 & 3 along with the second defendant in which the fourth defendant was a confirming party, they had entered appearance only through the fourth defendant on the strength of a Power of Attorney given to him much prior to the execution of the sale agreements. She would further submit that the defendants were not served in the suit as, they have entered caveat and such caveat has also been filed by the fourth defendant based upon a Power of Attorney that had been given much prior to the agreement of sale which is the subject matter of the suit.

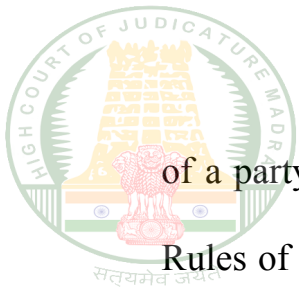
5. She would vehemently contend that if such a Power of Attorney was valid even on the date of entering the sale agreement, the defendants would have entered upon the sale agreements only through Power of Attorney and not individually by themselves. She would further submit that the fourth defendant, who claim to be a Power of Attorney agent alone had chosen to show himself as a witness on the side of the defendant. She would contend that it is well established principle of law that the Power of Attorney can only speak about his role and cannot speak to the acts committed by the principal.

6. She would contend that in this case, the alleged Power of Attorney is of the year 2015 and subsequently the sale agreements were entered into in the year 2016. The said sale agreements had been entered by the defendants 1 to 3



as owners and the fourth defendant who claims to be the Power Agent was also a party, that too as a confirming party only as an executor of the Will and not otherwise. Therefore, he may also not be a right person to depose on behalf of defendants 1 to 3. Utmost he could only depose about why he acted as confirming party and upon the limited role which he was performed as party to the agreement. She would rely upon Order XVI Rule 14 of the Original Side Rules to contend that a party to suit can call upon another party to a suit to be examined as a witness.

7. In support of her contention that the Power of Attorney can only speak about the act done by the Power of Attorney in exercise of the power granted under the instrument and cannot with regard to the acts done by the principals by themselves. In this context, she had relied upon a judgment of the Hon'ble Apex Court in the case of ***Man Kaur (Dead) by Lrs., Vs Hartar Singh Sangha*** reported in ***(2010) 10 SCC 512*** and in the case of ***Janki Vashdeo Bhojwani and another Vs Indusind Bank Ltd. and Others*** reported in ***(2005) 2 SCC 217***. She had also further relied upon the judgment of the Hon'ble Apex Court in the case of ***Mohammed Abdul Wahid Vs Nilofer and another*** reported in ***2023 INSC 1075*** and contended that even with regard to the unamended Order XVI Rule 21 of CPC by reading provisions of Order XVI Rule 14, Order XVIII Rule 3A of CPC, the Hon'ble Apex Court had held that there can be no distinction



of a party and a witness. Even if a party examines himself as a witness all the Rules of witness will apply to him. Further, she would submit that the Original Side Rules as framed under Order XVI Rule 14 is in contradistinction with Order XVI Rule 21 CPC which provides for a party in a suit to be called as a witness by another party.

8. She would also draw attention of this Court to the Madras amendment to CPC which is *pari materia* to Order XVI Rule 14 of the Madras Original Side Rules. Therefore, she would submit that the application ought to be ordered and the first and third defendants ought to be directed to give evidence.

9. Countering her arguments, Mr.S.K.Rahul Vivek, learned counsel appearing on behalf of the respondents/defendants would submit that the plaintiff cannot seek to compel the defendants to depose. He would submit that the plaintiffs have not disputed the Power of Attorney, when that being so, the Power of Attorney also being a party to the suit can also depose on behalf of them. He would further submit that Order XVI Rule 1 mandates that within 15 days from the date on which the issues were settled, the respective parties should present to the Court a list of witnesses, whom they propose to call either to give evidence or produce the documents. In the present case, the applicant had not given any list of witnesses much less including the name of the



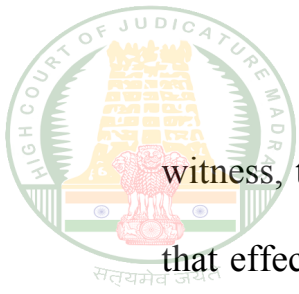
defendants 1 & 3.

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10. Sub Rule (3) in Rule 1 of Order XVI of CPC would indicate that for the reasons recorded in writing, a party can be permitted to call upon a witness whose name did not appear in the list, if a sufficient cause is shown for the omission. He would submit that since, there is no sufficient cause shown, the application is to be dismissed in limine. He would further submit that under Order XVIII Rule 3 A of CPC, if the party so wishes to appear, he should examine himself before any third party witnesses. He would submit that in the present case, the stage is where the plaintiff is gracing the box and is in the stage of cross-examination of him, therefore, the present application is also premature.

11. He would submit that the vague cause that has been shown by the applicant is to expose the 2 & 4 defendants. He would submit that the fourth defendant has been acting as a Power of Attorney of the 1 & 3 defendants and they have not taken any steps to undo the Power of Attorney or even call upon the Power of Attorney to explain for any of his acts. In the present application, the plaintiff can only be equated to a shedding of crocodile tears.

12. He would submit that utmost for not examining the particular



witness, the Court can only draw adverse inference against such parties and to that effect, he had taken this Court to the judgment in the case of ***Vidhyadhar Vs Manikrao and another*** reported in ***1999 (3) SCC 573*** and in support of the said contention he had also relied upon the judgment of the learned Single Judge of this Court in the case of ***D.Babu Vs K.A.Dinachandran and Others*** reported in ***(2012) 5 LW 931*** and the case of ***Minor Argumugam Vs State Bank of India and Others*** reported in ***2005 (5) CTC 773***. He had also placed reliance upon the judgment of this Court in the case of ***Sri Auribindo Ashram Trust Vs Kamal Dora*** reported in ***2000 (3) LW 22*** to contend that even for issuance of summons to witness, the court should be satisfied and exercise its discretion only based upon the bonafideness in such request and thereafter, pass orders. In the present case, he would submit that there is no authority to call upon a party to the proceedings as a witness that too without any reasons whatsoever.

13. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

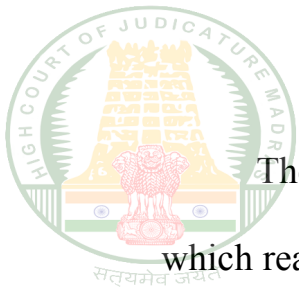
14. The application had been made to issue subpoena to the defendants 1 & 3 for giving evidence in the instant suit. A preliminary objection had been



raised by the respondent by contending that firstly the applicant being the plaintiff had not given any list of witnesses and also had not given details of what such witness is to depose as required under Order XVI CPC and further the applicant cannot call upon a party who is contesting the suit to give evidence, if such party does not choose to give evidence. From the Court records, it could be seen that the applicant/ plaintiff had filed a list of witnesses on 03.01.2025 in Diary No.722 of 2025. The applicant had listed the defendants 1 & 3 as witnesses to be examined as PW3 and PW4.

15. Be that as it may, the core issue to be decided in the lis is whether a party to a suit can call upon the other party to given evidence. Order XVI of CPC regulates the summoning and the attendance of the witnesses. Order XVIII of CPC deals with hearing of the suit and examination of the witnesses. Rule 2 of Order XVIII of CPC envisages the manner in which the evidence could be recorded. It is to be noted that in Order XVI and Order XVIII, the Madras High Court had also made certain amendments. Order XVI Rule 21 CPC reads as follows:-

“...21.Rules as to witnesses to apply to parties summoned-(1)
Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable...”



The same had been substituted by the Madras High Court amendment

which reads thus:

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“...21.Rules in case of parties appearing as witnesses.-(1)

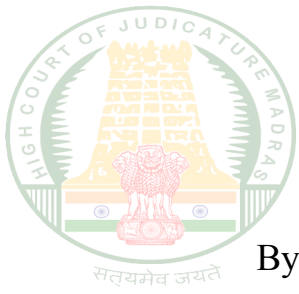
When a party to a suit is required by any other party thereto to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

(2) When a party to a suit gives evidence on his own behalf the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case or similar standing...”

Order XVIII Ruled 2 reads as under

“...Rule 2: Statement and production of evidence—

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. (2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case. (3) The party beginning may then reply generally on the whole case. (3-A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record. (3-B) A copy of such written arguments shall be simultaneously furnished to the opposite party. (3-C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment. (3-D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit...”



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By way of Madras High Court amendment the following had been inserted by way of an explanation under Rule 2

“...**Order 18, Rule 2** : Add the following at the end of R.2:

Explanation.- Nothing in this rule shall affect the jurisdiction of the Court, for reasons to be recorded in writing, to direct any party to examine any witness at any stage...”

16. The Madras High Court Original Side is governed by the Rules namely the Rules of the High Court Madras Original Side, 1994. Order XVI deals with summoning and attendance of the witnesses. Order XVI Rule 14 of Madras High Court Original Side Rules is a *pari materia* to Order XVI Rule 21(1) of the Madras High Court Amendment to the CPC as extracted supra. It is also to be noted that as regards the Madras High Court provisions of the Original Side Rules (hereinafter called as “Rules”) would prevail over CPC, as the CPC insofar as it is inconsistent with the Rules are repealed and superseded and is only applicable to the issues where the Rule have not prescribed a procedure.

17. It has also been brought on record that as per the procedure that had been followed by the other Courts and also this Court is that a party cannot call

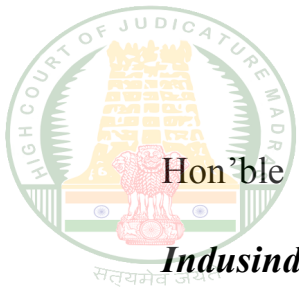


upon the other party to give evidence and such practice had been deprecated.

The learned counsel for the respondents had also placed on record a judgment of the Division Bench of this Court in ***Comp.A.Nos.472 & 473 of 2007*** dated 22.08.2023 in contending that the practice developed by a Court has to be followed till a new procedure is introduced by adopting a legal maxim *Cursus Curiae est lex curiae*. Various judgment have also been relied upon by the learned counsels appearing on either side. The learned counsel for the petitioner had relied upon a judgment of this Court in the case of ***Saradambal Ammal Vs Sambanda Mudaliar and Arun Balakrishnan Iyer & Anr vs M/s. Soni Hospital & Others*** reported in ***(1962) 75 LW 238 and AIR 2002 MAD 389*** in support of her contention with regard to the Madras Original Side Rules prevailing upon the CPC.

18. It is to be noted that the provisions of Order XVI Rule 21 of CPC as amended by the Madras amendment and Order XVI Rule 14 of Original Side Rules are Pari materia in respect of the right of a party to the proceedings to call the other party as a witness to the proceedings. In such view, there is no necessity to deal with the aforesaid judgments relied upon by the learned counsel for the applicant.

19. The applicant had further relied upon the two judgments of the



Hon'ble Apex Court in the case of *Janki Vashdeo Bhojwani & Anr Vs Indusind Bank Ltd & Others* reported in *2005 (2) SCC 217* and in the case of

Man Kaur (dead) by Lrs Vs Hartar Singh Sangha reported in *2010 (10) SCC 512* to contend that the witness who is sought to be examined by the defendants is only the Power of Attorney. The defendants themselves had executed an agreement of sale which is specifically sought to be performed. The Power of Attorney had which came into existence much before the execution of the sale agreement and therefore he cannot lead in any evidence with regard to the said agreement of sale.

20. This Court is of the view that if the witness seeks to speak about the execution then it will be open for the applicant to object to the same by relying on the aforesaid judgments. Further, it is to be noted that the second defendant was also a party to the said sale agreement and that the second defendant is the wife of the fourth defendant who is the Power Agent. The provisions of the Evidence Act enables a husband or a wife to depose on behalf of the other as contemplated under Section 120 of the Indian Evidence Act, 1872. The applicant had relied upon a judgment of this Court in the case of *Minor Arumugam Vs State Bank of India and others* reported in *2005 (5) CTC 773* in contending that in a given case, if reasons have been attributed even the other party against whom the party had filed a suit can call him for giving

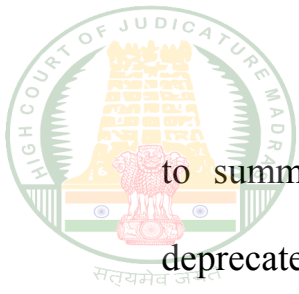


evidence in the proceedings.

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21. But on the contrary, the learned counsel appearing for the respondent had relied upon various judgments reported in *AIR 1938 PC 59, 1999 (1) LW 660, 2003 (1) MLJ 556, 2003 (2) LW 731 and 2012 (5) LW 931* to contend that it would be a fallacy to compel an opponents presence to give evidence by issuing summons to them. The Learned counsel for the respondent had also further relied upon a judgment of Hon'ble Apex Court reported in *1983 (4) SCC 36* in support of his contention that even to issue summons to a witness, the witness ought to have been shown in the list of witnesses and the reasons to examine him as a witness should also have to be given. I had gone through the judgment, the Hon'ble Apex Court in the aforesaid judgment had analysed the provisions of Order XVI Rule 1 (3) CPC. It did not have an occasion to deal with Order XVI Rule 21 CPC. Even while analysing the said provisions, the Court had held that even a person not shown in the list could be summoned as a witness provided reasoning should be given as to why such witness is to be examined in the applications seeking to issue summons to such witness as provided under Order XVI Rule 1 (3).

22. The judgment of the Privy Council reported in *AIR 1938 PC 59*, is a case where a party without entering a box to depose his evidence had sought for

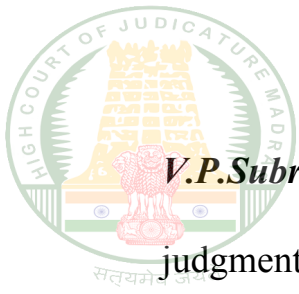


to summon the other party to lead in evidence. That is what has been deprecated by the learned Judges in the aforesaid judgment. The relevant portion of the said judgment is extracted hereunder:-

“...Mahabir Das the plaintiff, refrained from giving evidence on his own behalf. He adopted instead the tactics of calling Sham Dass, the first defendant, as a witness for the plaintiff, with the usual result that important features of his case are denied by his own witness. Their Lordships have on previous occasions condemned this practice and approve of the course taken by the High Court in treating the plaintiff as a person who put the first defendant forward as a witness of truth...”

23. In the present case, the plaintiff had examined himself as PW1 and had only sought for examining the defendants 1 & 3 as PW 3 & 4. A further judgment relied upon by the learned counsel for the respondent in the case of ***Kaliaperumal Vs. Pankajavalli and 2 others*** reported in ***1999 (1) LW 660***, is a judgment which decries a practice of a party causing his opponent to be summoned as a witness. Relying upon various judgments particularly, the judgment of the Hon'ble Bombay High Court in the case of ***Pirgonda Vs Vishwanath*** reported in ***AIR 1956 BOM 251*** and a further judgment of the Division Bench of the Hon'ble Mysore High Court in the case of ***Mallangowda Vs Gavisiddangowda*** reported in ***AIR 1959 Mysore 194*** apart from other judgments had come to such a conclusion.

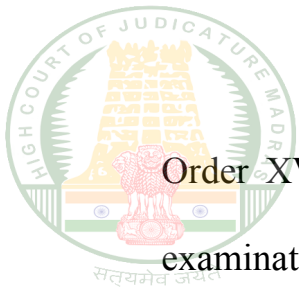
24. A judgment of the learned Single Judge of this Court in the case of



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V.P.Subramaniam Vs P.Saraswathi reported in **2003 (1) MLJ 556**, a further judgment of the another single Judge in the case of ***Varadharajan Vs Saravanan and D.Babu Vs K.A.Dinachandran and others*** reported in **2003 (2) LW 731 and 2012 (5) LW 931** were also relied upon by the learned counsel to drive home the said issue . He had submitted that this has been well established practice of the Court in not permitting a party to a proceedings to call upon the other party to examine such party as a witness and placing reliance upon the Division Bench judgment of this Court in ***Comp.A.Nos.472 & 473 of 2007*** dated 22.08.2023 which had been discussed supra, he had contended that when that is the practice of the Court, it would be law of the Court. It is to be noted that the judgment relied upon by a learned Single Judge reported in **1999 (1) LW 660** decries such a practice. He had relied upon a judgment of the Hon'ble Bombay High Court reported in ***AIR 1956 Bom 251***. The said judgment had been distinguished by the Hon'ble High Court of Bombay as early as in the year 2002 and the said judgment had been followed by the Hon'ble Bombay High Court in a judgment reported in 2012 (2) MHLJ 292 and 2015 SCC Online Bom 7325 in the case of ***Ravalnath Builders Vs Sebastiano Escolastica Beatriz and HSH Nordbank AG. Vs M.V.Dianthe and Anr..***

25. The Hon'ble High Court of Bombay, relying upon the provisions of



Order XVI Rule 1(3) read with Rule 21 had come to a conclusion that the examination of the opposite party by another is not prohibited by law. For better appreciation, the relevant portion of the order is extracted hereunder

2012 (2) MHLJ 292

“...8.The said aspect has been considered by this Court in the Judgment reported in 2003 (1) All M.R. 76, in the case of Ramdas Dhondibha Pokharkar v. State Bank of India, has held at Paras 8 and 9 thus:

“8. The most important provision of law for the decision in the matter is Rule 21 of Order XVI of the Civil Procedure Code which provides that, “Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.” In other words, the said rule clearly indicates that a party to a suit can seek assistance of the Court to examine the opposite party in the same suit as his witness and require such opposite party to produce a document or documents. Apparently, the said rule wipes out the difference between a party and witness in the matter of giving evidence in a suit. For the purpose of giving evidence, the parties to the suit as well as the witnesses in the suit stand on the same footings. Accordingly, the parties to the suit are exposed to all the consequences and penalties those may be faced by or imposed upon the witnesses consequent to issuance of order to give evidence or to produce document and for disobeying the same, apart form additional risk of judgment being passed against them in exercise of powers under Rule 20 of Order XVI of the Civil Procedure Code.

9. The law therefore does not prohibit examination of the opposite party as a witness in the suit. Of course, to enable to secure the presence of the opposite party as the witness in the suit, the party will have to take recourse to the provisions of law contained in Order XVI, Rule 1(3) r/w Rule 21 and the Court will have also to consider



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the provisions of Order XVIII, Rules 17 and 17A of the Civil Procedure Code. The said Rule 17 speaks of powers of the Court to recall and examine any witness who had been earlier examined and the Rule 17A provides that where a party satisfies the Court that after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just. Apparently, Rule 17A permits production of additional evidence which was not within the knowledge of the party or which could not be produced while leading the evidence. Obviously, such production of additional evidence can be allowed at a later stage.”

9. The said Judgment of this Court has been considered subsequently by another learned Single Judge of this Court in the case of Chandrabhan R. Singh v. Prabhakar R. Desai (supra) and has held at Para 3 and 4 thus:

“3. The judgment as cited by the learned Counsel for the respondent in Pirgonda Hongonda v. Vishwanath Ganesh, 1, 1956 B.C.I. (soft) 91 : AIR 1956 Bom. 251, is not applicable in view of above facts. The plaintiff/parties cannot be deprived of their right to substantiate their case by leading proper evidence including by calling the defendants as witnesses, specially when the defendants are not actively participating the proceedings.

4. The learned Counsel for the petitioner has relied on Ramdas D. Pokharkar v. State Bank of India, 2003(1) All.M.R. 76, whereby this Court has considered Order 16, Rule 1(3) read with Rule 21 clearly expressed that the examination of opposite party is not prohibited by law.

This Court has also distinguished the judgment cited by the learned Counsel for the petitioner in Pirgonda Hongonda (supra).”

2015 SCC Online Bom 7325

“...15. In the Privy Council's case, the Plaintiff refrained from giving evidence on his own behalf. Instead, he adopted the tactic of calling



Defendant No. 1 as a witness for the Plaintiff. The Privy Council condemned this practice.

16. The Privy Council's judgment was followed by the Bombay High Court in the case of Pirgonda Hongonda v. Vishwanath Ganesh - AIR 1956 Bom 251.

17. The judgment of the Bombay High Court in Pirgonda Hongonda's case (which followed the Privy Council in Mahunt Shatrugan Das (supra)) has been considered and distinguished by the Bombay High Court in the year 2002 in the case of Ramdas Dhondibhu Pokharkar's case (supra). In Ramdas's case, the court has referred to the various provisions of the Code of Civil Procedure, 1908 and in particular, Order XVI, Rule 21 of the Code of Civil Procedure, 1908 which wipes out the difference between a party and a witness in the matter of giving evidence in a suit. Further, the court has taken the view that in light of the aforesaid provisions of the Code of Civil Procedure, 1908, the law does not prohibit the examination of the opposite party as a witness in the suit. The other two judgments in the National Insurance's case and Chandrabhan Singh's case (supra) take a similar view..."

26. A learned judge of this Court in the case of ***Minor Arumugam Vs State Bank of India and others*** reported in ***2005 (5) CTC 773*** had also held that after referring to the Madras amendment to Order XVI Rule 21 had held that such summoning of witnesses of the opposite party can be made subject to giving a valid reason to summon them. Relevant paragraphs in the judgment is extracted hereunder:-



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“...13. The submission of the learned counsel for the revision petitioners that a party to a suit can seek the aid of Order 16, Rule 21, C.P.C. cannot be altogether denied, concluding as if the co-defendant has always no right to summon the other defendants or party to the suit. In a case, where a party to a suit, by filing written statement, supported the case of another party, then avoided the box to give evidence, then this provision could be invoked, since he is required by another party, to give evidence, as said in Order 16, Rule 21, C.P.C. If that is the case, there must be a provision to summon the party, to the suit and that is why the legislators have stated in Rule 21, that the provisions as to witnesses shall apply, which provision is Rule 1 of Order 16, C.P.C. In support of the above submission and the view expressed by me, reliance is placed upon the following decisions.

14. In Pirgonda v. Vishwanath, AIR 1956 Bom. 251, the Bombay High Court had the occasion to consider the provisions of Order 16, Rule 21, C.P.C, wherein it is observed as follows:

“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. 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.”

15. In Syed Yasin v. Syed Mohd. Hussain, AIR 1967 Mys. 37, the learned Judge has considered the words used in Order 16, Rule 21, C.P.C. and its consequences. The view expressed in the above ruling, that one party to suit can examine the other party, as his witness or require him to produce documents, appears to be the correct



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approach. Otherwise, there would be no need to have Order 16, Rule 21, C.P.C, if we take the view, that at no point of time, a party to a suit, cannot summon another party. The learned Judge has also taken the view that if the Court comes to the conclusion that prayer of party to summon and examine other party to a suit, as his witness is abuse of process of Court, it can disallow the prayer, which should be the correct approach also. In the above decision it is observed as follows:

“Though the petitioner has a right to summon the other party to the suit and examine him as a witness, it was possible for the Court, if it came to the conclusion that the said application of the petitioner was an abuse of the process of the Court, acting under its inherent powers under Section 151 of the Code of Civil Procedure, to disallow the application. In the instant case, there is no such finding by the Court below. The petitioner has therefore, a right to examine the plaintiff as his witness.”

But applying the above dictum is not possible, to the case on hand, because of the reasons recorded by me supra, since defendants 2 & 3 are not required to give evidence to the revision petitioners, in view of the defence taken and admitted position of the parties. Therefore, the refusal to issue summons by the trial Court, should be upheld, though defendants can invoke Order 16, Rule 21, C.P.C., for which there is strength from some other rulings also.

16. This Court in V.K. Periyasamy @ Perianna Gounder v. D. Rajan, 2001 (3) CTC 20, referring certain rulings, more or less in an identical case, has come to the conclusion, that if there are very good reasons, the Court may exercise its discretion, in favour of the party, seeking permission. As rightly observed in para-12 of the Judgment,



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if there was a total bar on the right of a party to summon other party to give evidence as witness, certainly Order 16, Rule 21, C.P.C. will not find a place in the Code and the mere existence of the Rule would indicate, under certain circumstances, where purposes acceptable to the Court are made out, then summons could be issued, even to examine a party to a suit, provided he is not considered as opposite party, in its real sense...”

27. It is also further to be noted that the Hon’ble Apex Court in judgment made in SLP.Civil No.14445 of 2021 had held that there is no difference between a party to a suit as a witness and the witness simpliciter. The Hon’ble Apex Court had held that the witness and the party to a suit are on the same footing, as the function performed by either a witness or a party to a suit when in the witness box is the same. The relevant paragraphs are extracted hereunder:-

“...11. The High Court in its considered view stated that a party cannot be equated to a witness. It is recorded in the impugned judgment that various provisions of the CPC lend credence to the difference between a party to the suit and a witness in a suit.

12. In advancing its arguments before this court, the Respondents submitted that the phraseology of the Code, employing "the Plaintiff's witnesses" and "the Defendant's witnesses" suggests a clear difference between the parties to the suit and the witness produced at their instance - and would submit that the literal rule of



interpretation, in the absence of any ambiguity, would be what is required to be followed.

13. This understanding, in our view, implies that the law places a party to a suit and a witness to a suit in watertight compartments and that a plaintiff/defendant, even when testifying to their own cause are not witnesses despite being in the witness box and being subject to the same practices and procedures as any other witness before the court on their behest.

14. This differentiation appears to be questionable. Reference may be made to Section 120 of the Indian Evidence Act, 1872 which states that parties to a civil suit shall be competent witnesses. It reads:- “120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial. - In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.” The word used is witnesses - which implies that a witness otherwise produced as also the defendant or the plaintiff themselves, will stand on the same footing when entering evidence for the consideration of the court. The Code itself speaks to the effect that when a party to a suit is to testify in court. Regard may be had to Order XVI Rule 21 which reads as under:- “21. Rules as to witnesses to apply to parties summoned.- Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable. Further, Order XVI Rule 14, as extracted hereunder is taken note of. “14. Court may of its own accord summon as witnesses strangers to suit. —Subject to the provisions of this Code as to attendance and



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appearance and to any law for the time being in force, where the Court at any time thinks it necessary [to examine any person, including a party to the suit] and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.” (Emphasis Supplied) In respect of the above provision, it is essential to notice that prior to the amendment to the Code in the year 1976, this Section was applicable to “any person other than a party to suit”⁸ the express exclusion has been amended, to turn it into an explicit inclusion within the term ‘witness’. We may also refer to Order XVIII Rule 3A which states that when a party to a suit wishes to appear as a witness, he is to do so prior to other witnesses. The section reads:- 3-A. 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. The relevant principles as culled out by B.P Sinha, CJI (majority opinion) in the above referenced decision of the Constitution Bench may also be instructive in gaining an understanding of the ambit of a witness. In Para 16, it was observed:- “ (3) “To be a witness” is not equivalent to “furnishing evidence” in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused. (4) Giving thumb impressions or impressions of foot or palm or fingers or specimen



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writings or showing parts of the body by way of identification are not included in the expression “to be a witness”. (5) “To be a witness” means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise. (6) “To be a witness” in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.” It is clear from the above discussion, that witnesses and parties to a suit, for the purposes of adducing evidence, either documentary or oral are on the same footing. The discussion as aforesaid, emphasises the lack of differentiation between a party to suit acting as a witness and a witness simpliciter in the suit proceedings. The presence of these provisions also begs the question that if the legislature had the intent to differentiate between a party to a suit as a witness, and a witness simpliciter, it would have done so, explicitly. On this we may only highlight what the High Court had to observe: “Merely because Order XVI Rule 21 provides that the Rules as to witnesses are to apply to parties summoned, that would not mean that the party is being equated with a witness. The Rule only applies for regulating the conduct of a party when he enters the witness box in his own cause, otherwise in absence of such a provision, there would be a void and the conduct of a party entering the witness box in his own cause, would go unregulated. This is further substantiated from the use of the expression “in so far as they are applicable” occurring in Rule 21 of Order XVI.” A simple brushing off by saying that “merely because” one provision mentions them to be performing similar



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functions, they are not to be equated, cannot be allowed. No proper reason is forthcoming from a perusal of the extracted portion or otherwise for the differentiation which is between a witness in the witness box and the conduct of a party appearing as a witness in the witness box. In our considered view, this distinction does not rest on firm ground. This is so because the function performed by either a witness or a party to a suit when in the witness box is the same. The phrase "so far as it is applicable" in Order XVI Rule 21 does not suggest a difference in the function performed..."

"...16. The thrust of the reliance was that this Act by the use of the phrase 'by the parties who calls him' in the extracted provision, recognizes the difference between a party to a suit and a witness called on to testify by a party. This distinction again, on the face of it, appears misconceived. It is not doubted that such a phrase or other similar phrases have been employed in these provisions, however, if the holding of the High Court is given an imprimatur, it would cause an apparent conflict between provisions of the very same Act i.e., the sections reproduced immediately hereinabove vis a vis Section 120, which, as hitherto reproduced states that, a party to a suit shall be, amongst others, a competent witness. It may also be observed that nowhere in the Evidence Act has the party been precluded from presenting himself as a witness, and therefore this differentiation based only on the meaning as it appears, cannot be countenanced. A perusal of Sections 137, 138 and 139, in our considered view, does not favour the differences as pointed out in the impugned judgement. Examination in chief, cross-examination and re-examination are all facets of a trial which can be availed by a party or the adversary, for both the party to a suit as a witness



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and also for other witnesses called by the party. Therefore, this negates the interpretation that “the party who calls him” suggests a difference between the party as also the witness called by such party for the purposes of entering evidence before the court.

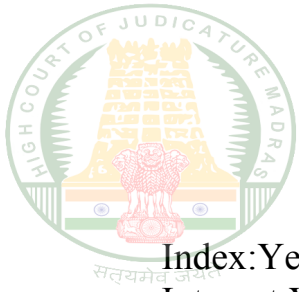
17. Having arrived at the conclusion as above, that the provisions of the Code as also the Evidence Act do not differentiate between a party to the suit acting as a witness and a witness otherwise called by such a party to testify, we may now consider the next question presented by this lis...”

28. From a reading of the aforesaid judgment, this Court comes to a conclusion that a role of the witness is only to assist the Court in deciding the lis between the parties, which even party to the proceedings or a third party proceedings has deposed in a proceedings, even though, they are the plaintiff or the defendant or has been produced by the plaintiff or the defendant.

29. In fine, this application is allowed. The matter is relegated to learned Advocate Commissioner for recording of evidence after issuing necessary subpoena to the first and third defendants. Learned Advocate Commissioner shall complete the recording of evidence as expeditiously as possible.

07.07.2025

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Index: Yes/No

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K.KUMARESH BABU., J

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Pre-Delivery Order in
A.No.1451 of 2025
in
C.S.No.68 of 2021

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