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C.R.P.No.5193 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5193 of 2024 &
CMP.No.29049 of 2024

1.Kamalam
2.Thangavel
3.Thangamani
4.Thilaka @ Thilakamani .. Petitioners

Versus

Sivakami .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 21.08.2024 passed in I.A.No.5 of 2024 in O.S.No.4 of 2023 on the file of the District Munsif Judge at Sulur.

For Petitioners : Mr.K.Myilsamy

For Respondent : Mr.N.Manoharan

ORDER



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This civil revision petition challenges the order passed by the learned District Munsif at Suler in I.A.No.5 of 2024 in O.S.No.4 of 2023 dated 21.08.2024.

2. O.S.No.4 of 2023 is a suit for partition and separate possession. According to the plaintiff, the suit property belonged to one Royappa Gounder. Royappa Gounder died leaving behind his legal heirs, namely, Ramathal, Sivagami and one son, Ramasamy. Ramasamy passed away leaving behind his wife-Kamalam, daughter-Thilagamani, and sons-Thangavel and Saminathan to succeed to the estate. The plaintiff pleaded that as the daughter of Royappa gounder, she demanded for partition and separate possession. As the same was not acceded to, she presented the suit.

3. The defendants did not dispute the relationship between the parties in their written statement. However, they pleaded that by virtue of previous family arrangements, the plaintiff is not entitled to succeed in the suit. In addition, they raised the plea of ouster and that, the suit is barred by time.



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4. On the basis of these pleadings, issues were framed and the parties were pushed to trial. She examined herself as PW1 and she was cross examined in full. It was the defendants' turn to let in evidence.

5. The fourth defendant entered the witness box and filed a proof affidavit. He filed the affidavit stating that he is deposing on behalf of defendants 2, 3, 4 and 6. The plaintiff also conducted a detailed cross examination of DW1. Thereafter, the matter was posted for further evidence.

6. The sixth defendant filed her proof affidavit to examine herself as DW2. The proof affidavit was received. Soon thereafter, the plaintiff filed an application to reject the proof affidavit filed by the sixth defendant. The plea of the plaintiff is that there is no necessity for 2 witnesses to be examined for proving the same fact. She relied upon Section 134 of the Indian Evidence Act to substantiate this plea.

7. This application was resisted by the sixth defendant pleading that she has an independent right to depose in the matter.



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8. The learned Trial Judge agreed with the plaintiff and rejected the proof affidavit filed by the sixth defendant. Hence, this revision.

9. When the matter came up for admission, I issued notice to the contesting plaintiff. I also ordered a private notice.

10. Notice was taken by Mr.K.Myilsamy and Mr.N.Manoharan has entered appearance on behalf of the contesting plaintiff.

11. Mr.K.Myilsamy contends that every defendant has a right to depose on his or her own behalf in a suit. He adds that for the mere fact, the chief examination of DW1 and DW2 are identical does not mean that the chief examination of DW2 should be rejected. He adds that it is up to the defendants to place such evidence as they desire in support of their case and this cannot be curtailed by the court.

12. Per contra Mr.N.Manoharan argues that during the course of cross examination of DW1, certain vital admissions had been extracted by the



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plaintiff. He urges that the attempt by the sixth defendant to examine herself as DW2, after having filed a common written statement, is an attempt to withdraw from the admissions already made. Relying upon the judgments of this court in *Ravi and another v. Ramar, (2008) 1 CTC 36* and *M.Kumar v. S.Subbiah Kone and Shiek Mohammad, (2008) 6 CTC 229*, he argues that since the fourth defendant had deposed on behalf of the defendants 2, 3, 4 to 6, there is no necessity for the sixth defendant to enter the witness box. He further urges, Order XVIII Rule 3A bars the sixth defendant from examining herself.

13. I have carefully considered the submission of both sides.

14. Here is a procedural issue which has been delaying the disposal of the suit. The relationship between the parties is admitted. It is not in dispute that the defendants 2, 3, 4 and 6 have filed a common written statement. It is also not in dispute that the fourth defendant entered the witness box as DW1 and stated, that he is deposing on behalf of the other defendants, who have joined him, in filing the written statement. However, it is pertinent to point out here that the fourth defendant did not produce a power of attorney or



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even a letter of authorisation to the effect that the defendants 2, 3 and 6 have authorised him to depose on their behalf also.

15. If a person has authorised another person or a co-defendant to give evidence on his or her behalf, then it will not be opened to the former to enter the witness box and to give separate evidence. This is because the evidence, that has been earlier recorded, is on the basis of the authorisation tendered by the person, who wants to enter the witness box later. That situation does not arise here.

16. The point remains, each defendant in a suit is entitled to depose independently on his or her own behalf. The fact that they have taken a common defence to defeat the claim of the plaintiff does not mean that, on account of the fact, one of the defendants who joined in filing the common written statement has already deposed, the other defendants forfeit their valuable right to give evidence before the court. I reach this conclusion because the right to depose in support of his/her case is a valuable right of a person in an adversarial civil proceeding.



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17. In case, I were to agree with Mr.N.Manoharan and the suit goes against the plaintiff, it can always be argued by the plaintiff that only one of the defendants has deposed and the other defendants have not deposed and therefore, adverse inference must be drawn against them. Such an argument is not a far fetched one.

18. With respect to the plea that Order XVIII Rule 3A bars a party from deposing, a careful perusal of Order XVIII Rule 3A points out that if the witnesses of the party are examined before the party, then the party has to secure the permission of the court for the purpose of deposing later. It is possible in a suit, a co-plaintiff or a co-defendant can examine the other co-plaintiff or co-defendant as witness on his behalf. If that is done, then the permission under Order XVIII Rule 3A would be essential. However, here is the case where the sixth defendant is not deposing on behalf of any other defendants, but wants to bring on record her evidence before the Court.

19. The Code of Civil Procedure or Evidence Act does not place any bar any of the parties to a suit from giving evidence. The bar under Order XVIII Rule 3A speaks about examination of witness on behalf of one party



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and the examination of that party at a later date. This was brought in order to curtail the attempt of a party to take a chance in the game of litigation and examine the witness first and thereafter, examine himself. This proposition cannot be stretched to bar a party to a suit from deposing, on his or her, own case. For the mere fact that the co-defendant, who has filed a common written statement, had also deposed in the case, the other defendants cannot be prevented to placing their evidence.

20. As pointed out above, the right to depose, being a valuable right, the curtailment of the same by a court should be avoided, unless and until it is a case covered by the situation in *M.Kumar v. S.Subbiah Kone and Shiek Mohammad, (2008) 6 CTC 229*. In that case, the power of attorney was examined first and the Principal wanted to enter the witness box later. Once the power of attorney had deposed and the principal exhausted his right to depose independently before the court. This is because the act of the agent binds the Principal.

21. The fear of Mr.N.Manoharan that the admissions that have been given by DW1 will be withdrawn by DW2 is unfounded, for the simple reason, even if DW1 had given admissions, it is always open to the DW1 to



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explain the same. The admissions made by one party cannot be utilised to bind another party. In any event, it is always open to Mr.N.Manoharan's client to confront DW2 with the alleged admission that had been made by DW1.

22. In the light of the above discussion, I am unable to sustain the order passed by the learned District Munsif, Sulur in I.A.No.5 of 2024 in O.S.No.4 of 2023 and the same is set aside. This civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23. The proof affidavit filed by DW2 shall be taken on file and the learned Judge shall proceed with the suit in all expedition that it requires.

22.01.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To
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The District Munsif Judge at Sulur.



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V.LAKSHMINARAYANAN, J.

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