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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 251 of 2026 and CMP.No.31282 of 2026

CNR: {HCMA010734352026}

1. A.Gowri Bai
2. A.Jaishankar

..Appellant(s)

Vs

1. M.K.Chandran (Died), 1.M.C.Chandrakumar
2. M.C. Banugopan
3. M.c. Mageshwar
4. Sampoornam
   M.k.kathirvelan (Died)
5. Aruljothi
6. Annaporani
7. Sampoorani

..Respondent(s)

Original Side Appeal filed under Order XXXVI Rule 1 of OS Rules read with Clause 15 of Letters Patent to set aside the order in A.No. 6349 of 2025 in C.S. No. 713 of 2019 dated 23.02.2026 on the file of this Court.

For Appellant(s): Mr.K.M.Vijayan, Senior Counsel
for M/s.K.M.Vijayan Associates

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

Challenging the order of the learned Single Judge dismissing the application filed to examine the plaintiffs 2 and 3 as witnesses, the present appeal has been filed.

2. Following are the brief facts leading to filing of this appeal.

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2.a. The plaintiff has filed the suit for partition against the defendants and the evidence of plaintiff was completed and during the pendency of suit, the first plaintiff died on 07.10.2023 and thereafter, the second and third plaintiffs were impleaded as his legal representatives. On the side of defendant, DW1 has examined and the matter was posted for cross-examination. At this stage, this application was taken up by the defendant 1 and 2 to summon the plaintiffs 2 and 3 as witnesses invoking Order 16 Rule 14 of Code of Civil Procedure. The learned Single Judge considering the fact that the first plaintiff was already examined substantially and cross-examined and thereafter, the plaintiffs 2 and 3 were impleaded as his legal representatives, has held that they have stepped into the shoes of the first plaintiff and the defendants now cannot call them as witnesses. Challenging the said order, the present appeal came to be filed.

3. The learned Senior Counsel for the appellants would submit that under Order 16 Rule 14, a party can examine his advisory as witnesses, and the Court may exercise its discretion in favor of the party seeking such permission. Hence, seeks for allowing this appeal.

4. In view of the above, now the point that arises for consideration in this appeal is whether the appellant, as a matter of right, can examine the plaintiffs 2 and 3 as witnesses on their side?

5. Order XVI Rule 1 reads as follows:

> 1. List of witnesses and summons to witnesses. (1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the

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parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such part shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf."

6. The above provision deals with the examination of witnesses by the parties. In fact, the parties are required to furnish a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons for their attendance in Court. Though Order XVI Rule 1 permits the parties to the suit to summon witnesses with the permission of the Court, under Order XVI Rule 14 of CPC, Court may of its own accord summon as witnesses strangers to suit. The Court can issue summons to any person 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. Order XVI Rule 21 provides that the rules applicable to witnesses shall also apply to parties summoned; where any party to a suit is required to give evidence or to produce a document, the provisions relating to witnesses shall apply to them so far as they are applicable.

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7. Courts have held that under Order XVI Rule 21 CPC, there may be situations where a party will be called upon by another to give evidence as to witness. However, such power must be exercised only for sufficient and valid reasons. Calling the opposite parties to be examined as witnesses, such power should be exercised by the Court with circumspection and the discretion should be exercised for proper and valid reasons. To exercise such prudent exercise of discretion by the Court, there must be proper reasons adduced for the purposes of summoning a particular person as a witness, rather calling the opposite party to be examined as witness on flimsy reasons. Such practice has been disapproved by the Courts frequently. In *Kaliaperumal Vs. Pankajavalli and Others, (Madras) reported in 1999(1) LW 660*, this Court has held as follows :-

> *6. In Mallangowda v. Gavisiddangowda, it is held thus: Practice of calling the opposite party as a witness should not be countenanced as it is not in the interests of justice.*
>
> *7. In Narana Pilla v. Kalyani Ammal 1963 K.L.T. 537, it is held that the practice of party causing his opponent to be summoned as witness was disapproved in rather strong terms by the Lordships of Privy Council and that as a matter of right, the party cannot have the opposite party as witness.*
>
> *8. The above decision was follows by Kerala High Court in a case between Muhammed Kunji v. Shahabudeen 1969 K.L.T. 170, wherein it is held thus:*
>
> *The practice of a party causing his opponent to be summoned as a witness has to be disapproved. As a matter of right a party cannot have the opposite party examined as a witness.*
>
> *9. In view of the settled legal position, I do not think that the petitioner can compel the second defendant to be examined as a witness for him.*

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8. Admittedly, in the present case, the suit has been filed for partition and the first plaintiff was examined substantially and his evidence is already over. Cross examination was also done by the defendants 1 and 2. Only on his death, plaintiffs 2 and 3 were impleaded as his legal representatives and virtually they have stepped into the shoes of the first plaintiff since the right to sue survives. The matter is now posted for defense side witness and DW1 is also examined, at this stage, this application has been filed. We are of the view that without establishing their case and going to the box, calling the plaintiffs 2 and 3 as witnesses in our view is only to delay the partition suit. Though under exceptional circumstances, adverse party may be called as witness, the same cannot be done routinely at the whims and fancies of the parties to delay the suit proceedings. Accordingly, these points are answered.

9. In view of the above, we do not find any merits in this appeal. Accordingly, this original side appeal stands dismissed. No cost. Consequently, connected miscellaneous petition stands closed.

(N.S.K.,J.) (G.K.M.,J.)
23-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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