
(2014) 11 MAD CK 0163

In the Madras High Court

Case No : C.R.P (PD) No. 1597 of 2011 and M.P. No. 1 of 2011

Anusuya

APPELLANT

Vs

Roselin Mary

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 3A
Constitution of India, 1950 — Article 227

Citation : (2014) 11 MAD CK 0163

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Judgement

P.R. Shivakumar, J.

1. The revision petitioners are the plaintiffs in the original suit O.S.No. 171 of 2007 pending before the trial court, namely the Court of District Munsif, Maduranthagam. The respondent herein is the defendant in the said suit.

2. The suit was filed by the revision petitioners represented by their General Power Agent L. Ramachandran. The suit is being contested by the respondent/defendant and the same is in the part heard stage. On the side of the plaintiffs, the Power Agent figured as the first witness and two more witnesses were examined as PWs.2 and 3. Thereafter, the first plaintiff came forward to examine herself as PW4 and submitted proof affidavit to be accepted as her evidence in chief. At that point of time, the respondent herein/defendant resisted the same and contended that the party (first plaintiff) could not be examined as a witness, since no prior permission was obtained before the examination of the non-party witnesses, as contemplated under Order 18 Rule 3A of CPC. In addition to the resistance made to it, the respondent/defendant filed an application in I.A.No. 2297/2010 for scrapping of the proof affidavit of PW4, which had been accepted as her evidence in chief examination.

3. The learned District Munsif, Maduranthagam, after hearing, accepted the contention of the respondent herein/defendant and passed an order dated

22.10.2010 scrapping the evidence of PW4 on the ground that no prior permission was obtained as contemplated under Rule 3A of Order 18 CPC. The legality of the said order of the learned District Munsif is questioned in the present revision.

4. The arguments advanced on the side of the revision petitioner is mainly based on the judgment of a Division Bench of this Court sitting at Madurai Bench (I was part of the Bench) in Ravi & Another v. Kumar reported in 2008-I-L.W.1055, wherein it was held that the provision found in Order 18 Rule 3A of CPC was only directory and not mandatory that the permission to examine non-party witnesses when a party wants to examine the party witness at a later point of time is obtained before the examination of the non-party witnesses and that such a permission can be sought for even subsequently and the court can grant such permission, provided it is satisfied with the reasons assigned for the non-examination of the party witnesses earlier. For better appreciation Order 18 Rule 3A of CPC is extracted below:

"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."

5. In the case on hand, admittedly, the plaintiffs did not seek prior permission to examine the plaintiffs after the examination of the non-party witnesses. Though the first petitioner was sought to be examined as PW4, even at the time of her examination, no such permission was sought for explaining the reasons for not having obtained prior permission. On that score alone, the learned District Munsif has chosen to allow the petition filed by the defendant and scrapped the evidence of PW4, who was not at all subjected to cross examination. This court does not find any defect, infirmity or illegality in the order passed by the learned District Munsif, Maduranthagam. This court also does not see any reason to interfere with the same in exercise of its powers under Article 227 of the Constitution of India. However, this court feels that the ends of justice can be met with by giving an opportunity to the petitioners to seek permission by filing a petition under Order 18 Rule 3A of CPC before the trial court, in which event, the trial court shall consider and dispose of the same and then proceed with the further trial of the case.

In the result, the civil revision petition is dismissed. However, leave is granted to the petitioners to seek permission before the trial court by filing a petition under Order 18 Rule 3A of CPC and in the event of petitioners filing the same, the trial court shall consider and dispose of the same on merits and in accordance with law and then proceed with the further trial of the case. However, there shall be no order as to cost in this revision petition. Consequently, the connected miscellaneous petition is also closed.