

(2016) 02 MAD CK 0246

In the Madras High Court

Case No : C.R.P (PD) No. 215 of 2016 and C.M.P. No. 1079 of 2016

Lakshmi

APPELLANT

Vs

K. Umamaheswari and others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3

Citation : (2016) 162 AIC 838

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

Bench : Single Bench

Advocate : C.R. Prasanan, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The arguments advanced by Mr. C.R. Prasanan, learned counsel for the petitioner are heard. The petition, supporting affidavit and the documents produced in the form of typed-set of papers are also perused.

2. The plaintiff in the original suit is the petitioner in the Civil Revision Petition preferred under Article 227 of the Constitution of India invoking the power of superintendence of this Court over the subordinate Courts. The order sought to be challenged is one passed by the trial Judge on 07.10.2015 in I.A.No.495 of 2015 filed purportedly under Order 8, Rule 3 CPC. But, a consideration of the prayer made therein will make it clear that the petition was filed under a wrong provision of law instead of citing the correct provision Order 18, Rule 3A CPC. The main provision of Rule 3A under Order 18 CPC makes it a general rule that the party should appear as a witness on his/her side before ever examining any non-party witness on his/her side. The rule provides an exemption that the Court can grant permission for the party to appear as a witness at a later stage after examination of non-party witnesses on the side of the said party.

3. The supporting affidavit contains a recital to the following effect:

"The petitioner is aged about 70 years. In May 2013, she has a cardiac problem

for which she had an angio treatment (without specifying whether it is a angiogram, which is only a test or Angioplasty, which is an intervention without external surgery to remove the blocks in the blood vessels leading to the heart). Thereafter, her health was severely effected. For a period of one month prior to the filling of the petition, the heart problem recurred and she was not in a position either to stand or walk. She was also having an intermittent mental shocks. In June 2015, again she got treatment at the very same hospital viz., Kuppusamy Naidu Hospital, Coimbatore and she had been advised that she should not be subjected to any mental shock. As such, she was not in a position to come to the Court and give evidence."

4. Based on the above pleadings, the petitioner wanted permission of the Court to examine other witnesses and to examine her at a later stage, provided her health condition would permit her to do so. Such a short affidavit was countered by elaborate averments made in the counter statement filed by the second respondent, which was adopted by respondents 3 to 5. Besides pointing out the fact that the provision quoted was erroneous, they also contended that the averment regarding her ailment, treatment and condition of health were also refuted as untrue, false, baseless and vexatious. It was also contended therein that the attempt made by her to seek permission to examine her at a later point of time was only to avoid being cross-examined on vital aspects, which may be covered by the witnesses to be examined before her examination and to plug the loopholes and fill up the lacunae, if she was allowed to examine at a later stage after the examination of the other witnesses to be examined on her side.

5. Considering the averments made on both sides in the light of the submissions made on both sides, the learned trial Judge came to a conclusion that there was no bona fide on the part of the petitioner in seeking such a permission and on the other hand, it was lacking any bona fide and that with a view to fill up the lacunae at a later point of time the petition came to be filed. Accordingly, the learned trial Judge passed the impugned order dismissing the said petition I.A.No. 495 of 2015. It is as against the said order, the present revision came to be filed.

6. The power of superintendence of High Court under Article 227 cannot be allowed to be invoked against each and every order passed by the trial Court unless there is exercise of jurisdiction of the Court below, which is not conferred on it or failure to exercise the jurisdiction which is conferred on it or exceeding the jurisdiction conferred on the Court below. In addition, the power can also be exercised to avoid a miscarriage of justice being caused or for any other justifiable reason. A mere wrong order cannot be the subject matter of a revision under Article 227 of the Constitution of India. If such a restricted interpretation is not given, then the very purpose of amendment made to Section 115 of the Code of Civil Procedure restricting the scope of revision will be defeated.

7. In the case on hand, the petitioner, as plaintiff, has filed the suit for partition. She claims enlargement of the widows estate into an absolute estate by virtue of

Section 14 (1) of the Hindu Succession Act, 1956. The petitioner is residing in Coimbatore City. The Court in which the suit is pending is also functioning in Coimbatore and the distance between her residence and the Court can be covered even within half an hour. If at all the petitioner is not in a position to stand during the course of her examination, considering her age, the Court is duty bound to give her a seat and examine her in a congenial atmosphere. Several instructions in this regard have been given to the Courts below. Instead of availing such facilities and deposing as the first witness on her side, the petitioner, for the reasons best known to her, wants the permission of the Court to examine her at a later stage, after the other witnesses would be examined.

8. There is no medical evidence to show that she is ailing from such acute health problem, which deters her from deposing as a witness. When the health condition, as projected by her in her affidavit, has been stoutly disputed in the counter affidavit, the petitioner could have either produced a medical certificate or sought the appointment of a Commissioner to pay a visit to her place and find out her health condition, which she has not chosen to do. The learned trial Judge seems to have rightly accepted the contention of the respondent, who are none other than petitioner's brother's legal heirs, who came forward with a denial of the petition averments regarding the health condition of the petitioner and also with a belief that the petitioner's intention is to examine other witnesses at the first instance and appear as a witness at a later stage so as to fill up the lacuna, if any, that may be caused in the evidence of the other witnesses, she has proposed to examine. The reason assigned by the respondents in opposing the application and accepted by the Court below cannot be termed to be either wrong or erroneous, much less perverse warranting an interference by this Court by exercise of its power of superintendence under Article 227 of the Constitution of India.

9. For all the reasons stated above, this Court comes to the conclusion that the Civil Revision Petition filed under Article 227 of the Constitution of India deserves dismissal at the threshold. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.