

(2012) 10 MAD CK 0208

In the Madras High Court

Case No : C.R.P. (NPD)(MD)No. 2117 of 2012 and M.P.(MD)No. 1 of 2012

Ramuthai

APPELLANT

Vs

Mookkayee alias Pappammal

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2013) 1 MadWN(Civil) 600

Hon'ble Judges : S. Palanivelu, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S. Palanivelu, J.—The petitioners are the defendants 1 to 6 in O.S.No.677 of 2008 on the file of the Principal District Munsif Court, Dindigul. After the commencement of trial, in order to examine the witnesses on their behalf, the plaintiffs filed a proof affidavit for chief examination of one Jeyaraman, who is not a party to the suit. The said Jeyaraman is the son of the second plaintiff. 2. On the contrary, the petitioners filed an application under section 151 CPC read with Section 120 of the Indian Evidence Act, 1872 before the Court below seeking to scrap such proof affidavit contending that the plaintiffs did not get permission to examine a third party, before they were examined as witnesses. But, the Court has returned the petition stating that there is no bar to examine son on behalf of mother as witness and held that the petition filed by the petitioners is not maintainable. 3. The petitioners re-presented the petition by making endorsement under Order 18 Rule 3A of the Civil Procedure Code to the effect that without getting permission of the Court, proof affidavit of the witness, by name, Jeyaraman was produced and that should be necessarily scrapped. The learned counsel for the petitioners also produced authorities before the Court below on the point but, again, the Court below returned the petition by stating that the referred citations are only for the order of witnesses to be examined and examination of son as a witness for his mother cannot be questioned by the other side and that the petition is not maintainable. 4. Since the Court below has

repeatedly returned the petition without taking it on file, the petitioners have come before this Court with this Revision Petition. 5. Order 18, Rule 3A of the CPC read as follows:-

"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." 6. It is clear from the reading of the above provision that if a party intends to examine any other witness other than the person who is a party to the proceedings, he has to get permission from the court and it is incumbent upon the Court to record reasons for permitting the party to the suit to examine other witness on his behalf before he was examined. It is a statutory requirement adumbrated in the provision, Order 18 Rule 3A of the CPC that Court has to record the reasons for permitting the party to examine any persons other than the party. 7. In this case, admittedly, Jeyaraman is not a party to the suit but he is the son of the second plaintiff. The plaintiff has filed a proof affidavit for chief examination and the same was accepted by the Court. As per the above said provision, it is the bounden duty of the plaintiff to get permission of the Court to examine Jeyaraman and the plaintiff but it was not done. The plaintiff did not file any application for the said purpose. Under these circumstances, this Court finds infirmity and illegality in the order challenged before this Court, which is liable to be set aside and accordingly, set aside. 8. The learned Principal District Munsif, Dindigul is directed to take the unnumbered application on file and proceed with the same in accordance with law. The trial Court shall dispose of the interlocutory application uninfluenced by the observations contained in this order. 9. In fine, the Civil Revision Petition is allowed. Connected Miscellaneous Petition is closed. No costs. C.R.P. Allowed - M.P. Closed - No Costs.