

Chidambaram Vs. Ratnam

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Court : Chennai

Decided On : Jul-24-1995

Reported in : 1998(2)CTC468; (1998)IIIIMLJ747

Judge : S. Jagadeesan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Order 18, Rule 3-A

Appeal No. : C.R.P.No. 1061 of 1995

Appellant : Chidambaram

Respondent : Ratnam

Advocate for Def. : Mr. K. Kuppuswami, Adv.

Advocate for Pet/Ap. : Mr. M. A. Ajmal Khan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. The revision has been filed by the third plaintiff in O.S.No.576 of 1988. The petitioner along with eight others have filed the suit for bare injunction restraining the respondent herein from interfering with their possession and enjoyment of the suit property. When the suit was taken up for trial, the petitioner herein filed I.A.No.136 of 1995 seeking permission to examine himself as P.W.2. The lower

court has dismissed the said application by order dated 15.2.1995. As against the same, the present revision has been filed.

2. The contention of the learned counsel for the petitioner is that the husband of the seventh plaintiff has been examined as P.W.1 and since the plaintiffs 5 to 9 have purchased the property and they are in possession of the same, the court below has held that those who are in possession of the properties must be examined first in accordance with order 18, Rule 3A, C.P.C. since the same is mandatory. It is the contention of the counsel for the petitioner that in view of the judgment reported in *Samidurai and others v. Kanakayal*, : (1996)IIMLJ495 wherein I held that the said provision is directory and not mandatory and as such the order of the Court below is liable to be set aside.

3. On the contrary, learned counsel for the respondent contended that in the decision reported in *V. Jayakannan and 3 others v. V.K. Sampath and Sampathkumar*, 1987 T.L.N.J.340 the provision order 18 Rule 3A has been held mandatory and the judgment was not referred to, in my judgment reported in *Samidurai and others v. Kanakayal*, : (1996)IIMLJ495 and in view of the judgment reported in the case of *V. Jayakannan*, 1987 T.L.N.J. 340 the order of the Court below is correct. Moreover, the lower court has dismissed the application on the facts of the particular case.

4. I carefully considered the contention of both the counsel. There is no dispute that the petitioner herein is the third plaintiff who is a party to the suit. Order 18, Rule 3A will come into play only where the witnesses are to be examined prior to the parties to the proceedings. When the parties to the proceedings are to be examined as witnesses, it cannot be dictated as to which of the plaintiff is to be examined first. Order 18, Rule 3A is as follows:

'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.'

From this it is very clear that the party to the proceedings should appear as a witness before ever any witness is to be examined on his behalf, unless the court

permits him to appear at a later stage. In this case, the petitioner is not the person who is appearing as a witness but he is appearing to give evidence on his own right as a plaintiff and as such the lower court has wrongly interpreted the application of the provision Order 18, Rule 3 A, C.P.C.

5. Since the petitioner, who is a party to the proceedings wants to examine himself, before every any witness is examined on behalf of the plaintiffs, there is no question of when he should be examined. Hence the application itself is misconceived by the petitioner. On this ground, I am of the view, that the order of the lower court is liable to be set aside and the Civil Revision Petition is allowed. No costs.

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