

Chidambaram vs Allah Pitchai on 18 November, 2024

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

CRP(MD)No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.10.2024

Pronounced on : 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.1119 of 2024

1.Chidambaram

... Petitioner / P

vs.

1.Allah Pitchai

2.Sheik Abdullah

3.Poosai Mani

4.Yogendran

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the Additional District Judge, Pudukottai passed in the Memo dated 04.03.2024 in O.S No.50 of 2018 filed by the petitioner under Section 137 and 138 of the Indian Evidence Act on 04.03.2024.

For Petitioner : Mr.N.Balakrishnan
For Respondents : Mr.P.Ganapathi Subramanian for R3

No appearance for R1 and R2

R4 – Tapal returned

<https://www.mhc.tn.gov.in/judis>

ORDER

The plaintiff in O.S No.50 of 2018 on the file of the Additional District Judge, Pudukottai is the revision petitioner herein. The suit is one for specific performance. The case of the petitioner is that the defendants 1 and 2 entered into a sale agreement with him on 20.03.2018 and that they received a sum of Rs.7.90 lakhs as advance. The balance amount payable was Rs.2.55 lakhs. Instead of executing sale deed, the defendants 1 and 2 sold the property in favour of the third defendant who was subsequently impleaded. During the course of trial, the third defendant called upon the court to permit him to cross examine DW.1/D1. The plaintiff filed a memo dated 27.02.2024 stating that D1 and D3 are not adverse parties and that therefore, D3 had no right to cross examine DW.1/D1. The court below however vide order dated 04.03.2024 held that D3 has to be given opportunity to cross examine D1. Challenging the same, this civil revision petition has been filed.

2.The learned counsel for the petitioner submitted that as per section 137 of Indian Evidence Act, an adverse party can cross examine a witness. In Black's Law Dictionary, "adverse party" has been defined as "a party whose interests in a transaction, dispute, or lawsuit are opposed to another party's interests". In P.Ramanatha Aiyar's Advanced Law Lexicon, "adverse party" has been defined as follows :

<https://www.mhc.tn.gov.in/judis> "Adverse party. If a party accepts the plaintiff's case, there is no contest between the plaintiff and that party and such a defendant cannot be styled as an "adverse party" and would not be entitled to cross examine the plaintiff. Such persons cannot be said to be adverse parties merely because they appear to be pro forma defendants in the cause title of the plaint." In K.Jothi v. D.Prema (2009) 4 L.W 371 cited in (2023) 3 L.W 356 (Chinnaiah v. Valliammal), it was held as follows :

"13.This Court in the case of K.Jothi and Others Vs. D.Prema and Others reported in [MANU/TN/1989/2009] dated 11.08.2009 has dealt with a similar issue and the relevant portion of the same is extracted hereunder :

"19. Cross examination of a witness is a right given to the opposite party. The law makers have used the word "adverse party" in so far as the question of cross examination <https://www.mhc.tn.gov.in/judis> is concerned. Therefore the right to cross examine a witness was given only to the party, having adverse interest in the matter. While considering the question as to whether a party was having interest adverse to that of the other, the entire pleadings have to be considered. It is not sufficient if one or two paragraphs from the written statement is taken in isolation. The entire text of the written statement has to be taken into consideration in order to see as to whether the fifth respondent was supporting the case of the first respondent or he was setting up a case adverse to her interest....." The question that calls for

consideration is whether the third defendant is an adverse party as far as the first defendant is concerned. It is true that originally D1 and D2 on the one hand and D3 on the other were not having interest adverse to each other. This is because D3 traces his title over suit property only through D1 and D2. It is not necessary that two parties should be adverse to each other from the inception. The element of adversity can <https://www.mhc.tn.gov.in/judis> creep in during the course of proceedings also. The right to cross-examine may accrue then. Therefore, scrutiny of pleadings alone may not be determinative of the issue. The Hon'ble Division Bench in the decision rendered in OSA No.187 of 2024 dated 17.10.2024 (S.Nirmala and ors v.

Shanthi Harikrishnan and ors), speaking through the Hon'ble Dr.Justice A.D.Maria Cleto held as follows :

14.This Court concludes that, as provided under Section 138 of the Evidence Act 1872, (Bharatiya Sakshya Adhiniyam 2023 i.e., Sections 142 and 143 of BSA 2023):

(i)Only an adverse party is entitled to cross-examine a witness.

(ii)A person whose interests are not adverse to the witness is not entitled to conduct a formal or friendly cross-examination.

(iii)A party with an interest adverse to the witness is entitled to cross-examine the witness, regardless of the array of parties involved; for example, a defendant can cross-examine co-defendants if their interests are adverse to the witness's testimony.

(iv)If parties' interests are adverse in different aspects, the party whose interest is adverse in a specific aspect has priority in cross-examining the witness before the more heavily contesting party proceeds with the cross-examination of the witness.

(v)Any objections regarding the priority of cross-examination of witness and claims that a party should be barred from cross-examining the witness due to non-adverse interests must be raised before evidence is recorded, and the court should decide these issues immediately.

(vi)If a witness has been cross-examined under oath and an objection arises later concerning the interest of the party who cross-examined the witness, questioning its adverseness and the priority of cross-examination, the previously recorded evidence cannot be eschewed. However, the court should assess the probative value of such evidence in the final evaluation of <https://www.mhc.tn.gov.in/judis> the case....” In this case, during the course of testimony, the first defendant deposed that the third defendant had knowledge of the suit agreement prior to his purchase. This stand of the first defendant would obviously work adverse to the interest of the third defendant and thus, the third defendant had become an adverse party. The court below rightly rejected the memo filed by the plaintiff. The impugned order is

sustained.

3.This civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

18.11.2024

Index : Yes / No
Internet : Yes/ No
skm

To:

1.The Additional District Judge, Pudukottai. <https://www.mhc.tn.gov.in/judis>
G.R.SWAMINATHAN, J.

skm 18.11.2024 <https://www.mhc.tn.gov.in/judis>