

In Re: U.R.M.M.S.S. Subramanian Chettiar and ors.

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Court : Chennai

Decided On : Oct-29-1953

Reported in : AIR1955Mad210

Judge : Panchapakesa Ayyar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 18, Rule 12 - Order 26, Rules 4, 5, 7 and 15

Appeal No. : Civil Revn. Petn. No. 1921 of 1953

Appellant : In Re: U.R.M.M.S.S. Subramanian Chettiar and ors.

Advocate for Pet/Ap. : K. Krishnaswami Iyengar, Adv.

Disposition : Appeal dismissed

Judgement :

Panchapakesa Ayyar, J.

1. This is a petition filed for revising and setting aside the order of the Additional Subordinate Judge of Devakottai, directing a commission to issue for examining the defendant, Vinaitheerthan Chettiar, in O. S. No. 8 of 1953 on his file. The learned Additional Subordinate Judge allowed the petition on the ground that the defendant had gone to Alor Star, Kedan State, Malaya, and would not be returning for a year, and the place where he was 'resident' was more than 200 miles from the court premises.

2. The learned counsel for the plaintiffs-petitioners urged seven reasons for holding that the order passed by the learned Subordinate Judge was in Irregular exercise of his discretion, and ought to be set aside as illegal and as causing a material failure of justice. The first was that the defendant went away to Malaya knowing that the plaintiffs would file the suit; but the defendant, on the other hand, alleged that the plaintiffs had filed the suit knowing that he had gone away to Malaya. Mr. Krishnaswami Aiyangar, for the petitioners, conceded that it is very difficult to find out which version is correct. So, this contention fails.

3. The second was that the person to be examined was a 'party', and a 'defendant', and, so, a commission should not have been issued. I cannot agree. A commission can be issued under the Civil P. C. for the examination of 'any person', including, a defendant.

4. The third was that it was a case of misappropriation which had been set up in the

plaint, and, so, it was necessary to examine the man in court so that the court may observe his demeanour. I cannot agree that this would exclude the jurisdiction of the court for issuing the commission. In all cases where a commission is issued, the court cannot observe the demeanour of a witness. The value of 'demeanour' has been too much emphasised; demeanour is one of those subtle things which are important only when the evidence is evenly balanced. It also gives no opportunity for either side to cross-examine the Judge who observes the demeanour of the witness and acts on it. So, it is one of those medieval relics which though they have some value, are not so important as to take away the rights under the Civil P. C. to issue a commission in deserving cases like this.

5. The fourth contention was that the defendant had gone to Malaya 'only for a year', and that this is a suit of 1953, and the Devakottah Sub Court is not likely to dispose of the suit in less than two years, and, so, there was no hurry to get ready with the evidence of the defendant by issuing a commission. I cannot agree. Suits are piling up in the higher courts in this country at such a terrific rate that all Governments and High Courts and other well-wishers of justice are flabbergasted. I cannot presume that the Devakottai Sub Court will take a minimum of two years to dispose of this or any other suit. If it does, the delay caused by lack of issuing this commission will be only added on to the two years. So, this ground cannot be agreed to.

6. The fifth was that the plaintiffs had already engaged an advocate here and would have to incur additional expenditure by engaging an advocate in Malaya to cross-examine this individual as this advocate may not go over there for that purpose. The plaintiffs filed the suit when the defendant had gone to Malaya, and knowing that he had gone to Malaya. They engaged an advocate here, no doubt, but that was because most suits filed in Sub Courts are filed through advocates, and parties do not generally file the suits themselves. Having brought on this state of things by their own act, they cannot complain.

7. The sixth contention was that the defendant cannot be said to be 'resident' in Malaya, or 'resident' beyond the local limits of the jurisdiction of the lower court as he is only in Malaya for a year. Now 'resident' in my opinion, cannot, and should not be held to mean 'permanently resident'. Of course, a man who casually makes a flying visit to Malaya for 10 or 20 days may not come under the expression 'resident' in the Civil P. C. in this context. But a witness who is in Malaya and is proved to be likely to remain there for more than six months must be held to be 'resident' in that place. The Civil P. C. does not say 'permanently resident' and I am satisfied that the Legislature knew that if they meant to say 'permanently resident' they should have used that phrase.

8. The last contention was that at least Rs. 1000 should have to been given by the lower court as compensation to the petitioners from the defendant when the commission was issued, as was done, by Mookerjee & Panton JJ. in--'Sarat Kumar v. Ramchandra', : AIR1922Cal42 (A). I cannot agree. Every case has to be decided on its own facts, and appropriate orders passed in each case; there is no such thing as applying a common rule of costs to all cases of commission. In that particular case, the learned Judges found that the order issuing the commission amounted to a wrong exercise of the discretion by the lower court. They themselves stated that a court of appeal must exercise great caution when invited to interfere with an order of the trial court made with jurisdiction and in its discretion and added that the High Court would be very unwilling to interfere with the exercise of that jurisdiction by the lower

court, and that each must depend on its own circumstances, and that no rule as to the exercise of that discretion could be laid down. In that particular case, they made a particular order to suit the particular facts. How their order regarding costs could be applied to the facts of this case Mr. Krishnaswami Aiyangar did not explain. So, this contention also falls.

9. In this case, there is absolutely no reason to interfere with the decision of the lower court as it was within its jurisdiction, and was not vitiated by any illegality or irregularity and did not cause also any failure of justice. The ruling of the Privy Council in -- 'Venkatagiri Aiyangar v. Hindu Religious Endowments Board, Madras , will show that petitions like these cannot be sustained.

10. In the end, therefore, this petition deserves to be and is hereby rejected.

11. Mr. Krishnaswami Aiyangar requested that the petitioners be allowed to file a petition in the lower court for cross-examining the defendant in case he comes back from Malaya and is found within the jurisdiction of the lower court before the suit is disposed of, and is available for being summoned and cross-examined on the evidence he gives on commission. Now, this is a right which I need not reserve and which enures to every party, though whether such a petition should be allowed or not is again a question within the discretion of the court hearing the petition.

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