

**(2010) 11 MAD CK 0125**

**Madras High Court**

**Case No:** C.R.P. No. 3985 of 2010 and M.P. No. 1 of 2010

S. Ramachandra Reddy and  
Vasanthi

APPELLANT

Vs

Natarajan, Karunakaran and  
Suguna <BR>Natarajan,  
Karunakaran and Suguna Vs S.  
Ramachandra Reddy and  
Vasanthi

RESPONDENT

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**Date of Decision:** Nov. 15, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 3A

**Citation:** (2010) 6 CTC 716 : (2010) 5 LW 856 : (2011) 2 MLJ 329

**Hon'ble Judges:** R.S. Ramanathan, J

**Bench:** Single Bench

**Advocate:** M.S. Subramanian, for the Appellant; N. Nagusah, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

R.S. Ramanathan, J.

The Defendants 1 and 2 in O.S. No. 253 of 2006 on the file of the District Munsif Court, Maduranthakam are the

revision Petitioners.

2. In that suit the Defendants examined their Power Agent as DW1 and thereafter filed I.A. No. 1372 of 2010 for the appointment of Advocate

Commissioner to examine the 1st Defendant as DW2 and that petition was dismissed and against the same this revision is filed.

3. Mr. M.S. Subramanian, the learned Counsel for the revision Petitioners submitted that there is no need to file a separate application seeking

permission of the Court to examine the party after the examination of the witnesses and in the affidavit filed in support of the petition for

appointment of Advocate Commissioner necessary permission has been impliedly asked and therefore the Court below without appreciating the

same dismissed the petition holding that the permission ought to have been obtained before the commencement of the examination of other

witnesses on behalf of the parties seeking permission and as no permission was sought for, prior to the examination of DW1 the application is

against under Order 18 Rule 3A of CPC and the reasonings given in the Court below are not correct.

4. Mr. N. Nagusah, the learned Counsel for the Respondents/ Plaintiffs submitted that as per the provisions under Order 18 Rule 3A of CPC,

whenever a party wants to examine after the examination of witnesses he has to obtain permission from the Court and in this case no such

application was filed for seeking permission of the Court and the revision Petitioners only filed an application to appoint the Advocate

Commissioner to examine the 1st Defendant and therefore the said application has been rightly dismissed by the Court as no application was filed

for seeking permission to examine the party after the examination of the witnesses. In support of his contention Mr. N. Nagusah, the learned

Counsel for the Respondents/ Plaintiffs relied upon the judgment reported in 2008 (4) CTC 490, in the matter of Chennimalai v. Alagulakshmi.

5. A reading of Order 18 Rule 3A of CPC would make it clear that where a party wishes to examine any witness before examining himself he has

to obtain the permission of the Court. Such permission can be sought for even after examining the witnesses as held by the Division Bench of this

Court in the judgment reported in Ravi and Gurunathapillai Vs. Ramar, in the matter of Chennimalai v. Alagulakshmi also the same position has

been reiterated. But without filing an application, it is not open to the party to examine himself after the examination of witnesses. Though in this

case no such application was filed, the Court below dismissed the application for appointment of Commissioner on the ground that a permission

ought to have been obtained before the commencement of the examination of other witnesses on behalf of the party for seeking permission. As

stated supra, as per the Division Bench of this Court in the judgment reported in Ravi and Gurunathapillai Vs. Ramar, this Court has held as follows:

As observed in the various decisions and more particularly in the decisions of the Division Benches of Punjab & Haryana, Jammu & Kashmir,

Patna and Orissa High Courts, what is necessary is that before giving such permission, the Court is required to give reasons and obviously the

reasons must be relevant. However, to lay down as an inexorable rule that in no case such an application can be filed after the examination of any

other witness may result in injustice.

Therefore, what is necessary is to file an application for permission and it is not necessary that such application should be filed before the

commencement of examination of the witnesses.

6. Hence, the order of the Court below is set aside and it is open to the revision Petitioner to file necessary application for seeking permission of

the Court to examine the 1st Defendant and on such petition being filed after hearing the Respondent herein the Court has to pass orders.

With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.