

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3178 of 2014

and

M.P.No.1 of 2014

Kothandaraman

.. Petitioner

Vs

1.Gopalarathinam

2.Mathivanan

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.06.2014 made in I.A.No.297 of 2014 in O.S.No.23 of 2011 on the file of the Subordinate Court at Poonamallee for appointment of Advocate Commissioner to record evidence of the first respondent/second respondent in his home.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.V.Bhiman
for M/s.Sampathkumar Associates (For R1)

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 30.06.2014 made in I.A.No.297 of 2014 in O.S.No.23 of 2011 on the file

of the Subordinate Court at Poonamallee for appointment of Advocate Commissioner to record evidence of the first respondent/second defendant in his home.

2.The petitioner as a plaintiff filed a suit in O.S.No.23 of 2011 for declaration and consequential injunction in respect of the suit property against two persons. The second defendant filed an application in I.A.No.297 of 2014 for appointment of Advocate Commissioner to examine himself in his house by the Advocate Commissioner stating that because of ill health i.e. Diabetes, severe Hypertension and Cervical Spoudylosis C Vertigo, it is very difficult for him to walk and stand. The Trial Court after examining the Doctor and considering the documents allowed the application and appointed an Advocate Commissioner to examine the witness and file a report. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4.The learned counsel for the petitioner would submit that the first respondent/second defendant is the President of Sembiyam Merchants Association and he is attending so many public functions and marriages. He

further submitted that the Doctor itself in his evidence has stated that after taking medicine, the first respondent/second defendant can travel, attend the Court and depose evidence in sitting position. He would also submit that if the witness was examined before the Court, then only the Court will have the opportunity to note down the demur and it will be helpful for the Court to dispose of the case. Hence, he pray for setting aside the order passed by the Trial Court in I.A.No.297 of 2014.

5.Resisting the same, the learned counsel for the respondents would submit that the petitioner is suffering from Diabetes and severe Hypertension and he is unable to walk and stand to depose before the Court. He further submitted that the Trial Court has considered the Doctor's evidence and came to the correct conclusion. Hence, he pray for dismissal of the revision petition.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The petitioner as a plaintiff filed a suit in O.S.No.23 of 2011 for declaration and injunction in respect of the suit property. Recording evidence on the side of the plaintiff has been completed and when the case was posted

for recording the evidence of the second defendant/first respondent, he filed an application in I.A.N.297 of 2014 for appointment of Advocate Commissioner for recording his evidence in his house. The said application was allowed.

8. Now, the only point to be decided is whether the second defendant/first respondent herein is able to attend the Court and withstand to the Chief and Cross examination?. It is pertinent to note that the Doctor in his evidence has stated that after taking medicine, the first respondent/second defendant can travel in a Car and depose before the Court. Admittedly, it is well settled that if the witness has deposed evidence before the Court, the Court will have the opportunity to test the veracity of the witness and note down the demeanor of the witness. It is true that nearly 50% of the population in India are suffering from hypertension and diabetes and it is not a disease, it is common to all the public. Therefore, it will not be a ground for appointing Advocate Commissioner to examine the witness in his house. Nowadays, most of the Courts are provided with all infrastructure facilities. So, if the first respondent/second defendant appeared before the Court, the Court will certainly provide him a chair for deposing before the Court. Further, as per the amended CPC, for chief examination the deposition must be in the form of an affidavit and so, he will be subjected to cross examination on the same day. It is also pertinent to note that it will be embarrassing for the

opponent/plaintiff to go to the house of the first respondent/second defendant for cross examination.

9. In such circumstances, I am of the view that it is a fit case to set aside the impugned order passed by the Trial Court since the first respondent/second defendant who is the President of Sembiam Merchants Association attending public functions and marriages. Therefore, the first respondent/second defendant is directed to appear before the Sub Court, Poonamallee and the Court is directed to provide him a chair while he was deposing evidence before the Court. Both the parties are directed to complete the Chief and cross examination on the same day. The Trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

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

04.11.2015

Index: Yes/No

Internet: Yes/No

cse

Note: Issue order copy on 05.11.2015

R.MALA. J.,

cse

To

The Sub Court, Poonamallee

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