

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2319 of 2015 &  
M.P.No.1 of 2015

S.Saraswathi

... Petitioner

v.

1.Sridhaar  
2.Ramesh Kumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.04.2015 in I.A.No.657 of 2015 in O.S.No.56 of 2011 on the file of District Munsif Court, Chengalpattu.

For Petitioners : Mr.S.Sethuraman

For Respondents : Mr.K.Perumal – for R1

ORDER

-

Challenging the order passed dated 09.04.2015 passed in I.A.No.657 of 2015 in O.S.No.56 of 2011 on the file of District Munsif Court, Chengalpattu. the 1<sup>st</sup> defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No. 56 of 2011 for declaration and permanent injunction. The suit is being contested by the defendants.

3. The 1<sup>st</sup> defendant filed an application in I.A.No..657 of 2015 under Order 26 Rule 1 of CPC seeking for appointment of an Advocate Commissioner to examine her in her residence. In the affidavit filed in support of the application, the 1<sup>st</sup> defendant has stated that she is aged 78 years and due to her old age and sickness, she could not travel to the court from Chennai. The plaintiff filed his counter and opposed the application.

4. The Trial Court while dismissing the application observed that Junior Lawyers are appointed as Commissioners to examine the witness, which may not fulfill the discipline maintained in the court. Further, the Trial Court observed that psychological background prevails in the mind of the witness would bring out the truth, which is very important to decide the suit. The Trial Court also disbelieved the medical certificate produced on behalf of the 1<sup>st</sup> defendant.

5. The reasoning of the Trial Court for dismissing the application is not supported by any provision of law. Under Order 26 of Civil Procedure Code, a Commissioner can be appointed to examine a witness, if the witness is not in a position to appear before the court for letting in oral evidence. Further, the reasoning of the Trial Court that Junior Lawyers are appointed as Commissioners to examine the witness which may not fulfill the discipline maintained in the court, is only an imaginary reasoning. In so many cases, Junior Lawyers are appointed as Commissioners and they recorded the evidences let in by the parties in a proper manner. Admittedly, the 1<sup>st</sup> defendant is aged more than 78 years and that due to her old age, she is not in a position to attend the court at Chengalpattu. In these circumstances, the Trial Court should have appointed Advocate Commissioner to examine the 1<sup>st</sup> defendant in her house. The Trial Court ought not have dismissed the application, in the interest of justice.

6. Therefore, the fair and decretal order passed I.A.No.657 of 2015 in O.S.No.56 of 2011 are set aside. The application in I.A.No.657 of 2015 in O.S.No.56 of 2011 stands allowed. It is brought to the notice of this court that this court by order dated 27.01.2015 in C.R.P.(PD) No.240 of 2015 directed the Trial Court to dispose of the suit within a period of three months. However, the suit has not yet been disposed of. In these circumstances, I direct the District Munsif Court, Chengalpattu, to dispose of the suit in O.S.No.56 of 2011, on merits and in accordance with law,

within a period of three months from the date of receipt of a copy of this order. It is also made clear that the 1<sup>st</sup> defendant should complete her examination through Advocate Commissioner within a period of 15 days from the date of receipt of a copy of this order.

With these observations, the Civil Revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2015.

Index : No  
Internet : Yes

Rj

To

The District Munsif Court,  
Chengalpattu,

M. DURAISWAMY,J.,

Rj

C.R.P.(PD)No.2319 of 2015 &  
M.P.No.1 of 2015

23.06.2015