

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P(PD) Nos.3573 and 3574 of 2015
and M.P.No.1 of 2015

1.Ravichandran
2.Muralidharan
3.Mohanraj

.. Petitioners in
both C.R.Ps'

Vs.

1.Arumuga Kondiar
2.Rajendran

.. Respondents in
both C.R.Ps'

Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the order dated 30.04.2015 made in I.A.Nos.85 and 86 of 2014 in O.S.No.14 of 2013 on the file of the District Court, Nagapattinam and dismiss the said I.A.

For Petitioners : Mr.S.Sounthar
For Respondents : Mr.M.Murali
(In both Cr.Ps')

ORDER

The revision petitioners are the defendants 2 to 4 in O.S.No.14 of 2013 on the file of District Court, Nagapattinam. The 1st defendant is the father of the plaintiff in the suit.

2. The 1st defendant, who is the first 1st respondent herein filed interim applications in I.A.Nos.85 and 86 of 2014 to examine him first and also through an Advocate Commissioner. Both the applications were allowed by the trial Court by an order dated 30.04.2015. These revision petitions are against the aforesaid orders.

3. Heard both sides.

4. Learned counsel for the petitioners vehemently contended that the 1st respondent, who is the father of the plaintiff, is in collusion with the plaintiff and therefore, the application of the 1st respondent, who is the 1st defendant to examine himself first would not have been allowed by the trial Court. On the other hand, the learned counsel appearing for the respondents has submitted that the trial Court allowed the applications, taking note of the fact that the 1st respondent is aged about 92 years and hence, he could not come over to the Court and to give evidence.

5. I have considered the submission made by either side.

6. Learned counsel for the revision petitioners has not disputed about the age of the 1st respondent. In any event, it is argued by the learned counsel appearing for the petitioners that the age is not relevant criteria

for examining the witnesses first before examining the evidence on the side of plaintiff. In support of his contention, the learned counsel appearing for the petitioners relied on a judgment of the Hon'ble Apex Court in ***Laxmibai Vs. Bhagwantbuva*** reported in **(2013) 4 SCC 97**.

7. I am not inclined to agree with the submission made by the learned counsel appearing for the petitioners. In my considered view, age is a relevant factor. Since the 1st respondent is admittedly aged about 92 years, the application to examine him first has to be necessarily allowed. The judgment relied on by the learned counsel appearing for the petitioners is not applicable to the facts of this case. In the said case, the age of witness is 70 years. Hence, the Court came to the conclusion of recording of evidence out of turn could not be accepted.

8. Taking into account the fact that the 1st respondent is aged about 92 years, I am not inclined to interfere with the order passed by the trial Court. Hence, these revision petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.10.2015

Index : Yes
Internet: Yes
vsm

D.HARIPARANTHAMAN,J.

vsm

To

The District Court, Nagapattinam.

C.R.P(PD) Nos.3573 and 3574 of 2015

15.10.2015