

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

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THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P(PD) No.3754 of 2015

and M.P.No.1 of 2015

D.Nedunchezian

.. Petitioner

Vs.

1.R.Radha Ammal
Malligavathi Ammal (Deceased)
2.S.Vanaja
Elangovan (Deceased)
3.M.Sarojini
4.M.Elango @ Dhanalakshmi Ammal
5.G.Mala
6.A.Baby @ Varalakshmi
7.The Secretary Regional
Transport Authority,
Salamedu, Villupuram
8.The Deputy Transport Commissioner,
Subramaniyapuram, Salem.
9.The Collector of Villupuram,
Villupuram, Villupuram District.
10.V.Pandurangan
11.D.Sateesh Kumar
12.D.Rajkumar
13.D.Dinesh Kumar
14.B.Gowri
15.R.Kannusamy
16.S.P.Raja
17.Chinnapillai Ammal
18.E.Usha

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 02.09.2015 in I.A.No.385 of 2012 in O.S.No.87 of 2004 on the file of Principal District Judge of Villupuram.

For Petitioner : Mrs.D.Geetha for
Mr.K.Chandrasekaran

For Respondents : Mr.R.S.Raveendhren

ORDER

The Revision Petitioner is the second defendant in O.S.No.87 of 2004 on the file of Principal District Judge, Villupuram. Now the stage is for the examination of the defendant witnesses. The revision petitioner/2nd defendant has to be examined as D.W.1. The revision petitioner/2nd defendant filed I.A.No.385 of 2015 to appoint an Advocate Commissioner to record the petitioner's evidence at his residence in Chennai.

2. The trial Court rejected the I.A.No.385 of 2015 in O.S.No.87 of 2004 by an order dated 02.09.2015. The revision petition is against the aforesaid order.

3. The detailed order is produced, as the same was not produced at the time of admission.

4. Heard both sides.

5. Learned counsel for the petitioner submits that the suit in O.S.No.80 of 2004 is a partition suit and the parties are close relatives. The petitioner is aged about 69 years. The learned counsel appearing for the

petitioner has brought to my knowledge Para Nos.10 and 11 of the affidavit filed in support of this petition, wherein, he stated that the petitioner met with an accident and also suffering with Colon Cancer.

6. On the other hand, the learned counsel appearing for the 1st respondent, who is the plaintiff in O.S.No.87 of 2004 has vehemently contended that there is no infirmity in the order of the trial Court. The plaintiff is none other than the sister of the revision petitioner.

7. Though the other defendants were made as parties, the learned counsel appearing for the revision petitioner has submitted that they are not necessary parties and an endorsement is made to the aforesaid effect.

8. Learned counsel for the 1st respondent/plaintiff has not disputed that the revision petitioner is suffering with Colon Cancer, but the learned counsel appearing for the 1st respondent/plaintiff submitted that the revision petitioner is moving around and attending the family function and therefore, the revision petitioner could very well attend the Court.

9. I have considered the submissions made by either side.

10. It is useful to extract Para Nos.10 and 11 of the affidavit filed in support of this petition, which reads as follows:

“10.At this juncture, it is relevant to state the medical condition of the petitioner, who is ailing from life threatening illness whereby he is not in a position to travel from Chennai to Villupuram to adduce his DW1 evidence. During the month of January 2013 the petitioner slipped and fractured his femur bone connecting his hip and leg. Subsequently, the petitioner was then admitted in Sri Ramachandra Medical Hospital, Porur and on 26.01.2013 the petitioner underwent DYNAMIC HIP SCREW FIXATION surgery, resulting the petitioner to be completely bed ridden with minimal mobility. All his daily need were catered only in the bed. Thereafter, the petitioner underwent physiotherapy treatment for next few months at his residence as he could not walk.

11.The petitioner states that even before recovering from fracture, during the month of mid-May 2013, the petitioner was diagnosed with Colon Cancer with Liver Metastasis threatening his life. Shocked with disbelief, the petitioner's family was deeply traumatized by the tragic news and the petitioner was immediately admitted in MIOT Hospital, Ramapuram. On 30.05.2013, the petitioner underwent a major surgery High Anterior Resection + Segment 6 Resection + Liver Cyst De-roofing + Repair of Unrinary Bladder Dome Injury, wherein certain portion of the colon was removed from the petitioner's abdomen. Thereafter, the petitioner was

put on strict dietary supplements. Subsequent to surgery, the petitioner underwent painstaking chemotherapy treatment for the next 7 months at Apollo Hospitals at Teynampet under the supervision of Dr.M.A.Raja (Medical Oncologist), Apollo Speciality Hospitals. The petitioner states that the petitioner is still under the constant treatment for cancer and on daily medication.”

11. The aforesaid facts relating to the health condition of the revision petitioner is not disputed. In fact medical records are also enclosed along with the typed set of papers. Further more, the learned counsel for the 1st respondent/plaintiff has not disputed that the petitioner is suffering from Colon Cancer. But her contention is the petitioner is moving around and attending family function and therefore, he could very well to come to the Court and face the cross examination.

12. In my view, the trial Court taking into account the illness of the petitioner ought to have allowed the application for appointment of Commissioner, as the same would not cause serious prejudice to the 1st respondent/plaintiff and none of the parties. Particularly, it is not in dispute that the petitioner is suffering from Colon Cancer.

13. A bare reading of the impugned order would go to show that there was a direction from this Court by order dated 02.06.2015 in

C.R.P.No.4216 of 2014 for early disposal of suit, but the suit has not been disposed of so far. In my view, the order has to be necessarily interfered with, particularly, taking note of the fact that the petitioner is suffering from Colon Cancer and also met with an accident at an earlier point of time. Just because, the cancer patient is moving around and attending family function cannot be cited as a reason to deny his application to examine by way of an Advocate Commissioner. In fact the 1st respondent/plaintiff could have a say about the Advocate Commissioner to safeguard the interest, but denying the right of the revision petitioner being examined by Advocate Commissioner on his cost is totally unjustified. Hence, I am of the view that the order of the trial Court requires to be interfered with.

14. Accordingly, this Civil Revision Petition is allowed and the order dated 02.09.2015 in I.A.No.385 of 2015 in O.S.No.87 of 2004 is set aside and a direction is issued to the learned Principal District Judge, Villupuram District to appoint an Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

30.10.2015

Index : Yes
Internet: Yes
vsm

To

- 1.The Secretary Regional
Transport Authority,
Salamedu, Villupuram
- 2.The Deputy Transport Commissioner,
Subramaniyapuram, Salem.
- 3.The Collector of Villupuram,
Villupuram, Villupuram District.
- 4.The Principal District Judge,
Villupuram.

D.HARIPARANTHAMAN,J.

vsm

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