

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.09.2015

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THE HONOURABLE MR. JUSTICE T.MATHIVANAN

C.R.P.(PD) No.2827 of 2012

and

M.P.No.1 of 2012

A.S.Madhavan

S/o A.S.Srinivasan

Power Agent of A.S.Srinivasan

..Petitioner/Defendant

/vs/

Samikannu

..Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.869/2011 in O.S.No.284/2007, dated 17.02.2012 by the Additional District Munsif Court, Kancheepuram.

For Petitioner :Mr.V.K.R.Balakrishnan

For Respondent :Mr.V.LakshmiNarayanan

ORDER

This memorandum of Civil Revision Petition is filed against the fair and decretal order, dated 17.02.2012 and made in I.A.No.869 of 2011 in O.S.No.284 of 2007 on the file of the Additional District Munsif Court, Kancheepuram.

2. It appears from the records that the revision petitioner herein is the defendant in the suit in O.S.No.284 of 2007 whereas the respondent herein is the plaintiff. The suit seems to have been filed by the respondent herein as against the revision petitioner seeking the relief of not to evict him from the suit property. This suit has been contested by the revision petitioner and the process of recording of evidence has commenced. Only at that time, it appears that the revision petitioner being the defendant has taken out an application in I.A.No.869 of 2011, under Order III, Rule 2 and under Section 151 of Code of Civil Procedure, to recognize him as the power agent of his father and to proceed with the case and also to permit him to give evidence on behalf of his father as DW1. This application was strenuously objected to by the respondent/plaintiff by filing his counter statement.

3. After hearing both sides, the learned Trial Judge has proceeded to dismiss the application in I.A.No.869 of 2011 on 17.02.2012 with an observation that it is well settled that the power agent's evidence can be accepted only for those matters, which are within his personal knowledge and hearsay evidence will remain unacceptable, even if given by power agent

regarding the matters told to him by his principal. Impugning this order the defendant stands before this Court.

4. Heard Mr.V.K.R.Balakrishnan, learned counsel appearing for the petitioner and Mr.V.Lakshminarayanan, learned counsel appearing for the respondent.

5. This Court has perused the impugned order and considered the submissions made on behalf of both sides.

6. After considering the submissions made by both sides, this Court finds that the order of the learned Trial Judge does not require any interference. However, Mr.V.Lakshminarayanan, learned counsel appearing for the respondent has suggested that the Court below might be directed to appoint an Advocate Commissioner to record the evidence of DW1 as it is alleged that the defendant had underwent a surgery for gland in respect of prostate enlargement and urinary track infection.

7. Mr.V.K.R.Balakrishnan, learned counsel appearing for

the petitioner has no objection in appointing an Advocate Commissioner to record the evidence of the defendant.

8. Keeping in view of the above fact, this civil revision petition is disposed of, confirming the order of the trial Court. The learned Trial Judge shall appoint an Advocate Commissioner exclusively for the purpose of recording the evidence of the defendant by making a personal visit to his residential premises and submit a report to that effect along with the recorded evidence. After recording the evidence of the defendant by the learned Advocate Commissioner, the revision petitioner/defendant is at liberty to adduce further oral evidence before the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

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To
The Additional District Munsif Court,
Kancheepuram.

09.09.2015

T.MATHIVANAN,J.

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