

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Original Side Appeal No.148 of 2014

V.Sethuraman

... Appellant

- Vs -

1. Thallam Rajagopal
 2. Thallam Sri Hari Rao
 3. Thallam Narendra Gupta
 4. Balasa Saroja
 5. M.Vasundara
 6. M.Vijayakumari
 7. M.Anusuya
 8. Thallam Sulochana
 9. Thallam Jagadeesh
 10. Thallam Surendra
 11. Thallam Sridhar
 12. Pathi Kanthamani
 13. P.Prabhakara Rao
 14. P.Nageswara Rao
 15. P.Premasudha Mani
 16. P.Suvarchala Devi
 17. P.Pavan Kumar
 18. R.Bruthitha (Minor)
- (R-18 Minor rep by her Mother
P.Suvarchala Devi)

... Respondents

Prayer:- Appeal filed under Order XXXVII Rule 9 of the Original Side Rules against the order and decretal order passed in A.No.1406 of 2014 in T.O.S.No.4 of 2006 dated 02.04.2014 by a learned Single Judge of this Court.

A.No.1406 of 2014 in T.O.S.No.4 of 2006:

Application praying that this Hon'ble Court be pleased to appoint on Advocate Commissioner to record evidence, namely Chief and Cross examination of the Applicant as PW1 in the above TOS at Applicant's residence at 1-A, "Century Towers" No.6, Barnaly Road, Kilpauk, Chennai-600 010.

For Appellant : Mr.P.B.Ramanujam

For Respondents : No representation

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu,J.)

The appellant is the plaintiff in T.O.S. No.4 of 2006 before the learned Single Judge of this Court. The trial is in progress. While so, the petitioner filed Application No.1406 of 2014 praying for appointment of an Advocate Commissioner to record the evidence of the appellant herein on the ground that the appellant was then aged about 84 years and unable to move to the Court. The said petition has been dismissed by the learned Single Judge. Challenging the same, the appellant is before this Court with this appeal.

2. We have heard the learned counsel for the appellant and there is no representation for the respondents, though their names have been printed in the cause list and the private notice sent to them have been served.

3. It is seen from the records that in the year 2014, the appellant was aged about 84 years and now he is aged 87 years, quite obviously it would be difficult for him to come to the Court and stand in the witness box and give evidence. It is also seen from the records that none of the respondents have any objection in the appointment of Advocate Commissioner to record the evidence of the plaintiff. Thus, in our considered view, the learned Single Judge ought to have allowed the application for appointment of the Advocate Commissioner. But the learned Single Judge has expressed the view that the appellant is trying to avoid coming to the Court. In our considered view, going by the old age of the appellant, it cannot be said that he is wantonly avoiding to come to the Court. When there is no counter filed by any of the respondents, there is no likelihood of any prejudice, it would have been in the fitness of things to allow the application for appointment of Advocate Commissioner. In such view of the matter, we are inclined to set aside the impugned order.

4. In view of the above, this appeal is allowed and the order dated 02.04.2014 is set aside and the Application No.1406 of 2014 in T.O.S.No.4 of 20106 is allowed and Mr.R.Mohandass, Advocate (Former Registrar (Judicial) of Madurai Bench of Madras High Court) (Cell No.9443366150) is hereby appointed as the Advocate Commissioner for the purpose of recording the evidence

of the appellant herein who is the plaintiff in T.O.S. No.4 of 2006. The Advocate Commissioner shall submit the deposition before the learned Single Judge.

5. The learned counsel for the appellant would submit that a sum of Rs.40,000/- may be fixed as remuneration for the Advocate Commissioner. In view of the above, we direct the appellant to pay a sum of Rs.40,000/- (Rupees forty thousand only) as remuneration to the Advocate Commissioner directly. The Advocate Commissioner shall receive necessary documents by filing necessary memo before the learned Single Judge and record the evidence of the appellant in accordance with law after affording sufficient opportunity to all the parties concerned and submit the same to the learned Single Judge. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original Side Section,
High Court, Madras.

Copy to

Mr.R.Mohandass, Advocate Commissioner,
No.J2c, Krishna Emerald Heights,
IV Main Road, Jaichandran Nagar,
Pallikaranai, Chennai-600 100.
(Cell No.9443366150)

+1cc to Mr.P.B.Ramanujam, Advocate Sr.7725

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srg 23/2/2017

O.S.A.No.148 of 2014