

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.3376 of 2012
and M.P.No.1 of 2012

Indiampalayam Panchayat Board,
rep. By its President,
Arasur Post,
Indiampalayam village,
Sathyamangalam Taluk,
Erode District.

.. Petitioner

VS

1.K.Jayapal
2.S.Sureshkumar

.. Respondents

Revision filed under Article 227 of Constitution of India
against the order passed in I.A.No.16 of 2012 in O.S.No.36 of 2010,
dated 23.2.2012 on the file of the District Munsif Court,
Sathyamangalam.

For Petitioner : Mr.N.Manokaran

For Respondents : No Appearance

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ORDER

This revision is directed against the order of the District Munsif Court, Sathyamangalam in I.A.No.16 of 2012 in O.S.No.36 of 2010, dated 23.2.2012, allowing the application filed by the plaintiff under Section 151 of Code of Civil Procedure, 1908, to strike off the chief affidavit of A.Arthanareeswaran as of D.W.1. The petitioner herein is the defendant and the respondents herein are plaintiffs in the suit.

2. Brief facts, which led to the filing of the revision, are as follows:

Plaintiffs have filed the suit for declaration of title to the suit property and for vacant possession of the same. Resisting the suit, the petitioner, who is the defendant in the suit, has filed the written statement. Trial of the suit commenced and oral evidence on the side of the plaintiffs' was closed. When the suit was listed for defendant's side evidence, one A.Arthanareeswaran, who was the former President of defendant Panchayat Board, has filed proof affidavit in chief as D.W.1. At that stage, the respondents have filed an application seeking to strike off the chief affidavit of D.W.1 alleging that A.Arthanareeswaran has no *locus* to represent the petitioner's

Panchayat Board and he cannot file an affidavit on behalf of the petitioner Panchayat Board. It is stated that A.Arthanareeswaran is not the custodian of the documents sought to be marked through him on the side of the defendant and consequentially, prayed for striking off the chief examination of D.W.1.

3. Resisting the application, the defendant Panchayat Board filed the counter-affidavit contending that in the proof affidavit of A.Arthanareeswaran, he has been described as former President of the defendant Panchayat Board. The oral evidence of A.Arthanareeswaran is very much relevant to the case, as on the date of the alleged cause of action, he was the President and he knows about the facts of the case. The provision of law mentioned in the application is not correct and prays for dismissal of the application.

4. Upon consideration of the pleadings and upon hearing the submissions of both sides, the trial Court allowed the application to strike off the chief affidavit of D.W.1. Aggrieved by the same, the petitioner has filed the present revision.

5. Heard Mr.N.Manoharan, learned counsel appearing for the

petitioner. Respondents have not entered appearance.

6. Learned counsel for the petitioner submits that the trial Court failed to note that the plaintiffs have no legal right to file a petition to eschew the evidence of the defendant. It is for the defendant to choose their witness particularly when D.W.1 was the President of the Panchayat Board at the relevant point of time. He further submitted that the trial Court failed to note that D.W.1 is the witness fully conversant with the affairs of the defendant Panchayat Board and that his evidence is very much essential in deciding the issue involved in the suit. He would further submit that the order passed by the trial Court eschewing the evidence of D.W.1 is totally misconceived one.

7. It appears that the trial Court while allowing the application held that the present President is the custodian of documents and the documents are to be marked through the present President only. Further, A.Arthanareeswaran can be examined as one of the witnesses in his individual capacity, but not as the representative of the defendant Panchayat Board to prove the contents pleaded in the written statement. With regard to the provision of law,

the trial Court held that in essential circumstances, the Court can use its inherent power under Section 151 C.P.C. and that the application seeking to eschew the evidence of D.W.1 is maintainable.

8. There is no quarrel that the Court can maintain application filed under Section 151 C.P.C. by using inherent power. This Court feels that only because a petition has been filed quoting wrong provision of law, the same cannot be rejected. Law is no more *res integra* that if a Court has jurisdiction to pass an order, a wrong provision of law cannot stand in the way. In other words, quoting a wrong provision of law in the petition can at the most be stated to be a technical defect.

9. Coming to the point whether the trial Court has right in allowing the application to eschew the evidence of D.W.1, as rightly pointed out by the learned counsel for the petitioner, the plaintiffs cannot dictate terms of the petitioner to examine the witness of their choice on the defendant side. The defendant is entitled to examine the witnesses of his choice and adduce oral evidence. Arthanareeswaran was the former President of the defendant Panchayat Board and at the relevant point of time when the suit cause of action arose, he was the

President. The said position is not denied by the plaintiffs. Further, the credibility of the witness and genuineness of the document can be gone into only at the time of final arguments in the suit. No one can be non-suited on the ground of competency to give evidence, because such prerogative cannot be taken away at the instance of other side. The reasons given by the trial Court in allowing the application are not correct and unsustainable in law.

10. Hence, this Court warranting interference in the orders passed by the learned District Munsif Court, Sathyamangalam and the order in I.A.No.16 of 2012 in O.S.No.36 of 2010, dated 23.02.2012, is liable to be set aside.

11. In the result:

(a) the Civil Revision Petition filed by the petitioner is allowed and the order of the trial Court in I.A.No.16 of 2012 in O.S.No.36 of 2010, dated 23.2.2012 is set aside;

(b) the trial Court is directed to expedite the trial of the suit, as the suit is seven years old and dispose of the same within a period of four months

from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, M.P.No.1 of 2012 is closed.

02.01.2017

Note: Issue order copy on 02.01.2018

vs

Index : Yes

Internet : Yes

To

The District Munsif Court, Sathyamangalam.

Office to note :-

Send order copy (along with records, if any) to the trial Court, forthwith.

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M.V.MURALIDARAN, J.

VS



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