

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD)No.4570 of 2013
and
M.P.Nos.1 of 2013 &1 of 2014**

1. J.Dhanalakshmi
2. S.Naveenraj (Minor)
Rep. By his father and natural guardian
R.Sampathraj .. Petitioners
Vs.

H.Mageswari
Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order dated 06.09.2013 made in I.A.No.1024 of 2013 in O.S.No.306 of 2010 by the Additional District Munsif Court, Poonamallee.

For Petitioners : Mr.N.Mariappan

For Respondents : Mr.A.Rajesh Kumar

ORDER

The petitioners are the defendants and respondent is the plaintiff in the suit. She filed the suit for permanent injunction restraining the petitioners from raising any building by encroaching the undivided share of 1520 sq.ft of the land in the suit property.

2. The petitioners filed written statement and are contesting the suit. When the suit was posted for trial, the respondent has filed an application in I.A. No.1024 of 2013 under Section 151 of CPC to grant permission to the plaintiff to authorise her husband, R. Harikrishnan to give evidence on her behalf.

3. According to the respondent, she is suffering from acute back pain and could not move and travel and she is unable to stand in the witness box for a long time to give evidence.

4. The petitioner opposed the said application on the ground that both petitioners and respondent are residing in the same compound and respondent is doing all the household works and climbing the steps and she is not suffering from back pain. Moreover, she has not produced any medical certificate to prove her illness and only to avoid being cross examined, she has filed present application. Without Power of Attorney, she cannot authorise her husband to give evidence.

5. Learned Judge considered all the materials on record and averments in the affidavit and counter affidavit and medical certificate produced by the respondent, allowed the application holding that as per Section 120 of the Indian Evidence Act that in all the Civil proceedings,

the parties to the suit or husband or wife or any of the party to the suit can be competent person to give evidence even without specific power of attorney.

6. Aggrieved against the order dated 06.09.2013 made in I.A.No.1024 of 2013 in O.S.No.306 of 2010, the present Civil Revision Petition is filed.

7. The learned counsel for the petitioner submitted that without the specific power of attorney, the respondent cannot authorise her husband to give evidence. The respondent is hale and healthy and only to avoid being cross examined, she is claiming to be suffering from back pain and filed the present petition. She is doing all the household works and climbing the staircase. The respondent did not produce any medical certificate along with application filed under Section 118 of the Indian Evidence Act. As per Section 118 of The Indian Evidence Act, the respondent is not suffering any of disease mentioned therein and she is not entitled to authorise her husband to give evidence on her behalf. The learned Judge erred in relying on the judgments referred by the respondent but he failed to see that those judgments are not applicable to the facts of the present case. The respondent not giving evidence is depriving the petitioner from cross examining her.

8. The learned counsel for the respondent submitted that even without the power of attorney, the respondent can authorise any person to give evidence on her behalf. In the present case, the respondent has authorised her husband to give evidence and as per Section 120 of the Indian Evidence Act, such authorisation is valid and legal. The respondent by producing the medical certificate obtained from a competent medical practitioner has proved that she is unable to appear before the court and depose personally. As per Order XVI Rule 1 CPC, the respondent can let in evidence by examining any third party. The Learned Judge has properly appreciated all the evidences and perused the materials available on record and allowed the application.

9. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

10. The point to be determined in this Civil Revision Petition is whether the respondent/plaintiff can authorise her husband to give evidence without executing a power of attorney appointing him as her agent to give evidence. In the present case, the respondent has sought such permission to authorise her husband to give evidence on her behalf. The respondent has sought such permission on the ground that she is

suffering from acute back pain, she cannot travel, she cannot stand in the witness box for a long time to give evidence. She has produced the medical certificate.

11. According to the petitioner, the respondent is hale and healthy and in any event, she is not suffering from any disease as per Section 118 of the Indian Evidence Act. The said contention has no force. The respondent has produced medical certificate with regard to her illness obtained from the competent medical practitioner and there is no reason to reject the said medical certificate as invalid.

12. Secondly, the respondent is authorising her husband to give evidence on her behalf. Such authorisation is permissible under Section 120 of the Indian evidence Act.

13. Further as rightly pointed out by the learned counsel for the respondent that as per Order XVI Rule 1 (a), a party to the suit can examine any third party as witness on his behalf by complying the condition mentioned therein. In the present case, respondent has sought permission to authorise her husband to give evidence on her behalf.

14. The learned Judge has considered this aspect and allowed this application by giving acceptable reason. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Trial Judge, dated 06.09.2013.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.06.2017

Index : Yes
Speaking/Non-speaking Order
gv/gsa

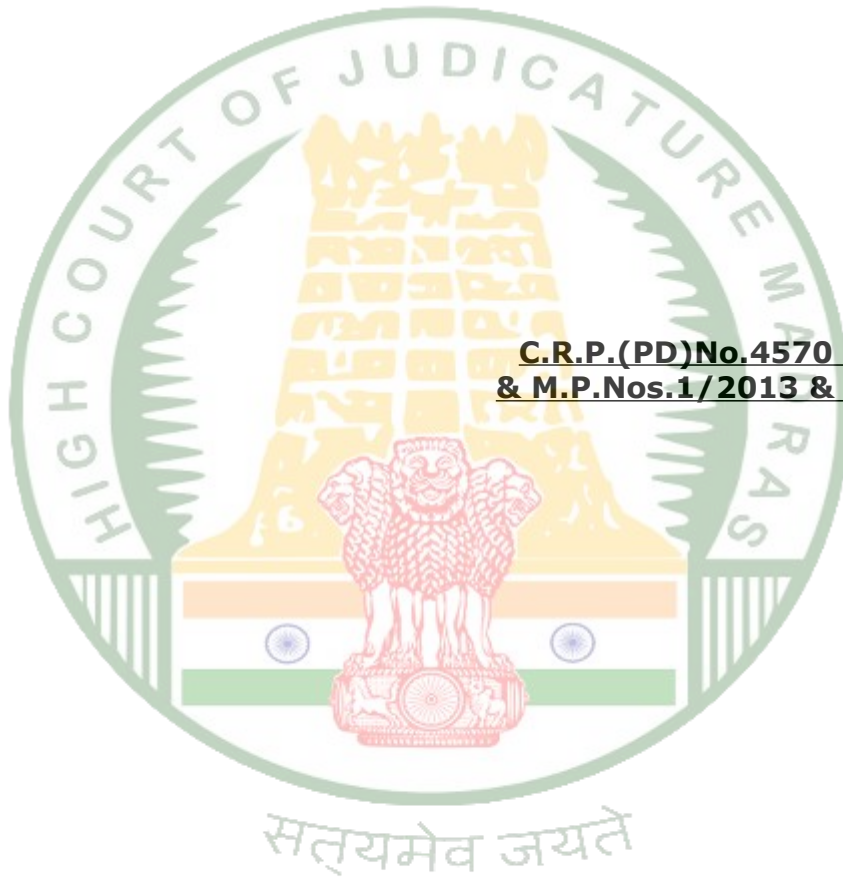
To
The Additional District Munsif Court,
Poonamallee.



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V.M.VELUMANI, J.

gv/gsa



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