

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.387 of 2018

and C.M.P.No.2070 of 2018

Ponmudi Devi

.... Petitioner

Vs.

1. K.K.Balasubramaniam
2. K.Shanmugam
3. Govindaraj
4. Balakrishnan
5. K.S.Karunambal

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 11.12.2017 made in I.A.No.1617 of 2017 in O.S.No.362 of 2010 on the file of the learned District Munsif, Avinashi.

For Petitioner : Mr.A.Kundavai

For Respondents : Mr.S.Vinoth Kumar (for R1)
No appearance (for R3 to R5)

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The relief sought for in this revision petition is to set aside the fair and decretal order dated 11.12.2017 made in I.A.No.1617 of 2017 in O.S.No.362 of 2010 on the file of the learned District Munsif, Avinashi.

2. The revision petitioner challenged the order made in I.A.No.1617 of 2017 in O.A.No.362 of 2010 passed by learned District Munsif, Avinashi, for examining the witnesses through the Commissioner.

3. The main reason stated by the trial Court is that the witness is residing beyond the Jurisdiction of the Court. Therefore, the trial Court cannot appoint an Advocate Commissioner for examining the witness who is residing beyond the jurisdiction.

4. The learned counsel for the respondent contended that the revision petitioner filed an application before the trial Court under Order XXVI Rule 4 C.P.C and also he reiterated extracted provision of Order XXVI Rule 4 Section 151 of C.P.C. No doubt the revision petitioner filed an application under Order XXVI.

5. After amending the C.P.C in the year 2002, there is a provision incorporated in the C.P.C. under Order XVIII Rule 4, where the chief examination can be done by way of filing the proof affidavit and Order XVIII Rule 4 Sub clause 2 is very clear that the cross examination can be done either

through the Court or by an Advocate Commissioner. Therefore, no condition has given in the said provisions that only the witnesses those who are unable to come to the Court alone can choose the cross examination through an Advocate Commissioner.

6. Under these circumstances, the order of trial Court warrants interference. Therefore, the order passed by the trial court in I.A.No.1617 of 2017 dated 11.12.2017 is hereby set aside. The trial Court is directed to appoint an Advocate Commissioner with consent of both the parties and also the revision petitioner is directed to bare the entire cost to bring the Advocate Commissioner and also to both counsel to the witness and also made necessary arrangement for recording evidence from the witness.

7. Since the second respondent/second defendant reported dead, this Court directs the first respondent/ plaintiff to take steps before the trial Court for the deceased second respondent/second defendant.

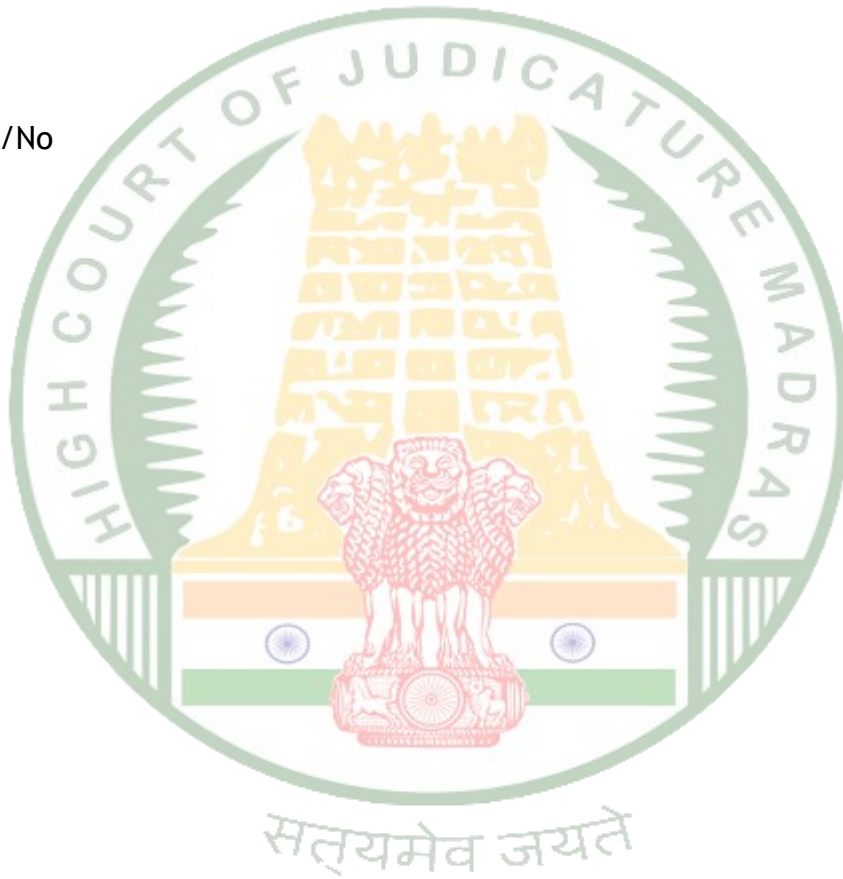
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8. With the above direction, this Civil Revision petition is disposed of.
Consequently, connected Miscellaneous petition is closed. No costs.

19.06.2018

Index:Yes/No

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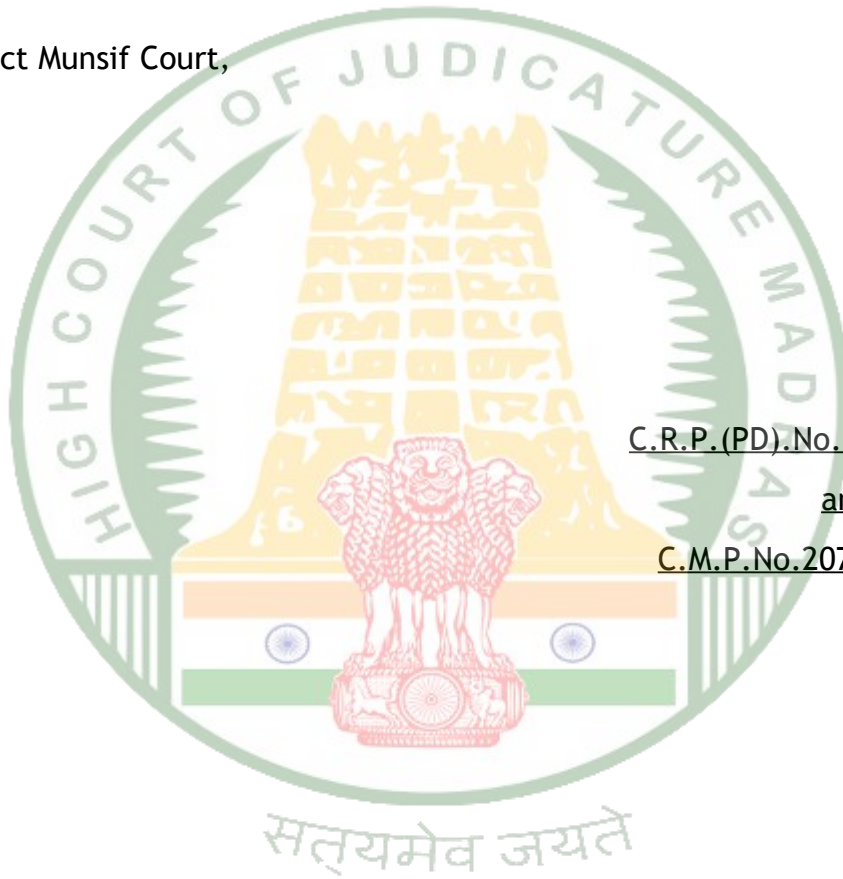
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P.VELMURUGAN, J.,

vum

To

The District Munsif Court,
Avinashi.



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and

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