

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.R.P.(PD).No.949 of 2017

and

C.M.P.No.4721 of 2017

M.Nirmala

..Petitioner

Vs.

N.Varadharaj

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Final Order dated 07.03.2016 made in I.A.No.671 of 2015 in O.S.No.574 of 2014 on the file of the IV Additional District Court, Coimbatore.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.R.Rajesh

ORDER

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The order under challenge in the present revision is appointment of the Advocate Commissioner pursuant to the application made under Order 18 Rule 16 CPC, for examining witnesses out of turn. The suit is filed for partition.

2. The learned counsel for the petitioner submits that the respondent herein had not assigned any valid reasons as to why the witness has to be examined out of turn and in the absence of any such valid reasoning, the Court below ought not to have permitted the application filed under Order 18 Rule 16 CPC. The learned counsel by relying upon Judgment of the Hon'ble Apex Court **2013 4 SCC 97 (Laxmibai (Dead) through Lrs. and Another Vs. Bhagwantbuva (Dead) through Lrs. and others)** submitted that mere old age and apprehension of death cannot be construed as a sufficient cause for the purpose of invoking Order 18 rule 16 CPC.

3. The learned counsel for the respondent on the other hand submitted that the provision under Order 18 Rule 16 CPC is self sufficient to permit the witnesses to be examined out of turn and that there was no infirmity in the prayer sought for, before the trial Court. The learned counsel also submitted that sufficient reasons have been stated in his application and considering those reasons, the Court below had appointed the Advocate Commissioner to examine the witnesses and as such, there is no illegality in the order. He further submitted that the order under

challenge came to be passed on 01.03.2016 and the Civil Revision Petition was belatedly made only in the month of February 2017, by which time, the witnesses had already been examined and as such, it would not be appropriate to interfere with the order at this point of time.

4. I have given my careful consideration to the submissions made by the respective counsels.

5. Order 18 Rule 16 of CPC is an exception to Order 18 Rule 1 of CPC, wherein, the witnesses could be examined out of turn when sufficient cause is established before trial court. In the instant case, the respondent herein had stated in his application filed Order 18 Rule 16 that the witness namely Thiru V. Subbiah, who is aged about 81 years in the year 2015, is not in a condition to move freely, since he is a heart patient. It is also stated that the witness, being an auditor, has ceased to attend his office and is now leading a retired life. The Court below on appreciation of these statements felt it to be a sufficient cause and therefore permitted the said witness to be examined by an Advocate Commissioner. The requirement of Order 18 Rule 16 is that sufficient cause has to be shown to the court and if the trial Court is satisfied on such a cause, it would allow the application and order for examination of such a witness immediately.

6. In my view, there is no infirmity in the order of the trial court considering the age of the petitioner and his medical condition as sufficient cause for the purpose of ordering the application.

7. The decision of the Hon'ble Apex Court in **2013 4 SCC 97 (Laxmibai (Dead) through Lrs. and Another Vs. Bhagwantbuva (Dead) through Lrs. and others)** relied upon the learned counsel for the petitioners may not be applicable for the present case for the reason that the facts before the Hon'ble Apex Court was that the witness was aged about 70 years and was also in a good state of health. It is on this medical condition the Hon'ble Apex Court had held that mere old age and apprehension of death would not be a sufficient cause. In the present case, when a specific statement is made that the witness was aged about 81 years and was undergoing heart ailment, it cannot be ruled out that such a condition can be deemed to be a sufficient cause and thereby, the witness need not wait for his regular turn for examination. The powers of the trial court under order 18 Rule 16 CPC is discretionary in nature and therefore, the trial Court had rightly exercised its discretion in allowing the application.

8. In the light of above observations, I do not find any infirmity in the order passed by the trial Court, by allowing the application. In the result, the Civil Revision Petition stands dismissed.

9. It is brought to the notice of this Court that both parties to the partition suit are senior citizens and the suit is of the year 2014. As such, the learned trial Judge shall endeavour to complete the suit proceedings as expeditiously as possible, in any case atleast within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

22.11.2018

Internet: Yes/No
Index: Yes/No
Speaking order/Non-speaking order
dh

To
IV Additional District Court,
Coimbatore.

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M.S.RAMESH, J.
dh



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