



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.550 of 2018 (PD)

and

CMP(MD) No.2387 of 2018

Seeni Mytheen

...Petitioner/ 1st Defendant

Vs.

1.Subaitha Ammal

Samsathu (died)

2.Noor Mohammed

3.Abdul Kather

4.Mumtaj

5.Pallakku

6.Rubia Banu

7.Mohamed Sabeer

8.Aasick Ali

...Respondents 1 to 8/Plaintiffs

9.Anwar

10.Abdul Rahman

11.Sahubar

12.Eagles Eye Real Estate ...Respondents 9 to 12/Defendants 2 to 4

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 01.02.2018 made in I.A.No.33 of 2018 in O.S.No.122 of 2010 on the file of the learned Subordinate Judge, Ramanathapuram.

For Petitioner

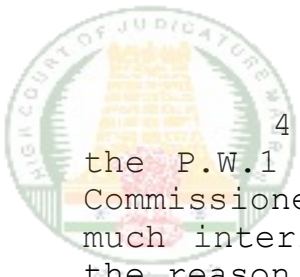
: Mr.J.M.Hassanul Bazari

ORDER

This Civil Revision Petition has been filed challenging the fair and decretal order dated 01.02.2018 passed in I.A.No.33 of 2018 in O.S.No.122 of 2010 on the file of the learned Subordinate Judge, Ramanathapuram.

2. The petitioner is the 1st defendant in the suit in O.S.No.122 of 2010 and the said suit has been filed for declaration and permanent injunction. Pending suit, the plaintiffs have filed I.A.No.33 of 2018 seeking appointment of Advocate Commissioner to cross examine P.W.1. The Trial Court has allowed the application, aggrieved by which, this civil revision petition has been filed by the petitioner/1st defendant.

3. Heard the learned Counsel for the petitioner and perused the materials available on record. Notice to the respondents is dispensed with.



4. The learned Counsel for the petitioner would submit that the P.W.1 was already examined at her house through the Advocate Commissioner, which were answered by her relatives and there were much interference and threat during the earlier occasions and that the reason of illness stated by her is false.

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5. The learned Counsel for the petitioner would further submit that the medical certificate produced by P.W.1 is absolutely forged and it is no-where mentioned that P.W.1 is not able to attend the Court proceedings and therefore, the order passed by the learned Judge is liable to be set aside and hence, he prayed to allow the Civil Revision Petition.

6. It is seen from the records that the 1st respondent / 1st plaintiff was examined as P.W.1 in the suit and her evidence had been recorded through Advocate Commissioner on 09.01.2016. Originally she was examined as P.W.1 through Advocate Commissioner, due to her ill-ness and now the petitioner/1st defendant has filed petition to recall P.W.1 for further cross examination and the same was allowed. P.W.1 is not in a position to appear before the Court to subject herself for cross examination, as she was taking treatment with one Doctor Javith Abdullah at Ramanathapuram.

7. Perusal of records shows that even in an earlier occasion P.W.1 has produced certificate issued by Pulmonologist to show her sickness and infirmity and therefore, her evidence was recorded through Advocate Commissioner. The explanation to Order 26 Rule 1 of Code of Civil Procedure provides to accept the certificate issued by the registered medical practitioner as evidence of sickness or infirmity of any person without calling the medical practitioner and therefore, in my considered opinion, the learned Trial Judge, after considering the facts of the case in proper perspective, allowed the Interlocutory Application and the same does not warrant any interference at the hands of this Court.

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

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge, Ramanathapuram.

+One cc to M/s.J.M.Hassanul Bazari, Advocate, SR.No.56043

rm

RL/3C/2P/CVC/SAR1/2/4/2018