



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.1957 of 2017 (PD)

and

C.M.P. (MD) .No.9955 of 2017

T.K.Chinnasamy Pillai,
through his General Power Agent,
K.Mayilvel ... Petitioner / Petitioner / Plaintiff

Vs.

1.Thangammal

2.N.Ilangovan

3.T.Arumugam ... Respondents / Respondents / Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, as against the fair and decreetal order, dated 13.10.2017, passed in I.A.No.251 of 2017 in O.S.No.84 of 2005 on the file of the Principal District Munsif, Manamadurai.

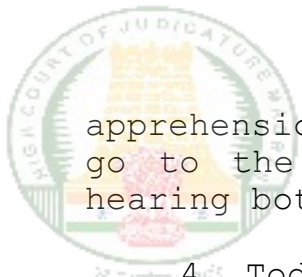
For Petitioner	: Mr.V.Ramakrishnan
For respondents	: Mr.V.Nagendran

ORDER

This civil revision petition has been filed by the revision petitioner / plaintiff, challenging the order passed in I.A.No.251 of 2017 in O.S.No.84 of 2005 by the Principal District Munsif, Manamadurai.

2. It is stated in the petition that the revision petitioner / plaintiff has filed the suit for the relief of recovery of possession, rent arrears and mesne profits. Though the power agent of the revision petitioner / plaintiff was examined as PW1, he could not able to answer several questions. The plaintiff, alone being the owner of the suit property, could answer those questions which are within his personal knowledge and therefore, it is necessary to examine the revision petitioner / plaintiff as a witness. The plaintiff, who is aged about 88 years, could not appear before the Court as he suffers from senile degeneration of both hip and knee joints, bedridden and not fit for amputation. Therefore, the revision petitioner / plaintiff has filed an application in I.A.No.251 of 2017 seeking to appoint an Advocate Commissioner for recording the evidence of the plaintiff at his residence.

3. A perusal of the counter affidavit filed by the respondents before the court below could go to show that they have no serious objection for examining the plaintiff as a witness and their



apprehension is that it would cause great inconvenience to them to go to the house of the plaintiff. But, the Court below, after hearing both sides, has dismissed the said application.

4. Today, when the matter is taken up for hearing, the learned counsel for the respondents would submit that the respondents have an apprehension that some untoward incident may happen, if the respondents would go to the plaintiff's house and therefore, the evidence may be recorded in a public place. The learned counsel for the revision petitioner / plaintiff would submit that there will not be any such incident and that the apprehension of the respondents is unnecessary as the revision petitioner / plaintiff is not in a position to move, due to ill-health.

5. Admittedly, the revision petitioner / plaintiff is an octogenarian and due to his illness, he could not able to move and in order to substantiate the same, he has produced Ex.P1. The revision petitioner / plaintiff, being the owner of the property, sought to be examined by way of a Commission as he is the only person who got more personal knowledge about the case. Further, no prejudice would be caused, if the revision petitioner / plaintiff is permitted to be examined by way of a Commission. The reasons assigned by the Court below are untenable and therefore, this Court is inclined to set aside the same and remit the matter back to the file of the Court below for appointment of an Advocate Commissioner.

6. In view of the above, this Civil Revision Petition is allowed; the order impugned in this revision petition is set aside and the matter is remitted back to the file of the Court below for appointment of an Advocate Commissioner within a period of one week from the date of receipt of copy of this order and the other issues. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Munsif,
Manamadurai.

+1cc to M/S.V.Ramakrishnan, Advocate SR.No. 45135

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