



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.1261 of 2018 and
C.M.P. (MD) No.5328 of 2018

Ponnammal

... Petitioner/Petitioner/
Plaintiff

Vs.

Muthukrishnan

... Respondent/Respondent/
Defendant

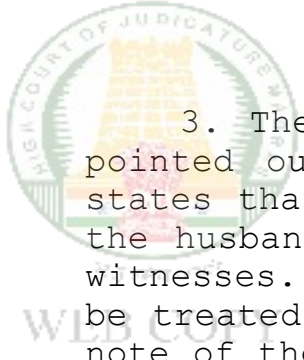
PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order in I.A.No.860 of 2017 in O.S. No.238 of 2006, dated 29.01.2018 passed by the learned Principal District Munsif, Ambasamudram.

For Petitioner: Mr.K.P.Narayanakumar
For Respondent: No appearance.

O R D E R

The plaintiff in O.S.No.238 of 2006 on the file of the learned Principal District Munsif, Ambasamudram, is the Revision petitioner herein. The suit is one for redemption of mortgage and recovery of possession. In the said suit, the plaintiff had filed her proof affidavit. In fact her chief examination is over. She is not available for cross examination. She is based in Mumbai. She is unable to attend the Court for the cross examination. Therefore, the plaintiff filed I.A.No.860 of 2017 for eschewing her evidence and for permitting her husband to be examined on her behalf. The said application was dismissed by the Court below by order dated 29.01.2018. Questioning the same, this Civil Revision petition has been filed.

2. Though the respondent herein has been served and his name is also printed in the cause list, he has not chosen to enter appearance either in person or through counsel.



3. The learned counsel appearing for the Revision petitioner pointed out that Section 120 of the Indian Evidence Act, 1872, states that in all civil proceedings, the parties to the suit and the husband or wife of any party to the suit, shall be competent witnesses. Therefore, the husband of the petitioner herein has to be treated as a competent witness. The Court below has not taken note of the statutory mandate set out in Section 120 of the Indian Evidence Act.

4. In this view of the matter, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-I)

To

The Principal District Munsif,
Ambasamudram.

+ 1 CC TO MR.K.P.NARAYANAKUMAR, ADVOCATE IN SR NO.
PMU
BU/NM/RP/SAR-1 :15.11.2018 : 2P/3C

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