



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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C.R.P. (PD) (MD) .Nos.2231 and 2232 of 2018

and

C.M.P. (MD) .Nos.10012 and 10013 of 2018

1.M.Santha
2.M.Singarajan
3.M.Malathi
4.M.Pushbalatha
5.M.Saravanan
6.M.Sivagnanam
7.M.Dhanalakshmi

... Revision Petitioners in both CRPs

-Vs.-

1.P.Ammaponnu
2.K.Chellakkannu

....Respondents in both CRPs

PRAYER in C.R.P. (PD) (MD) No.2231 of 2018: Petition filed under Article 227 of the Constitution of India to set aside the returned docket order dated 28.09.2018 passed in I.A.No.unnumbered of 2018 in O.S.No.522 of 2003 on the file of the Learned District Munsif, Madurai Taluk Court and to direct the learned District Munsif, Madurai Taluk Court to number the Interlocutory Application filed by the petitioners herein in O.S.No.522 of 2003 and dispose the same on merits.

PRAYER in C.R.P. (PD) (MD) No.2232 of 2018: Petition filed under Article 227 of the Constitution of India to set aside the returned docket order dated 28.09.2018 passed in I.A.No.unnumbered of 2018 in O.S.No.163 of 2016 on the file of the Learned District Munsif, Madurai Taluk Court and to direct the learned District Munsif, Madurai Taluk Court to number the Interlocutory Application filed by the petitioners herein in O.S.No.163 of 2016 and dispose the same on merits.

**COMMON ORDER**

The plaintiffs in O.S.No.522 of 2003 on the file of the District Munsif Court, Madurai Taluk are the revision petitioners herein. The suit has been instituted seeking certain injunctive reliefs. The matter pertains to the affairs of a private Trust. The plaintiffs had already adduced their evidence. The defence side has commenced. The grievance of the plaintiffs is that a total stranger and some one who is unconnected to the Trust has been examined as P.W.1 on behalf of the trustee.

2.It appears that due to oversight the plaintiffs have omitted to challenge the competence of the witness at the time of filing of the proof affidavit. The plaintiffs filed an I.A., for rejection of the said proof affidavit. The Court below even without numbering the same, had chosen to return the I.A. Challenging the aforesaid stand of the trial Court, this Civil Revision Petition has been filed.

3.Heard the learned counsel appearing for the revision petitioners.

4.I am of the view that if an incompetent person has been examined as a witness on the side of the defendant, they will have to necessarily take the consequence also. It is not necessary to call for rejection of the proof affidavit filed by such a witness. It is always open to the revision petitioners herein to appropriately cross examine the said witness by pointing out that he has no competence to get into the witness box on behalf of the Trust.

5.The learned counsel for the revision petitioners pointed out that Section 47 of the Indian Trust Act, 1982 clearly states that "a trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation".

6.Definitely, Section 47 of the Act, can be invoked by the plaintiffs herein, even at the time of arguments. The learned counsel pointed out that as the plaintiffs have not so far cross examined the said witness, the matter is likely to be closed. In the interest of justice, I permit the plaintiffs herein to file an I.A., for reopening their side for recall of D.W.1 to cross examine the said witness. Such an I.A., shall be filed within a period of one week from the date of receipt of a copy of this order. On filing such an application, the Trial Munsif is directed to allow the same. The counsel indicates that he would be in a position to cross examine the witness on 25.10.2018.



7. With these observations and directions these Civil Revision Petitions are closed. No costs. Consequently, connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar (Crl. side)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The District Munsif,
Madurai Taluk Court,
Madurai.

+2CC to Mr. T. Lajapathi Roy, Advocate, SR.No.89449

ORDER MADE IN
C.R.P. (PD) (MD) .Nos.2231 and 2232 of 2018
and
C.M.P. (MD) .Nos.10012 and
10013 of 2018
09.10.2018

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