



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.2336 of 2016

and

C.M.P. (MD) .No.10777 of 2016

1. S.Devika

2. U.Manichelvi

.. Petitioners/ Petitioners/
Defendants 1 and 2

vs.

Na.Srinivasan

.. Respondent / Respondent /
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 21.06.2016 made in I.A.No.55 of 2016 in O.S.No.208 of 2012, on the file of the District Munsif Court, Sivakasi.

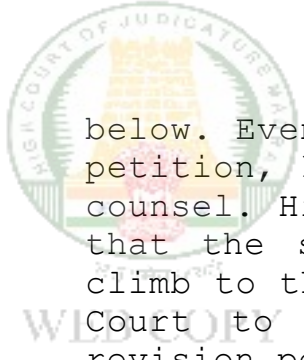
For Petitioners : Mr.A.Sivaji

For Respondent : No appearance

ORDER

The revision petitioners are figuring as defendants 1 and 2 in O.S.No.208 of 2012 filed by the respondent herein. It is a suit for declaration and permanent injunction. Few other reliefs have been sought for. The trial in the suit commenced in the year 2016. When the matter was posted for defendants' side evidence, the revision petitioners filed I.A.No.55 of 2016. The prayer made in the petition was that an advocate commissioner should be appointed for examining defendant No.2. It was projected in her affidavit filed in support of I.A.No.55 of 2016, that she is suffering from severe knee pain and that she is not in a position to reach the Court, which is located in the first floor of the building. But the Court below dismissed the said IA by order, dated 21.06.2016 on the ground that medical evidence has not been filed in support of the claim made in the affidavit. The Court below took the view that this IA has been filed for dragging on the proceedings. The correctness of the said order is questioned in this civil revision petition.

2. The learned counsel for the revision petitioners reiterated the grounds set out in the memorandum. He also pointed out that the plaintiff did not oppose the IA before the Court



below. Even before this Court, the plaintiff though served in this petition, has not chosen to enter appearance in person or through counsel. His name is also printed in the cause list. He reiterated that the second defendant in the suit is not in a position to climb to the first floor of the building. He therefore wanted this Court to set aside the impugned order and allow this civil revision petition.

3. This Court has to note that the IA filed by the revision petitioners suffered dismissal only for the reason that the medical evidence was not produced by the revision petitioners. The revision petitioners could have at least filed a medical certificate issued by the competent Ortho Doctor certifying that the second defendant cannot climb the stairs and reach the Court which is in the first floor of the building. Even in the typedset of papers, no certificate has been enclosed. Therefore, this Court will have to pass an equitable order, considering the facts and circumstances of the case. If the revision petitioner files any medical certificate certifying her physical condition as projected in the affidavit filed in support of IA.No.55 of 2016, before the Court below, within a period of ten days from the date of receipt of a copy of this order, the Court below shall examine the second defendant in the ground floor of the said building. It appears that in the ground floor of the said building, there is a Judicial Magistrate Court. The examination of the second defendant can take place after the working hours of the said Magistrate Court. In any event, an appropriate adjustment can be arrived at with the learned Magistrate, who is presiding over the Court. Access to justice is a constitutional imperative and therefore, if the litigant is not in a position to physically climb on account of her disability, the Court should either accept the request for examining her through an advocate commissioner or it must itself literally come down. Since this Court does not want to reject the revision petitioner's request, it directs the learned District Munsif, Sivagangai to examine the second defendant in the ground floor of the building.

4. With this direction, the Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

/True Copy/

Sub Assistant Registrar(CS I)

To

<https://hcservices.ecourts.gov.in/hcservices/>
1. The District Munsif, Sivagangai District.



2. The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

1CC TO MR. A. SIVAJI, ADVOCATE SR NO.79043
1CC TO MR. V. SRINIVASAN, ADVOCATE SR NO.79261

PJL

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