



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).(MD).No.2578 of 2018 and
C.M.P.(MD).No.11348 of 2018

Mr.Pavunan

... Petitioner

Vs.

Mr.Alliraj

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.07.2018 passed in I.A.No.119 of 2018 in O.S.No.36 of 2016 by the Principal District Court, Pudukottai.

For Petitioner

: Mr.S.Anand Chandrasekar for
M/s. Sarvabhauman Associates

For Respondent

: Mr.K.C.Maniyarasu

O R D E R

Challenge in this revision petition is to the order of learned Principal District Judge, Pudukottai made in I.A.No.119 of 2018 in O.S.No.36 of 2016, dated 26.07.2018.

2. Heard Mr.S.Anand Chandrasekar, learned counsel for the petitioner and Mr.S.I.Muthiah, learned counsel for the respondent. By consent of both parties, the revision petition itself is taken up for final disposal.

3. The said Interlocutory Application was taken out by the respondent herein seeking appointment of Commissioner to examine the first defendant, who is aged about 92 years, by appointing a Commissioner before recording the evidence of the plaintiff is purportedly under Order 18 Rule 16 of C.P.C., r/w. Order 26 Rule 4 of C.P.C.

4. This application was resisted by the petitioner herein contending that the defendant cannot be allowed to adduce evidence prior to the examination of the plaintiff. No doubt the said contention overlooks the provision under Order 18 Rule 16 of C.P.C., which specifically enable the Court to record evidence of any witness for the reason stated therein. However, the trial Court has allowed the application without assigning any reason, by observing as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

4. Considering the facts and circumstances and in the interest of justice Thiru.P.T.Panneerselvam, Advocate



appointed as Commissioner to record the evidence from petitioner/first defendant who is aged about 92 years old. The petitioner is directed to pay the Commissioner fees of Rs.3,000/- directly. The Commissioner also directed to submit his report on 24.08.2018 without fail. Report by 24.08.2018."

5. This method of disposal by the trial Court, in my considered opinion, is wholly unsatisfactory. The trial Court should have assigned reasons for its conclusion. Therefore, I find that the order impugned cannot be sustained. Hence, the Civil Revision Petition is allowed and the order dated 26.07.2018 is set aside. The I.A.No.119 of 2018 is remitted to the learned Principal District Judge, Pudukottai, with a direction to pass appropriate orders by giving proper reasons for its disposal. The trial Court is directed to dispose of the application in I.A.No.119 of 2018 within a period of two weeks from the date of receipt of a copy of this order and report such disposal to the Court. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-IV)

akv

To

1.The Principal District Court,
Pudukottai.

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

+1cc to Mr.K.C.Maniyarasu, Advocate in SR No.96503
+1cc to M/s.Sarvabhauman Associates, Advocate in SR No.96715

C.R.P. (PD) (MD) .No.2578 of 2018

NM/RP/SAR IV/26.11.18/2P/6C.