



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD) No. 622 of 2013

and

M.P. (MD) No. 2 of 2013

1. Pandiammal
2. P. Dharmaraj
3. P. Siva
4. P. Ganesan
5. P. Ramila
6. Sathya

... Petitioners

Vs.

T. Jegatheesan

... Respondent

PRAYER: This petition is filed under Article 227 of the Constitution of India, to set aside the order dated 29.11.2012 and made in Memo in O.S.No.282 of 2008 on the file of District Munsif cum Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr. A. Arumugam
For Respondents : Mr. G. Ramapandian

O R D E R

The defendants in the suit in O.S.No.282 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Vadipatti, are the Revision Petitioners in this Civil Revision Petition.

2. The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1. The respondent / plaintiff filed a suit in O.S.No.231 of 2007 on the file of the District Munsif, Vadipatti, for declaration of title and consequential permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. After commencement of trial, the plaintiff's counsel filed a memo requesting the Court to direct the defendants to cross examine the witness in giving written questions in advance as the witness has defective hearing. This memo was seriously opposed by the defendants. The reason stated by the plaintiff for examining the witness by way of giving questions in writing is that the witness PW.2 was unable to hear even with the help of hearing aid, since he has lost his hearing capacity totally. Accepting the reasons stated in the memo filed by the plaintiff's counsel, the defendants were directed to cross examine P.W.2 by



giving written questions. The lower Court further directed the defendants to submit three set of questions in writing. The order passed by the learned District Munsif cum Judicial Magistrate, Vadipatti is the subject matter of the present revision petition.

3. The learned counsel appearing for the revision petitioners submitted that the order passed by the lower Court on the memo filed by the plaintiff's counsel is invalid and improper for the following among other reasons.

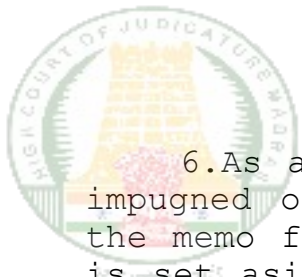
a) Seeking direction to cross examine the witness by giving written questions is not a small issue, as this can be manipulated to the disadvantage of parties on the other side in any given case. Therefore the lower Court is not right in entertaining the memo by the advocate instead of filing an application so that the aggrieved party can have effective remedy;

b) Even if the witness cannot hear accurately or it is not possible for the witness to understand any question, the more convenient way to protect the rights of parties to conduct cross examination is by giving written questions one after another, so that the witness cannot have independent advice for each question and the counsel who has to be cross examined the witness will be in a position to frame the next question depending upon the answer given by the witness to the previous question; and

c) Even if, the witness is unable to hear anything, the witness has to be summoned to give evidence in open Court.

4. Though the last point of the learned counsel for the petitioners is not convincing, this Court is of the view that the order passed by the lower Court on the memo filed by the learned counsel for the plaintiff is not acceptable. Secondly, the lower Court has passed the order without considering the legal consequences and the ill effects by directing cross examination by giving written questions in advance. If at the request of the counsel, a witness is shown privilege by giving all the written questions, the evidence will be as tutored by counsel and this may pave way for undesirable results. Therefore, the learned counsel for the revision petitioner is right.

5. The learned counsel for the revision petitioner further pointed out that the plaintiff could have examined any other person, who is competent to give evidence in this case. For this purpose, he also pointed out that other persons are available, who are competent and has the same knowledge to give evidence in this case on behalf of the plaintiff. Having regard to the fact that the order has been passed by the lower Court on the memo without considering the legal implications and the consequences by directing the defendants to cross examine the witness, after furnishing written questions, this Court is of the view that the impugned order is liable to be set aside.



6.As a result, this Civil Revision Petition is allowed and the impugned order passed by the learned District Munsif, Vadipati on the memo filed by the respondent / plaintiff in O.S.No.282 of 2008 is set aside. However, considering the facts and circumstances of the case, this Court is of the view that the respondent / plaintiff should be given one more opportunity to file a fresh petition and it is open to the revision petitioners to raise any legal issue, so that the examination of a person, who has got some hearing defect can be avoided. In case, the plaintiff has no other option but to examine only the person, who has the hearing defect, the other side may be permitted by put questions in writing one by one as it is convenient in open Court and to record in the manner without causing any prejudice to any one of the parties.

7.Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The District Munsif cum Judicial Magistrate,
Vadipatti.

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

+1CC to Mr.G.Rama Pandian, Advocate in SR.No.68805.

+1CC to Mr.A.Arumugam, Advocate in SR.No.68802.

PNN

DS/SKN-RSK/SAR-3 :04.07.2018: 3P/6C

ORDER MADE IN
C.R.P. (PD) (MD) No.622 of 2013
19.06.2018