

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.938 of 2019

&

C.M.P.No.6111 of 2019

Sivanandam

...Petitioner

Vs

1.Rahamathnisha

2.Subramanian

3.Kandhan

4.Balaji

5.Arumugam

6.Kumar

7.Malliga

8.Thamizharasi

9.Brindha

10.Sadique Amin

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11.Pon.Vaithiyanathan

12.Sivasankar

13.Rasulkhan

14.Roshan Bee

15.Jailani

16.Sathik Basha

17.Rajeswari

18.Sudha Devi

19.Anuratha

20.Sathiyapriya

21.Palanisamy

22.Chandrasekaran

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order passed by the Principal District Judge, Villupuram dated 19.11.2018 in I.A.No.22 of 2016 in O.S.No.113 of 2011.

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For Petitioner

:

Mr.Prahalad
for Mr.R.Parthasarathy

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Villupuram in I.A.No.22 of 2016 in O.S.No.113 of 2011 in and by which the learned Judge has dismissed the application filed by the revision petitioner/6th defendant seeking to reject the proof affidavit filed by one Jawahar Mohideen who is none other than the husband of the plaintiff Rahamathnisha on the ground that he is not competent to file proof affidavit as the same is not maintainable under law.

2.The learned Principal District Judge has dismissed the application stating that under Section 120 of the Evidence Act, in all civil proceedings the parties to the suit and the husband or wife are competent witnesses and therefore the application lacks merits.

3.Challenging the said order the revision petitioner is before this Court. Heard Mr.Prahalad, learned counsel for the revision petitioner, who would argue that the proof affidavit is filed on behalf of the plaintiff and such an application is not permitted by law. He would rely upon the Judgement in ***Janki Vashdeo Bhojwani and another Vs.***

Indusind Bank Ltd. And others reported in **(2005) 2 SCC 217.**

The Honourable Supreme Court in paragraph No. 13 of the order has held that the power of attorney can act on behalf of the principal which does not include the act of giving evidence.

There is no quarrel with reference to this preposition. In the instant application the person who has deposed is not a power agent but the husband of the plaintiff. In these circumstances, I find no infirmity in the order passed by the learned Principal District Judge, Villupuram in I.A.No.22 of 2016. The Civil Revision Petition is dismissed. There shall be no order order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

11.03.2019

kan
Index : Yes/No
Speaking order/non-speaking order

To,

The Principal District Judge,
Villupuram.

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P.T.ASHA, J.,

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