

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.2304 of 2013

and

M.P.No.1 of 2013

1. Ramesh
2. Kavitha
3. Batrachalam
4. Baskar

... Petitioners

Vs.

1. S.Saravanan
2. S.Muruvappan
3. The Sub Registrar,
Sub Registrar Office,
Mailam Main Road, Vanur.
4. M.Usha
5. P.Saravanan

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decree, dated 11.01.2013 made in I.A.No.12 of 2013 in O.S.No.87 of 2009, on the file of the Principal Sub Court, Tindivanam.

For Petitioners : Mr.D.Ravichander
For R1 to R4 : No appearance
For R5 : No such person

ORDER

This Civil Revision Petition has been filed as against the order and decree dated 11.01.2013 made in I.A.No.12 of 2013 in O.S.No.87 of 2009, on the file of the Principal Sub Court, Tindivanam.

2. The learned trial Judge allowed the application filed by the plaintiff, examining her mother through an Advocate Commissioner.

3. The learned trial Judge considering the respective parties' submissions and pleadings appointed an Advocate Commissioner to examine and to record the evidence of the mother of the plaintiff in the above suit. The learned trial Judge also ordered that the entire proceedings has to be conducted under video coverage. Aggrieved by the same, the present revision petition has been filed.

4. Heard the learned counsel appearing for the revision petitioner and perused the entire materials available on record.

5. It is the contention of the learned counsel appearing for

the revision petitioner that his mother is hale and healthy and he has also submitted the medical certificate of his mother. Therefore, the trial Court appointing an Advocate Commissioner to examine his mother and record the evidence of his mother is unwarranted.

5. I have perused the materials, it is well settled that after amendment in C.P.C., Act 22 of 2002 and Act 46 of 1999, evidence of the witness can be recorded by the commissioner. There is no bar in recording the evidence by the Advocate Commissioner appointed by the court. The Advocate commissioner is also empowered to record the remarks in respect of demeanour the deposition of any witness while examining. When that being the position, merely one of the witnesses in the suit sought to be examined under commission same cannot be illegal.

5. However, in this case it appears that before the plaintiff being examined, he sought to examine his mother as a witness in the above suit. Such exercises cannot be permitted without the permission of the court. For examining any witness before the party to the suit is concerned party ought to have obtained permission of the court and

under Order 18 Rule 3A of the Civil Procedure Code. But no such permission was obtained by the plaintiff. Therefore, in view of the above, though this court do not find any legal infirmity in the order of the trial court in appointing the Advocate Commissioner and directed the party namely the plaintiff to examine himself first, after his examination the Advocate Commissioner can record the evidence of the witness.

6. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2019

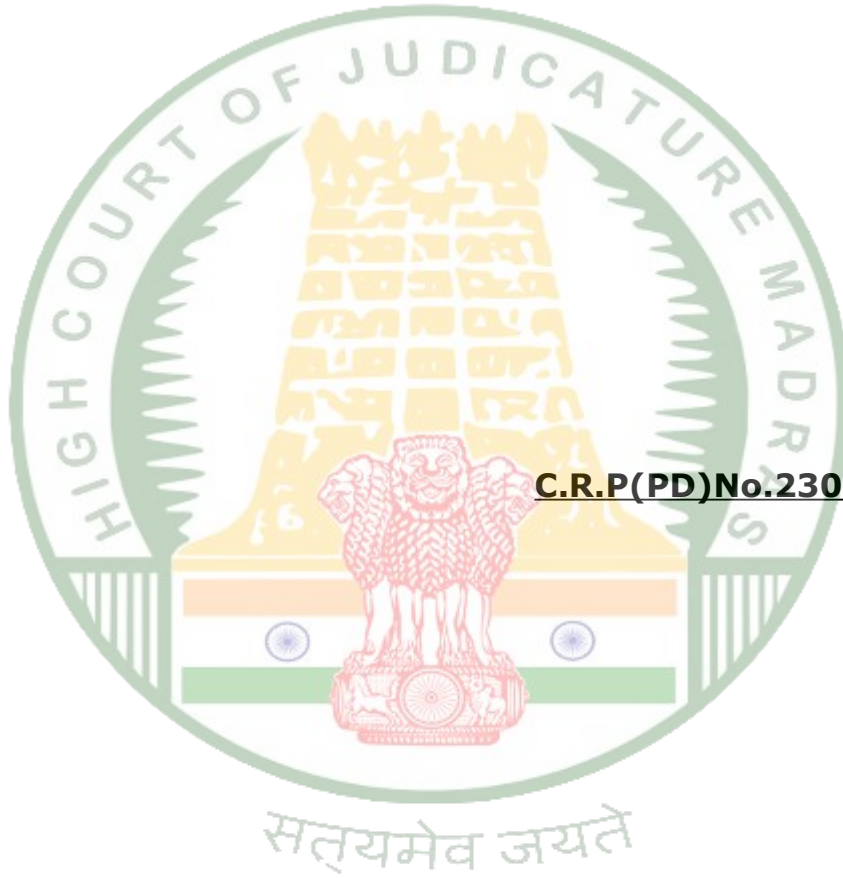
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To

1. The Principal Sub Court, Tindivanam.
2. The Section Officer, VR Section, Madras High Court.

N.SATHISH KUMAR, J.

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