

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

CRP (PD)No.4325 of 2014

and

MP No.1 of 2014

1. S. Sekar

2. S. Lingesan

versus

1. N. Eswari

2. J. Revathi

.... Petitioners

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal and fair order made in I.A. No.11491 of 2014 in O.S. No.2059 of 2013 duly passed by the I Assistant Judge, City Civil Court, Chennai, dated 15.09.2014 in dismissing the application duly taken out for rejection of the proof affidavit of PW1 B. Naga Sundaram duly filed in the main suit namely O.S. No.2059 of 2013.

For Petitioners

: Mr. D. Deepak Rajan  
for Mr.D. Ashokkumar

For Respondents

: Mr. R. Sundaramurthy

**ORDER**

The instant Civil Revision Petition has been filed challenging the order dated 15.09.2014 passed by the learned I Assistant Judge, City Civil Court, Chennai in I.A. No.11491 of 2014 in O.S. No.2059 of 2013.

**Brief facts leading to the filing of the instant Civil Revision Petition :-**

2. The petitioners are the defendants in the suit and the respondents are the plaintiffs. The respondents filed a suit for declaration to declare that the settlement deed, dated 18.05.1989 registered as document Nos.846 of 1989 and 847 of 1989 executed in favour of the petitioners / defendants as null and void and they have also sought for permanent injunction restraining the petitioners / defendants from alienating the suit schedule property.

3. A written statement was filed by the petitioners / defendants in the suit and issues were also framed by the Trial Court. During the course of Trial, I.A. No.11491 of 2014 was filed by the petitioners / defendants to reject the proof affidavit of PW1 S. Nagasundaram on the ground that the respondents / plaintiffs, who are his sisters have not voluntarily authorised S. Nagasundaram, the husband of the first respondent / first plaintiff to file the affidavit on their behalf.

4. A counter affidavit was also filed by the respondents /plaintiffs in I.A. No.11491 of 2014 denying the allegations contained in the affidavit filed in support of I.A. No.11491 of 2014.

5. By order dated 15.09.2014, the Trial Court dismissed I.A. No.11491 of 2014 on the ground that PW1 has filed proof affidavit only on behalf of the first respondent / first plaintiff, who is his wife and not on behalf of the second respondent / second plaintiff, who is the sister of the first respondent / first plaintiff.

6. The Trial Court has also observed that under Section 120 of the Evidence Act, in civil suits, the husband or wife of any party to the suit, shall be a competent witness and can let in oral evidence. The Trial Court has also observed that in view of Section 120 of the Evidence Act, there is no necessity for the husband to obtain Power of Attorney from his wife to depose on behalf of his wife. Aggrieved by the dismissal of I.A. No. 11419 of 2014, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

7. Heard Mr.D.Deepak Rajan, learned counsel for the petitioners and Mr.K.Sundaramurthy, learned counsel for the respondents.

8. This Court has perused and examined the impugned order. The Trial Court has rightly rejected the application since under Section 120 of the Evidence Act, the husband can let in evidence on behalf of his wife.

9. In the instant case, the first respondent's husband has filed proof affidavit on behalf of his wife. Whether the proof affidavit filed was authorised or not by the wife of Nagasundaram is a matter for trial and it cannot be decided in interlocutory applications.

10. In the considered view of this Court, the Trial Court has rightly rejected the application. Accordingly, there is no merit in this Civil Revision Petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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Speaking Order/Non-speaking Order  
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To  
The I Additional District Munsif,  
Erode.



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**ABDUL QUDDHOSE, J.**

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