

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3583 of 2019  
and C.M.P.No.23482 of 2019

T.C.Thangamani

... Petitioner

-Vs-

1.G.Gowri

2.G.Kavin

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 04.10.2019 passed in I.A.No.5 of 2019 in O.S.No.155 of 2010 on the file of Subordinate Court, Perundurai.

For Petitioner : Mr.S.Kaithamalai Kumaran

O R D E R

This revision has been filed against the fair and decreetal order dated 04.10.2019 passed in I.A.No.5 of 2019 in O.S.No.155 of 2010 on the file of Subordinate Court, Perundurai.

2. Before the Court below, the respondents were the defendants, who filed the said application in I.A.No.5 of 2019 seeking permission from the Court to appoint Advocate Commissioner to record the evidence of one Dr.Zakir Ahmed Shakir on behalf of the defendants and accordingly, the said application was filed under Order 26 Rule 4(1) read with Section 151 of C.P.C., and the said application, has been allowed and the advocate commissioner was also appointed. Aggrieved over the same, the present revision has been filed by the plaintiff / revision petitioner.

3. Heard Mr.S.Kaithamalai Kumaran, learned counsel appearing for the petitioner, who would submit that, the impugned order was passed on 04.10.2019 and the certified copy of the order was made available on 18.10.2019 and though the revision petitioner decided to prefer this revision, he sought for stay of the proceedings till the outcome of the C.R.P., is known, the said plea has not been considered and the suit has been proceeded for trial and the advocate commissioner has also visited the witness and recorded the evidence, without giving an opportunity to the revision petitioner / plaintiff.

Therefore, the cross examination of the said witness by the revision petitioner / plaintiff is also defeated.

4. I have considered the said submissions made by the learned counsel for the revision petitioner and have perused the materials placed on record.

5. Insofar as the impugned order permitting the defendants side to examine the said witness by the advocate commissioner is concerned, since the said witness is admittedly an 80-year-old person, because of his advanced age and sickness, the said arrangement could have been sought for and it was allowed by the Court below, of course, rightly.

6. However, since the right of the plaintiff to cross examine a witness cannot be defeated, while sustaining the impugned order of the trial Court in this revision this Court is of the view that such an opportunity of cross examining the said witness by the revision petitioner / plaintiff shall be given to him.

7. In that view of the matter, this Civil Revision Petition is dismissed with a direction that the trial Court shall give an opportunity to the revision petitioner / plaintiff to cross examine the witness one Dr.Zakir Ahmed Shakir, who has already been examined on behalf of the defendants by the advocate commissioner. No costs. Consequently, connected miscellaneous petition is also dismissed.

8. Since the suit is of the year 2010, the trial can be expedited by the trial Court and the suit can be disposed of as early as possible.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,  
Perundurai.

+1cc to Mr.A.K.Kumarasamy, Advocate Sr.91947

C.R.P. No.3583 of 2019

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srg 11/11/2019