

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.R.P.No.3681 of 2018

D.Sundara Pandian

...Petitioner

Vs

1.K.Parthiban
2.Rajeswari
3.R.J.N.Fazular Rahman
4.Kathija Younoos
5.J.N.Thahseen Fathima
6.M.Jesuraj
7.K.Arumugam
8.A.K.Gulam Mohammed
9.Sub-Registrar
Sub-Registrar Office,
Redhills,
Chennai-52.

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.218/2018 in O.S.No.110/2011 dated 10.10.2018 on the file of the IV Additional District & Sessions Judge, Thiruvallur @ Ponneri.

For Petitioner : Mr.V.Chandraprabu

For Respondents: Mr.G.Ethirajulu
for K.Balan for R-2.
R1-Non Appearance
RR3 to 9-Given Up.

ORDER

The above Civil Revision Petition is filed challenging the order passed by the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri in I.A.No.218 of 2018 in O.S.No.110 of 2011, whereby the learned Additional District Judge, without considering the real issue involved in the case, has simply relied on Section 120 of the Indian Evidence Act and has allowed the application, permitting the second respondent/8th defendant to depose on behalf of the first respondent/7th defendant.

2. The learned Additional District Judge who is obliged to receive the documents, has proceeded beyond the brief, and permitted the 2nd respondent/wife of the 1st respondent to adduce evidence on behalf of the 1st respondent, which was not sought for by the revision petitioner. The evidence is not in line with the affidavit filed in support of the petition. Insofar as the reception of additional documents are concerned, the revision petitioner has no objection to the same and the objection is only for the following observations:

" The petitioners herein are the 7th and 8th defendants in the main suit. The petitioner has filed the affidavit stating that she is the 8th defendant in the suit and that her husband is the 7th defendant and that she has filed the chief affidavit along with a petition for reception of documents on behalf of her and also on behalf of her husband to tender evidence. Under Section 120 of the Indian Evidence Act in Civil proceeding the parties to the suit and the husband and wife of any party to the suit shall be a competent witnesses. Hence, there is no legal embargo under law for the 2nd petitioner to tender evidence on behalf of her husband."

3. As rightly pointed out by the learned counsel for the revision petitioner, a demand for allowing the 8th defendant to defend on behalf of the 7th defendant without a prayer being made to this effect amounts to exceeding the jurisdiction of the Court. The learned District Judge has suo motu ordered the relief without it being prayed for. The said observation shall be expunged from the order. The order would stand as it is, in all other aspects. The Civil Revision Petition is disposed of. No costs.

ssb

Sd/-

सत्यमेव जयते Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional District
and Sessions Judge,
Thiruvallur @ Ponneri.

2. The Sub Registrar,
Red hills, Chennai - 52.

+1cc to Mr.M.Venkateswaran, Advocate, SR.No.37428
+1cc to Mr.K.Balu, Advocate, SR.No.37479

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Kak (15/07/2019)



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