



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (NPD) (MD) .No.1580 of 2010
and M.P. (MD) .No.1 of 2010

P.Kandasamy ... Petitioner/2nd Plaintiff
Vs.
1.S.Valliyammai ... Respondent/Petitioner
2.Poonsolai
3.Chinnayah
4.Mani ... Respondents/1,3 & 4 Plaintiffs

(No relief is claimed against respondents 2 to 4 in the revision as well as in the miscellaneous petition)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Additional District Munsif, Karaikudi in I.A.No.227 of 2010 in O.S.No.181 of 2008, dated 21.04.2010.

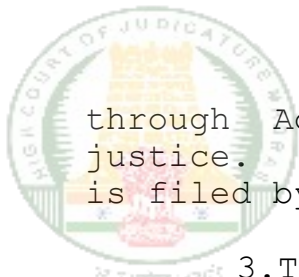
For Petitioner : Mr.M.R.S.Prabhu
For Respondents : Mr.S.Madhavan for R1
R2 to R4 - No Appearance

ORDER

This Civil Revision petition is directed against the order passed by the learned Additional District Munsif, Karaikudi, allowing the petition in I.A.No.227 of 2010 in O.S.No.181 of 2008 to examine the defendant through an Advocate Commissioner.

2.The brief facts that are necessary for the disposal of the civil revision petition are as follows:

The revision petitioner is the second plaintiff in the suit in O.S.No.181 of 2008. The suit was filed for permanent injunction restraining the defendant in the suit from interfering with the plaintiff's peaceful possession and enjoyment of the suit property either by putting up construction or by other means. After closing all evidence on plaintiff side, the defendant namely the first respondent in this civil revision petition filed an application in I.A.No.227 of 2010 to examine her through Advocate Commissioner. This petition is filed under Order 26 Rule 4A. The petition was allowed by the lower Court after considering the fact that the defendant was suffering from heart ailment. Based on the medical records, the Court found that the examination of the defendant



through Advocate Commissioner is required in the interest of justice. Challenging the above order, this civil revision petition is filed by the second plaintiff in the suit.

3.The contention of the revision petitioner is that the first respondent herein has failed to prove her physical ailment by producing necessary documents. It is also stated that the first respondent's house is very near to the Court premises and that the defendant can attend the Court without any difficulty.

4.The first respondent has produced necessary documents before the lower Court to show that she was suffering from some ailment which is serious and that as per doctor's advice, she could not come to Court and depose as a normal witness. The lower Court accepted the documents produced by the defendant to show that the physical condition of the defendant is such that examination of her through Advocate Commissioner is warranted. This Court find no error or legal infirmity in the order passed by the lower Court appointing the Advocate Commissioner to examine the defendant in her residence. The lower Court has exercised its discretion judiciously and no irregularity or illegality is pointed out before this Court to set aside the order.

5.In the above circumstances, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional District Munsif,
Karaikudi.
2. The Section Officer,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

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