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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.567 of 2019
and
C.M.P. (MD) No.2831 of 2019

Sundaramoorthi

... Petitioner/Respondent/Plaintiff

vs.

1.Chinnu

2.Jeyam

... Respondents/Petitioners/Defendants 1 & 2

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1195 of 2018 in O.S.No.290 of 2012 on the file of the learned Additional District Munsif, Karur, dated 30.01.2019.

For Petitioner : Mr.S.J.Chakkaravarthy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.1195 of 2018 in O.S.No.290 of 2012 on the file of the learned Additional District Munsif, Karur, dated 30.01.2019.

2.Before the trial Court, the petitioner herein is the plaintiff and the respondents herein are the defendants 1 and 2. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.1195 of 2018 was filed by the defendants 1 and 2, who are stated that the plaintiff has filed a suit in O.S.No.290 of 2018 for the relief of declaration and others. The defendants 1 and 2 are the husband and wife. Already on 18.04.2018, the first defendant was examined as D.W1 and the documents were marked. Subsequently, the first defendant had ailments and he was partly recovered from the illness and on 10.09.2018 even with illness, he appeared before the trial Court for the cross examination. Since the diseases affected on the first defendant is not cured, he is bed ridden and he is not able to move anywhere from the bed. Hence, the second defendant, who is the wife of the first defendant has filed a petition for appointing an Advocate Commissioner to record the cross examination of D.W1 by the plaintiff side.

4.The plaintiff has strongly objected the said petition for appointing an Advocate Commissioner by stating that regarding the ailment and the admission of the first defendant in the hospital



were not stated earlier and the treatment for the said ailment was not furnished along with the said petition. Further, the plaintiff contended that based on the memo, the first defendant is not in a position to depose and he need not be examined by way of Commissioner.

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5.The trial Court after considering the facts and circumstances of the case, has allowed the said petition and appointed the Advocate Commissioner to record the evidence of the first defendant and to file a report. Aggrieved by the said order, the plaintiff has preferred the present Civil Revision Petition.

6.The learned counsel for the plaintiff has raised another grievance that the Commissioner appointed by the trial Court is also a young Advocate and he may not be a fit person to attend the said work deputed to him for the purpose of examination of the first defendant. This grievance raised by the plaintiff's counsel is not proper and sustainable. When the trial Court is appointing a Commissioner, he will act as a fit person to do the work and the said relief grievance raised by the plaintiff's counsel is very much contempt of the trial Court.

7.In view of the above, the order passed in I.A.No.1195 of 2018 in O.S.No.290 of 2012 on the file of the learned Additional District Munsif, Karur, dated 30.01.2019, does not require any interference of this Court and there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To

The Additional District Munsif,
Karur.

+1CC TO MR.S.J.CHAKKARAVARTHY, Advocate Sr. No.55600

CRP (MD) No.567 of 2019

TR (22.04.2019) 2P 3C