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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2019

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P(MD)No.860 of 2019
and
C.M.P(MD)No.5073 of 2019

J.Vincent .. Petitioner/Petitioner/ 1st Defendant

Vs.

Jeyaseela Royan .. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.04.2019 made in I.A.No.7 of 2019 in O.S.No.298 of 2008 by the District Munsif Court, Lalgudi.

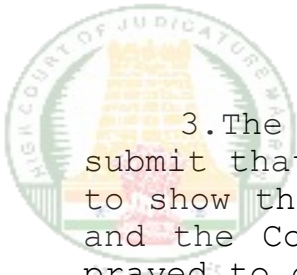
For petitioner : Mr.P.Thilakkumar

For Respondent : Mr.B.Prasanna Vinoth

ORDER

The respondent / plaintiff filed O.S.No.298 of 2008 for the reliefs of declaration and permanent injunction. Pending suit, the petitioner / 1st defendant has filed I.A.No.7 of 2019, seeking appoint an Advocate Commissioner to take evidence and examine him in his home on the ground that he is aged about 90 years and he is bedridden due to age-old ailments. The Court below dismissed the same, against which, the present Civil Revision Petition has been filed.

2.The learned counsel appearing for the petitioner / 1st defendant would submit that the suit is posted for defendants' side evidence. Since he is 90 years old and is bedridden in home, his son namely Anthony Deepan Rajasekaran filed chief affidavit, which was refused by the Court below. Therefore, he filed the present petition seeking to appoint an Advocate Commissioner to take evidence and examine him in his home. The respondent / plaintiff has also admitted his age. But, the Court below has erroneously dismissed the petition on the ground that no document has been submitted to substantiate the same. Thus, he prayed to set aside the order passed by the Court below.



3.The learned counsel for the respondent / plaintiff would submit that the petitioner / 1st defendant has not filed any document to show that he is bedridden and is suffering from age-old ailments and the Court below has rightly dismissed the petition. Thus, he prayed to dismiss the revision.

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4.The learned counsel for the respondent / plaintiff has also produced the photocopies showing that the petitioner / 1st defendant is hale and healthy, which is also not disputed by the petitioner.

5.Heard the learned counsel for the parties and perused the materials available on record.

6.Perusal of records would show that the petitioner / 1st respondent has not produced any documents before the Court below to show that he is bedridden and is suffering from age-old ailments. Further, old age is not a ground to appear before the Court and to give evidence. The petitioner / 1st defendant did not given any power of attorney to his son to let in evidence on behalf of him. Therefore, the learned Judge has rightly dismissed the petition. Moreover, the photocopies produced by the learned counsel for the respondent / plaintiff would also show that the petitioner / 1st defendant is hale and healthy and attending the Court regularly. In view of the above, I do not find any infirmity in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-)

smn

To

The District Munsif,
Lalgudi.

+1 CC to M/s.B.PRASANNA VINOTH, Advocate(SR-72079[F]dated 28/06/2019)

ORDER MADE IN
C.R.P(MD)No.860 of 2019
27.06.2019