



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.2669 of 2018

and

C.M.P. (MD) .No.11729 of 2018

KA.Kandasamy

... Petitioner/Petitioner/
Third Party

Vs.

1.P.Kandasamy
2.K.Murugesan
3.Gandhimathi
4.Ramasamy
5.Kalaiselvi
6.Shanmugam
7.Ganapathi
8.Selvakumar
9.M.Ammaiyappa Gounder
10.K.Kandasamy
11.Kalliyammal

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.11.2018 made in I.A.No.933 of 2018 in O.S.No.215 of 2011 on the file of the Principal Subordinate Judge, Karur.

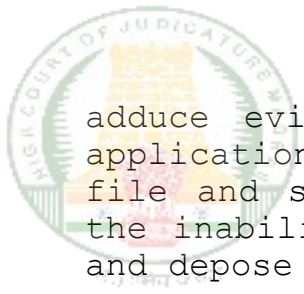
For Petitioner : Mr.K.Prabhakar

For R4 to R6 : Mr.M.P.Senthil

O R D E R

The Civil Revision Petition has been filed challenging the order passed by the learned Principal Subordinate Judge, Karur in I.A.No.933 of 2018 in O.S.No.215 of 2011, dated 03.11.2018.

2. The application in I.A.No.933 of 2018 was filed by the revision petitioner herein under Section 151 of C.P.C., to scrap the chief affidavit filed by the revision petitioner's wife viz., Tmt.Kaliyammal in O.S.No.215 of 2011 and to permit the revision petitioner to file chief affidavit and proceed with the case on behalf of his wife under Section 120 of the Evidence Act and to



adduce evidence afresh. The Court below has rejected the said application stating that the revision petitioner herein failed to file and satisfy the Court for producing sufficient records about the inability / ill-health of the wife to appear before this Court and depose evidence.

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3. It is the case of the revision petitioner that his wife was admitted in the hospital and she was not able to produce any evidence. Therefore, he filed an application in I.A.No.933 of 2018, to scrap the chief affidavit filed by his wife viz., Tmt.Kaliyammal in O.S.No.215 of 2011 and to permit him to file chief affidavit and proceed with the case on behalf of his wife. Further, the revision petitioner contended that the petitioner got a legal right under Section 120 of the Evidence Act, to depose on behalf of his wife. That being the case, the Court below has wrongly dismissed the application stating that the revision petitioner has failed to prove his case. But, according to the revision petitioner, it is not necessary to prove his case to substitute his wife to depose evidence on her behalf, but it is a legal right of the revision petitioner to depose evidence on behalf of his wife.

4. The learned counsel appearing for the respondents 4 to 6 contended that the Court below has rightly dismissed the application, since the medical records of the revision petitioner's wife were not produced. However, he has accepted the provision under Section 120 of the Evidence Act, with regard to the deposition of the husband on behalf of his wife. Further, the respondents also not refuted the husband and wife relationship between the revision petitioner and the 11th respondent.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is an admitted fact that the revision petitioner and the 11th respondent are the husband and wife and the I.A.No.933 of 2018 was dismissed by the Court below stating that the revision petitioner failed to produce sufficient medical records about the admission of his wife for taking a treatment and to satisfy the Court.

7. On perusal of Section 120 of the Indian Evidence Act, 1872, it appears that *in all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.*

8. In view of the above principles of law, this Court is of the view that the Court below has miserably failed to consider the request of the revision petitioner and wrongly dismissed the application. Therefore, the order passed by the Court below is liable to be dismissed. Accordingly, the order passed by the learned



Principal Subordinate Judge, Karur in I.A.No.933 of 2018 in O.S.No.215 of 2011, dated 03.11.2018 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

akv

To
The Principal Subordinate Judge,
Karur.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-92891[F] dated 18/10/2019)

C.R.P. (PD) . (MD) .No.2669 of 2018
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JMN(22.11.2019) 3P : 3C