

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.2125 of 2015

and

M.P.No.1 of 2015

1.Panjavarnam

2.V.Devarajan

... Petitioners

Vs.

1.D.K.Vasu @ Vasudevan

2.K.Kannan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order and decretal order dated 05.09.2014 passed by the learned Sub Court, Madurantakkam, Kanchipuram District dismissing I.A.No.200 of 2012 in O.S.No.92 of 2006.

For Petitioners : Mr.N.Nagu Sah

For Respondents : Mr.M.Gnanasekaran

ORDER

This Civil Revision Petition has been filed by the

petitioners/plaintiffs 2 and 3 against the order passed by the Sub Judge Madurantakkam, Kanchipuram District in I.A.No.200 of 2012 in O.S.No.92 of 2006 dated 05.09.2014.

2. One Venkatesan had filed a suit in O.S.No.92 of 2006 on the file of the Sub Judge, Madurantakkam, Kanchipuram District to direct the defendants therein/ respondents herein to execute a sale deed in favour of him in respect of the suit property. During pendency of the said suit, the said Venkatesan died and hence the petitioners herein were impleaded as plaintiffs 2 and 3. During trial, one Veerasamy who is said to be the Power of Attorney of the first defendant has filed a proof affidavit as D.W.1. The petitioners herein have filed an application in I.A.No.200 of 2012 under Section 151 of C.P.C to eschew the chief examination (proof affidavit) of D.W.1 on the ground that he cannot give evidence with regard to the events which were happened before execution of Power of Attorney in his favour. The learned Sub Judge by the order dated 05.09.2014 has dismissed the said petition by holding that whether his evidence can be accepted or not can be decided at the time of disposing of the suit. Feeling aggrieved, the plaintiffs 2 and 3 have filed the present Civil Revision Petition.

3. Heard Mr.N.Nagu Sah, learned counsel for the petitioners and Mr.M.Gnanasekaran, learned counsel for the respondents.

4. The learned counsel for the petitioners has submitted that D.W.1 who is said to be the Power of Attorney holder, cannot give evidence with regard to the fact which were not personally known to him, but in this case, D.W.1 in his proof affidavit stated the facts which were not personally known to him and hence his evidence has to be eschewed. He further submitted that the learned Sub Judge has erroneously dismissed the petitioners' petition and therefore he prayed to allow the Civil Revision Petition and set aside the order passed by the learned Sub Judge and allow the I.A.No.200 of 2012 and eschew the evidence of D.W.1.

5. Per contra the learned counsel for the respondents has submitted that the question as to whether the evidence of D.W.1 has to be accepted or not has to be decided at the time of disposal of the suit and keeping in mind the aforesaid Principles, the trial court has rightly dismissed the petitioners' petition and therefore he prayed to dismiss this Civil Revision Petition.

6. It is for the parties to choose the witness who has to be examined on their side. The opposite parties cannot prevent the same. At the most, the opposite parties can argue at the time of disposal of the suit that the person who gave evidence is not having personal knowledge and his evidence cannot be accepted. In this case, the trial court has rightly held that whether the evidence of PW1 has to be accepted or not will be decided at the time of disposal of the suit. Therefore this court does not find any illegality or irregularity in the said order.

6. In the result, this Civil Revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

06.10.2020

Vv

Index : Yes/No

Internet : Yes/No

To

The Sub Court,

Madurantakkam, Kanchipuram District.

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CRP (PD).No.2125 of 2015

P.RAJAMANICKAM.J.,

Vv



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