

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRP.NO.1113 OF 2020

AND

C.M.P.NO.6073 OF 2020

Meenakshi

... Petitioner

/Vs/

S.Parameswari

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 18-12-2019 in I.A.No.142 of 2018 in I.A.No.376 of 2014 in O.S.No.36 of 2014 on the file of I Additional District Court, Erode, as prayed for to set aside the same.

For Petitioner : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and decretal order dated 18-12-2019 in I.A.No.142 of 2018 in I.A.No.376 of 2014 in O.S.No.36 of 2014 on the file of I Additional District Court, Erode, praying to set aside the same.

2. The respondent/plaintiff has filed the suit in O.S.No.36 of 2014 for partition and separate possession, rendition of accounts and permanent injunction against the first defendant in the aforesaid suit. Subsequently, the respondent has filed in I.A.No.376 of 2014 before the I Additional District Judge, Erode, to appoint a Receiver and she is contesting the same on various grounds. At the time of filing of the suit, the petitioner was 75 years old and the suit was filed in the year 2014. Now, the petitioner is aged about 79 years, and due to old age, she is unable to move and stand to adduce evidence in the Court. Apart from that, she is bed-ridden, and suffered

from age related diseases and taking treatment for various ailments. In view of the said circumstances, the petitioner is not in a position to come to the Court to adduce evidence on her side, therefore, the petitioner sought for appointment of the Advocate Commissioner, to record her evidence, at her residence. Hence, the said application is dismissed by the Trial Court. Aggrieved by the same, the Civil Revision Petition is filed before this Court.

3. Counter affidavit filed by the respondent in IA, by stating that the application for appointment of Receiver, I.A.No.376 of 2014 was filed along with suit in O.S.No.36 of 2014. After filing of the counter affidavit, arguments were advanced on the side of the respondent in I.A.No.376 of 2014 and the petitioner sought time for arguments in the Receiver application for several hearings, stretching from the year 2015, has been dragging on the proceedings and if really had it been true that oral evidence is necessary, the petitioner ought to have let in the same at the earliest opportunity and the belated application filed after filing the application for appointment of Receiver, completely lacks bona-fide and deserves to be rejected instantly. Thereafter, the trial court has held that the petitioner has not produced any medical records before the Court below to substantiate her claim for the past four years. The respondent further stated that the suit is in trial stage from 16.11.2014 and due to the pendency of the application in I.A.No.376 of 2014, the trial had not yet been commenced. Hence, the respondent herein prayed to dismiss the aforesaid revision petition.

4. The learned counsel for the petitioner submitted that the ground raised by the petitioner before this Court is that there is no prejudice caused to the respondent, if the petitioner is examined through Advocate Commissioner. He further submitted that the delay is only due to pendency of proceedings and such documents as intended by the parties concerned, had been filed. Therefore, the reason stated by the Court below are not correct.

5. By considering the aforesaid reasons as stated by the petitioner in her affidavit filed in support of the interlocutory application, the Court below has considered the same including all the grounds raised by the petitioner and there is no valid reason stated in the said affidavit for appointing the Advocate Commissioner for the purpose of P.W.1's cross-examination as well as for marking of the documents at the residence of the revision petitioner. However, the petitioner has not produced any medical records to substantiate her claim for the purpose of cross-examination of P.W.1 before the Court below. Therefore, there is no bona-fide reason stated in his affidavit to appoint the Advocate Commissioner as per the Rules.

Therefore, the Court below has rightly rejected the contention of the counsel for the petitioner and even this Court does not find any merit in those contentions so as to interfere with the order passed by the Court below in I.A.No.142 of 2018 in I.A.No.376 of 2014 in O.S.No.36 of 2014 on the file of I Additional District Court, Erode, dated 18-12-2019. Hence, the contentions of the learned counsel for the petitioner are liable to be rejected.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

msm

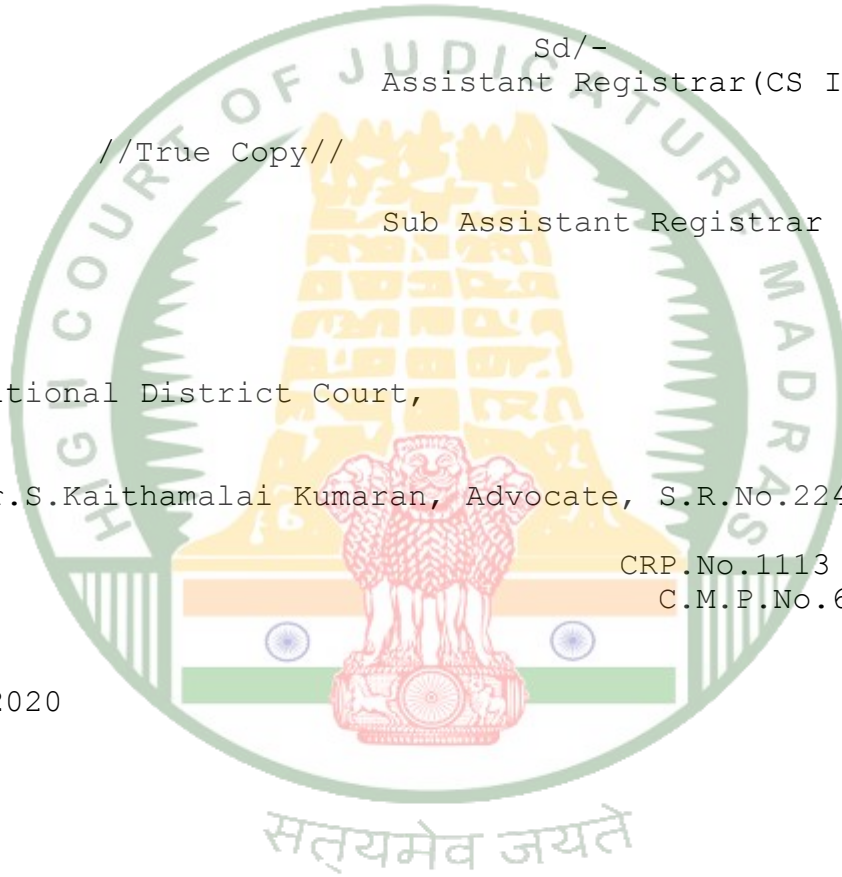
To

The I Additional District Court,
Erode.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.22476

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