

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.3564 of 2018

A.Rajesh

..Petitioner/Plaintiff

Vs.

1. R.Devi

2. A.Sumathi

3. A.Lakshmi

..Respondents/Defendants

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the order dated 25.10.2018 passed by the learned Sessions Judge, Mahila court, Tiruvannamalai in O.S.No.88 of 2017.

For Petitioner : Mr.C.Umashankar

For Respondents : Mr.R.Sreedhar

O R D E R

The plaintiff in O.S.No.4 of 2008 has come up with this revision, challenging an order made by the trial Court on 25.10.2018 made in an application filed by him, seeking to reopen the evidence of the defendants and permit him to further cross examine DW1 and to issue Subpoena to the U.S. Immigration (Embassy) Authority, at Cathetral Road, Chennai to produce documents in respect of Mrs.Shantha Shanmugham, wife of Shanmugham, when she was granted a Visa to visit United States in the year 2007.

2. The reasons for seeking reopening is that the witness compelled his counsel to complete the cross examination on 11.09.2018, as she wanted to travel outside India. It is also stated that a certified copy of the evidence of DW1 furnished to the plaintiff is not complete and a page which contains vital admissions is missing.

3. The trail Court considering the fact that the witness had by then left India, directed her examination through Video conferencing on 31.10.2018. Aggrieved, the petitioner has come up with this Civil Revision petition.

4. I have heard Mr.C.Umashankar, learned counsel appearing for the petitioner and Mr.R.Sreedhar, learned counsel appearing for the respondents.

5. Since there was some dispute at a bar regarding the fact that the signatures of DW1 were omitted to be obtained in one page of her deposition, particularly in cross examination. I had summoned the original deposition from the trial Court. The original deposition has been made available. The cross examination done on 11.09.2018 runs to about four pages. The signature of DW1 has not been obtained in 3rd page. Though Mr.C.Umashankar, learned counsel appearing for the petitioner would suggest that the 3rd page has been substituted, I am unable to agree with the said contention of the said counsel, in as much as the same is a continuation of the evidence and I do not find any possibility of there being any interpolation or addition.

6. However, considering the fact that the witness is available and she can be examined through Video conferencing, the trial Court has also permitted her to be examined through Video Conferencing, I do not see any reason to interfere with the conclusion of the trial Court, in allowing the application for reopening the evidence and examining DW1 through Video Conferencing.

7. As regards the other request for issuing Subpoena to the U.S. consulate, I do not think that the same is necessary, in view of the factual position that pertains in this case. The plaintiff claims title under a Will said to have been executed by one Shanmugham on 09.10.1992. It is not in dispute that Shanmugham died on 24.10.1992. The 1st defendant also sets up title under another Will said to have been executed by Mrs.Shantha Shanmugham, wife of Shanmugam on 30.11.1992 which is marked as Ex.B2. Admittedly, the property is belonged to Shanmugham. If the Will executed by Shanmugham on 09.10.1992 which is relied upon by the plaintiff is held to be true, dehors the Will dated 30.11.1992, the plaintiff would acquire a right to the property. Therefore, the plaintiff need not take the pain of proving that Shantha @ Shanthini was illiterate and she could not have executed the Will dated 30.11.1992.

8. It is settled law that the plaintiff has to succeed on his own case and he cannot rely upon the weakness of the defence. If the Will dated 09.10.1992 is upheld, then Shantha @ Shanthini would only have a life estate and she cannot bequeath the property to the defendants under the alleged Will dated 30.11.1992. The Will dated 30.11.1992 will automatically become invalid, once the Court accepts the Will dated 09.10.1992.

9. I, therefore, see no necessity for issuing a Subpoena to summon all irrelevant documents from the counsels. Hence, the prayer for issuance of Subpoena is rejected and the prayer for reopening the evidence and further cross examination of DW1 is alone permitted. It is open to the trial Court to fix a date for examining DW1 by Video conferencing. The trial Court shall also obtain an acknowledgement regarding the evidence at page 3 of the cross examination dated 11.09.2018 from DW1 when she is examined through Video Conferencing to make the records straight. The Civil Revision petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Mahila court, Tiruvannamalai.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.C.Umashankar, Advocate in SR.NO..29167

+1cc to M/s.R.Sreedhar, Advocate in SR.NO..29176

CRP No.3564 of 2018

AK(CO)
RV(06/10/2020)

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