



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (MD)No.134 of 2020

and

C.M.P. (MD)No.764 of 2020

WEB COPY

1.S.Krishnavadivoo
2.T.Murugananthamani

...Petitioners / Petitioners /
Defendants 1 and 3
-Vs-

1.T.Gajendramathi
2.Arulmurugamathi

...Respondents / Respondents /
Plaintiff and 2nd Defendant

(The 2nd Respondent set ex-parte in trial Court, hence, notice may be dispensed with)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 12.12.2018 passed in I.A.No.286 of 2018 in O.S.No.147 of 2011 on the file of I-Additional Sub-Court, Nagercoil as far as the portion of directing the commissioner to fix the common place for examining D.W.3.

For Petitioners : Mr.V.Meenakshi Sundaram
for Mr.R.Murugan
For Respondents : Mr.D.Saravanan

ORDER

This Civil Revision Petition has been filed against the portion of the order of the trial Court, directing the Commissioner to fix common place for examination of the first defendant as D.W.3.

2.The suit has been filed by the plaintiff against the defendants for declaration and permanent injunction. The parties are related to each other. This fact is not disputed by both sides.

3.It is the contention of the second defendant that the first defendant has settled the property in her favour. Therefore, in order to prove the settlement, the first defendant, who is the mother of the defendants 2 and 3, has to be examined as witness. An application has been taken out before the trial Court to examine the first defendant through the Commissioner appointed by the Court, as she is very old and immobilized. The trial Court, by its order dated 12.12.2018, has appointed an Advocate, by name Mr.R.Ravindran to examine the first defendant and given a liberty to the Commissioner to fix common place, wherein D.W.3 could be examined.



Against which, the present Civil Revision Petition is filed.

4.It appears that the Commissioner has fixed the place of Mathusoothanaperumal Marriage Hall as a common place to examine the first defendant. It is the contention of the learned counsel appearing for the revision petitioners that since the first defendant is very old and not in a position to move out, it is very difficult for her to go to the marriage hall, which is far away from the house. Whereas, Mr.D.Saravanan, learned counsel appearing for the respondents submitted that the Commissioner can examine D.W.3 in any one of the nearby hospitals, situated in the vicinity of the house, she can be examined in the nearby hospital, known as Lakshmi Hospital, Idalakadi, Kanyakumari District, he has no objection for that. He has submitted that he would get necessary permission from the hospital authorities.

5.In such view of the matter, the Commissioner is directed to examine D.W.3 in the aforesaid hospital and it is made clear that while examining the first defendant, both the plaintiff and the second defendant are not permitted to accompany with the first defendant. The cross-examination can be done by the concerned Lawyers in the hospital itself.

6.In the result, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The 1st Additional Subordinate Judge, Nagercoil.

2.The Section Officer, (2 COPIES)

V.R. Records,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MURUGAN, Advocate (SR-4146[F] dated 31/01/2020)

+1 CC to M/s.D.SARAVANAN, Advocate (SR-4160[F] dated 31/01/2020)

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31.01.2020

SMA/13/02/2020/2P/6C