



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) (NPD) No.459 of 2020
and C.M.P (MD)No.2788 of 2020

P.D.P.Chinadurai ... Petitioner/1st Respondent
/1st Plaintiff

Vs.

1.T.Lakshmanan ..1st Respondent/Petitioner/
1st Defendant

2.P.D.P.Mohan

3.P.D.P.Stephen Subburaj

4.P.D.P.Velraja ... Respondents 2 to 4/Respondents 2 to 4/
Plaintiffs 2 to 4

5.P.D.P.Sekar ... 5th Respondent/5th Respondent/
2nd Defendant

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 02.03.2020 made in I.A.No.3 of 2020 in O.S.No.72 of 2013 on the file of the Additional District Munsif Court, Valliyur.

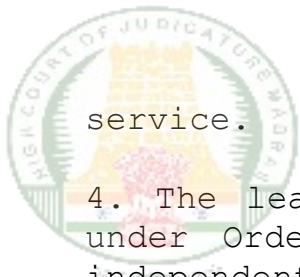
For Petitioner : Mr.A.Arumugam

ORDER

The plaintiff in O.S.No. 72 of 2013 on the file of the Additional District Munsif Court, Valliyur, is the revision petitioner herein. The suit is laid for declaration of title of the plaintiff and the second defendant to the suit property. The suit is resisted by the first defendant.

2.The trial of the case has commenced and the plaintiff has adduced evidence. The matter is now pending and the contesting first defendant has to produce his evidence. At this juncture, he has filed EA.No.3 of 2020 before the trial court to let him examine his son on his behalf and to exempt him from adducing evidence. This was allowed by the trial court Vide the impugned order dated 02.03.2020.

3. Private notice was ordered by this Court on the first defendant. It was returned as 'unclaimed' and this Court holds it sufficient



service.

4. The learned counsel for the revision petitioner submitted that under Order 18 Rule 3A C.P.C a party, who wants to examine an independent witness before he steps into the box, can seek the leave of the court for the same. But a party, who is under a burden to establish his part of the case, cannot be exempted from adducing evidence. If he is competent to give evidence, even the evidence can be given by appointing a Commission in certain circumstances. The revision petitioner cannot seek exemption to adduce evidence due to his choice to examine his son. If exemption to appear and adduce evidence is granted to the defendant, it would imply that the plaintiff may not be in a position to invoke Section 114 illustration (g) of the Indian Evidence Act, and the best evidence could be shut.

5. This Court finds merits in the submission of the learned counsel for the revision petitioner.

6. It is imperative, subject to burden of proof, best evidence should be made available to the court. If in a given case, a witness is granted exemption from tendering evidence which he is in the best position to give or speak to, then, it would amount to court foreclosing its responsibility to ensure reception of best evidence. In a litigious battle, if a party fails to produce best evidence, when he is in a position to tender it, other side is entitled to seek the court an adverse inference. The court cannot forfeit its power to draw adverse inference by its own orders.

7. In the result, this petition is partly allowed and only that portion of the impugned order in I.A.No.3 of 2020 in O.S.No.72 of 2013 on the file of the Additional District Munsif Court, Valliyur, which exempts the first defendant from tendering evidence is set aside. The rest of the order stands unaltered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

<https://hcservices.ecourts.gov.in/hcservices/>



To,

1.The Additional District Munsif Court,
Valliyur.

2.The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.A. ARUMUGAM, Advocate (SR-19241[F] dated 07/10/2020)

C.R.P (MD) (NPD) No.459 of 2020
and C.M.P (MD)No.2788 of 2020
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sss(CO)

TR(28.10.2020) 3P 5C