



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (MD) No. 995 of 2020
and C.M.P (MD) No. 6514 of 2020

WEB COPY

1.M.Marimuthu Gopal Chettiar
2.Mahendran
3.Santhosh

... Revision Petitioners/Respondents/
Defendants

Vs.

1.Mahalakshmi
2.Mariyayee

... Respondents/Petitioners/Plaintiffs

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating to the fair order and decretal order dated 10.03.2020 in I.A.No.02 of 2020 in O.S.No. 16 of 2016 on the file of the 1st Additional District Judge (PCR), Tiruchirappalli.

For Petitioners : Mr.S.Vinod Sathya Lazar

O R D E R

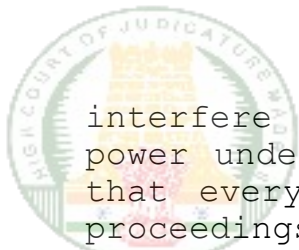
The present petition is filed by the petitioners/defendants in O.S.No.16 of 2016, which is laid by the respondents herein for recovery of money.

2. In that case, the plaintiffs have moved the trial court with an application to appoint a Commissioner for examining an independent witness of the action. This is allowed by the trial court. Aggrieved by the same, the defendants in the suit have come forward with this revision.

3. The learned counsel for the revision petitioners made a strenuous if not a vehement submission, and took this Court through paragraph No.6 of the affidavit wherein it is averred that the independent witness is about 70 years old and suffers from 80% hearing disability. The learned counsel says when a witness is fit enough to come to the court, it is important that he is examined in open court. Secondly, the learned counsel argued that the independent witness resides along with the plaintiffs and therefore, the fairness in recording the evidence of the independent witness may get affected.

4. This Court gave due consideration to the submissions of the learned counsel, but is not adequately convinced that it has to

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interfere with the orders of the trial court in exercise of its power under Article 227 of the Constitution. It needs to be stated that every trial judge has considerable discretion to manage the proceedings as per the Civil Procedure Code. He is the best Judge of the matter before him. Therefore, when the litigants require the High Court to exercise its jurisdiction under Article 227 of the Constitution of India, they have to *prima facie* demonstrate how the exercise of discretion by the trial Court is perverse and has occasioned injustice. Secondly, turning to the facts, when a witness suffers 80% hearing disability, he is good enough to be a candidate for being examined on a commission.

6. As to the second point raised by the learned counsel, this Court does find that there is some merit in it. This Court has to ensure that the proposed witness is examined in a separate room, and at the time of examination, other plaintiffs or other independent witnesses shall not be present in the same room. Even if the counsel for the plaintiffs wants to get any instruction from the plaintiffs as to anything to be asked during the examination, he may have to go out to get instruction and the plaintiffs would not be allowed to enter the room.

7. In fine, this Court dismisses this petition with a direction given as to how the examination of the proposed witness shall take place. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To

The 1st Additional District Judge (PCR), Tiruchirappalli.

Copy to: The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2)

C.R.P. (MD) No.995 of 2020
and C.M.P(MD) No.6514 of 2020
10.12.2020

MK (CO)

CS(11.01.2021) 2P 4C

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