

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.2581 of 2018 and
CMP.No.15530 of 2018

Jambu Kumar

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Petitioner

Vs

- 1.Sakeena
- 2.Mahmooda(died)
- 3.N.Shaifudeen
- 4.S.Abdul Malik
- 5.Majeeda

(respondents 1 & 2 rep. by their
power agent N.Ahmed Jaleel,
No.106/120(Old), Vepery High Road,
Periamet, Chennai 600 003)
(R3 to R5 brought on record as LR's of
the deceased 2nd respondent vide court
order dated 19.07.2021 in CMP.No.
9170 of 2021 in CRP.No.2581 of 2018)

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 01.02.2018 passed in IA.No.17371 of 2017 in OS.No.1630 of 2014 on the file of the II Assistant Judge (FAC), I Assistant Court, City Civil Court at Chennai.

For Petitioner : Mr.N.Nagusah

For Respondents

For R1,3 to 5 : Mr.R.Krishnaprasad
for M/s.Sarvabhauman Associates

R2 : died

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 01.02.2018 passed in IA.No.17371 of 2017 in OS.No.1630 of 2014 on the file of the II Assistant Judge (FAC), I Assistant Court, City Civil Court at Chennai, thereby allowing the petition to appoint advocate commissioner for the purpose of recording cross examination.

2. The petitioner is the defendant and the respondents are the plaintiffs. The respondents filed suit for recovery of money. The suit itself is filed by the power of attorney who is none other the husband of the first plaintiff for recovery of money. The petitioner was the tenant and he is in arrears of rent. Therefore, the respondents 1 & 2 filed suit for recovery of money represented by the husband of the first plaintiff as power of attorney. After chief examination, the power agent could not able to appear before the trial court for cross examination since he had undergone treatment for his

heart attack. The medical records were also filed along with the petition.

3. The learned counsel for the petitioner contended that though the petitioner was set exparte in the said application, the court below ought to have passed orders on merits. Simply because of non appearance of the petitioner, the said application was allowed. The power of attorney cannot be examined on behalf of the Principal in the suit for recovery of money.

4. On perusal of the plaint revealed that the power of attorney is none other than the husband of the first respondent herein. He is being power holder, collected rent from the petitioner herein when the petitioner occupied the petition premises. As per Section 120 of Indian Evidence Act, the husband on behalf of his wife is competent to depose. Therefore, the court below rightly allowed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed.

Consequently, connected miscellaneous petition is closed. No order as to costs.

19.07.2021

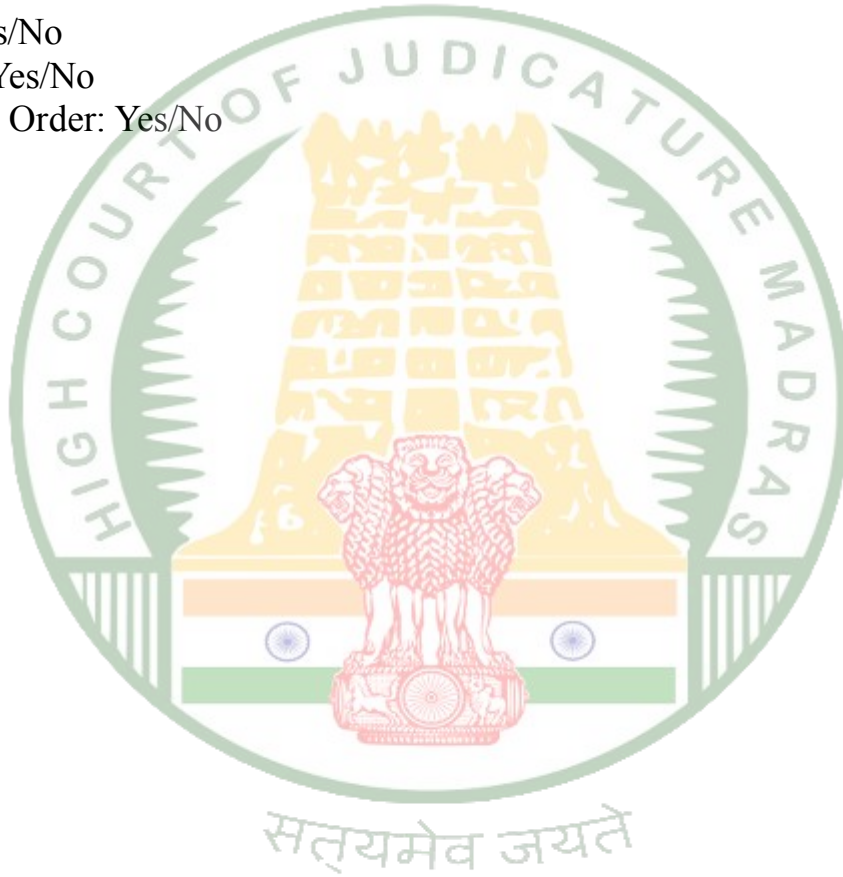
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(2/2)

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No



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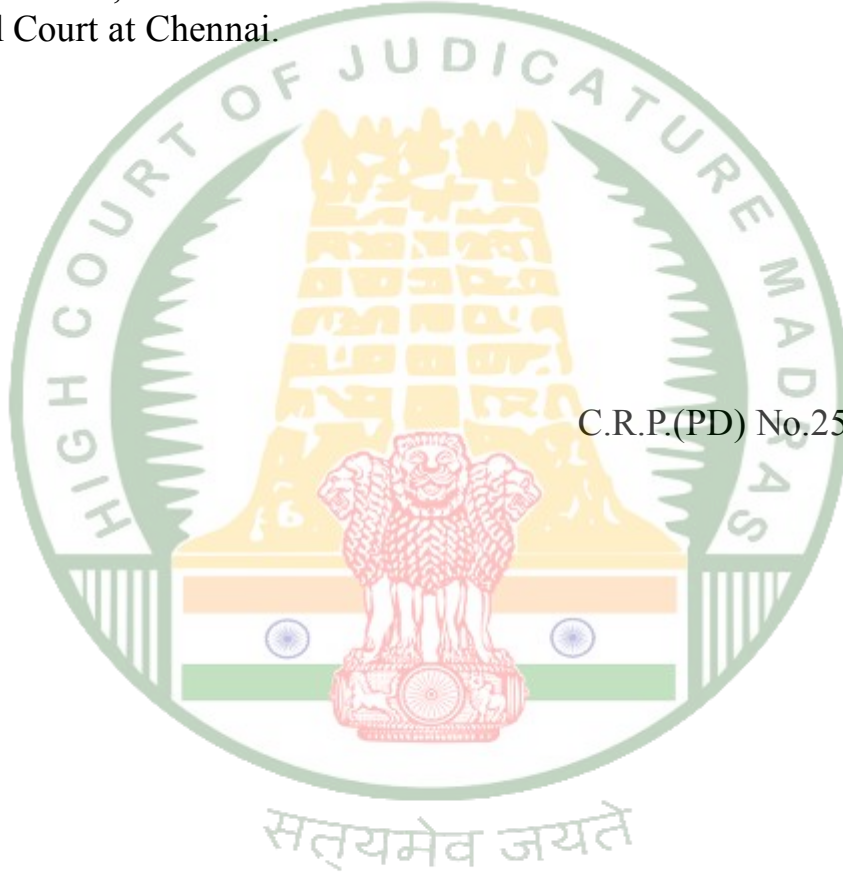
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G.K.ILANTHIRAIYAN,J.

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To

The II Assistant Judge (FAC),
I Assistant Court,
City Civil Court at Chennai.



C.R.P.(PD) No.2581 of 2018

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19.07.2021