

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.1760 of 2021
and C.M.P.No.13595 of 2021
(Through Video Conference)

Rajiv

.. Petitioner

Versus

- 1) Rukumani
- 2) Leelavathi
- 3) Venkatesh
- 4) Thangavel
- 5) Devi
- 6) Mythili
- 7) Kuyili

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 21.04.2021 passed in I.A.No.1 of 2021 in O.S.No.70 of 2016 on the file of II Additional Sub Court Erode, and allow the Civil Revision Petition.

For Petitioner : Mr.S.Kaithamalai Kumaran

WEB COPY
ORDER

This Civil Revision Petition is filed to set aside the order passed in I.A.No.1 of 2021 in O.S.No.70 of 2016 on the file of the II Additional Sub Court, Erode.

2. I.A.No.1 of 2021 was filed for scrapping the evidence of D.W.3. Learned counsel for the petitioner submitted that the petitioner is claiming right to the suit property on the basis of the Will. He was examined as D.W.1 and the attestors to the Will were examined as D.W.2 and D.W.3. D.W.3, one of the attestors has been won over by the other side and therefore, he is not coming to the Court for cross examination by the other side. In such circumstances, he has filed a petition for scrapping the evidence of D.W.3. However, the learned II Additional Sub Judge, Erode dismissed the petition. Against the said order of dismissal, the present Civil Revision Petition has been filed.

3. Learned counsel for the petitioner reiterated his submission that D.W.3, one of the attestor of the Will has been won over by the other side and he is not coming to the Court for facing the cross examination. It is represented by the learned counsel for the petitioner that D.W.3 was summoned to appear before the Court and to give evidence. Accordingly, he appeared and his chief examination was recorded. As per Order XVI Rule 12 of the Civil Procedure Code, the procedures to be followed if the witness fails to appear are enlisted and for better understanding, the same is extracted hereunder:

"Order XVI- Summoning and Attendance of Witnesses

12. Procedure if witness fails to appear

[(1)] The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs to such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the Costs and fine aforesaid, the Court shall order the property to be released from attachment.

[(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.]"

If D.W.3 does not turn up for cross examination, it is for the Court to enforce his attendance through the aforesaid Rules provided under the Civil Procedure Code.

4. Despite the efforts taken by the Court, if D.W.3 does not show up for cross examination, then, his chief examination has to be closed and it will have no force at all. If he appears for cross examination, the other side has to cross examine D.W.3. If he turns hostile during the course of cross examination of

G.CHANDRASEKHARAN, J.,

sts/gd

the other side, the petitioner can very well treat D.W.3. as hostile witness and cross examine him. The scrapping of evidence of D.W.3 at this stage is not the right course of action. Therefore, the learned II Additional Sub Judge, Erode has rightly dismissed the petition.

5. This Court finds no reason to interfere with the order of dismissal of the petition by the learned II Additional Sub Judge, Erode. The Court may proceed with the examination of D.W.3 as indicated above. Accordingly, **Civil Revision Petition is Dismissed.** No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते 31.08.2021

Speaking Order / Non-Speaking Order

Index: Yes / No

sts/gd

To:

The II Additional Sub Court,
Erode.

Order made in
C.R.P.(PD)No.1760 of 2021