

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

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

CRP.PD.No.4355 of 2017

and

CMP.No.20680 of 2017

Sheela Suganthi

..Petitioner

Vs.

1.Halima Bai
2.I.Salai Mohamed Sait
3.Iboo Sait
4.Sattar Sait

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair order and decretal order of the learned Subordinate Judge, Udthagamandalam made in IA.No.209 of 2017 in OS.No.75 of 2014 dated 19.08.2017.

For Petitioner

: Dr.C.Ravichandran

for Mr.S.D.Venkateswaran

For Respondents

For R1

:Mr.Srinath Sridevan

R2

: died

For R3

: Mr.T.Mohan

for Mr.M.Murali

R4

: Notice served

ORDER

This Civil Revision Petition is arising out of fair order and decretal order of the learned Subordinate Judge, Udthagamandalam made in IA.No.209 of 2017 in OS.No.75 of 2014 dated 19.08.2017 thereby dismissing the petition filed by the petitioner to eschew the evidence of DW1.

2. The petitioner is the plaintiff. She filed suit for declaration declaring that the judgment and decree dated 28.10.1996 passed in OS.No.148 of 1996 as null and void. The only ground raised by the petitioner is that DW1 deposed on behalf of the first defendant in the suit. He categorically mentioned that he is the power holder of DW1 and on the capacity of the power holder deposed before the trial court. Admittedly, he did not mark any power of attorney and categorically admitted that no power of attorney executed in favour of DW1. The petitioner cross examined only to the effect that DW1 was not power holder to the first defendant and he deposed. In respect of other depositions, the petitioner did not cross examine since DW1 is not the power holder of the first defendant and he is not competent to depose on behalf of the first defendant. The court below also noted that admittedly there is no power of attorney executed in favour of DW1.

However, he has been examined as one of the witness on behalf of the defendants as DW1. Therefore, the question of eschewing the evidence of DW1 would arise only at the time of arguments. Therefore, this Court finds no irregularity or infirmity in the order passed by the court below. However, the petitioner is permitted to cross examine DW1.

3. Accordingly, the petitioner is directed to cross examine DW1 on the next hearing date, failing which the trial court is directed to proceed with the suit in accordance with law. Further, the trial court is directed to dispose of the suit within a period of thirty days from the date of receipt of copy of this order.

4. With the above direction, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

05.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The Subordinate Judge,
Udhagamandalam



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