



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1541 of 2021

and

C.M.P (MD) No.8465 of 2021

WEB COPY

Suyambukani

... Petitioner/Petitioner/Plaintiff

Vs.

1.Jayaraj Nadar

2.Samuvel

3.Selvan

... Respondents/Respondents/Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the Civil Revision Petition, by setting aside the fair order and decreetal order, dated 10.08.2021 made in I.A. No.79 of 2021 in O.S.No.46 of 2013, on the file of the District Munsif Court, Saathankulam, Thoothukudi District.

For Petitioner : Mr.S.R.Anbarasu

O R D E R

The Civil Revision Petition has been filed seeking to set aside an order, dated 10.08.2021, passed in I.A.No.79 of 2021 in O.S.No.46 of 2013, on the file of the District Munsif Court, Saathankulam, dismissing the petition to appoint an Advocate Commissioner to record the evidence of the petitioner/plaintiff.

2.The learned counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.46 of 2013, on the file District Munsif Court, Saathankulam, seeking for declaration and for recovery of possession. The respondents have filed a written statement. Issues were framed and the case was posted for trial. The petitioner is aged about 77 years and she has suffered with fracture in the left distal radius and also in the left hip trochanter. Since she is immobilized, she had filed a petition under Order 26 Rule 1 of the Code of Civil Procedure, to appoint an Advocate Commissioner to examine her as a witness in this case and record her evidence. The Trial Court, without considering the physical condition of the petitioner and the necessity of appointing Advocate Commissioner and also without considering the affidavit filed by the petitioner that she is immobilized, had dismissed the petition, holding that the petition is filed to



delay the suit.

3.The learned counsel would further submit that the reasoning given by the Judge is that the trial has not commenced after eight years and that the Court has held that there is no progress in 90% of the cases pending in its Court, wherein, appointment of the Advocate Commissioner is made to record evidence. He would further submit that the suit has been filed by the petitioner for declaration and for recovery of possession and the possession is also with the respondents and there is no necessity for the petitioner/plaintiff to delay the progress of the suit, whereas, the trial Court has rendered an illogical finding that the petitioner is the reason for the delay.

4.The learned counsel would further submit that the petitioner was under the impression that the Court will accept the affidavit and therefore, the petitioner had not filed the medical records before the Court at that time. He would further submit that the petitioner has now furnished all the medical records of the petitioner before this Court and would seek to set aside the order.

5.The learned counsel for the petitioner further reiterated that the date may be fixed after the consultation with the respondent's side and on date being fixed, the petitioner undertakes to complete her evidence by filing proof affidavit on the same day and she is also prepared to pay the necessary charges for the commissioner as fixed by the Court.

6.Heard the learned counsel for the petitioner and perused the materials available on record, including the medical records.

7. The petitioner is the plaintiff in O.S.No.46 of 2013 filed for declaration and recovery of possession. The petitioner is a lady aged about 77 years, the medical records furnished by the petitioner discloses that she is a known case of Osteoporosis, who has suffered with fracture of the left distal radius and fracture of the left hip trochanter. It is stated that the petitioner is immobilized and she is unable to move out of her house. In the opinion of this Court that it is a fit case for appointment of an Advocate Commissioner to examine the petitioner/plaintiff, as a witness.

8.In view of the above, the Civil Revision Petition stands allowed. The trial Court is directed to appoint an Advocate commissioner to examine the petitioner as witness in the case and record her evidence. The learned counsel for the petitioner/plaintiff is permitted to file the proof affidavit in



advance on a particular date and thereafter, the trial Court shall fix a date for cross examination of the petitioner/ plaintiff in the presence of the Advocate Commissioner.

9. The Advocate Commissioner shall receive the copy of the proof affidavit of the petitioner in advance and hand over the same to the learned counsel for the respondents and thereafter, another date may be fixed by the Advocate Commissioner for recording evidence of the petitioner/plaintiff. The learned counsel for the petitioner/plaintiff shall give an undertaking that he will cooperate for cross examination on the date fixed by the Advocate Commissioner, without fail. The trial Court shall fix the remuneration of the Advocate Commissioner and it shall be paid by the petitioner.

10. With the above observations, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif,
Saathankulam,
Thoothukudi District.

C.R.P. (MD) No.1541 of 2021

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RD/PM(10/11/2021) 3P 2C