



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.215 of 2022
and C.M.P. Nos.1094 & 4544 of 2022

Thangarasu

...

Petitioner /
Plaintiff

versus

1.Ponnudurai
2.Palaniammal
3.Saraswathi

...

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.11.2021 made in I.A.No.5 of 2021 in O.S.No.150 of 2015 on the file of the learned Sessions Judge [Fast Track Mahila Court], Namakkal.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondents : Mr.P.Chandrasekaran



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ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Sessions Judge [Fast Track Mahila Court], Namakkal dated 30.11.2021 made in I.A.No.5 of 2021 in O.S.No.150 of 2015.

2. The revision petitioner is the plaintiff in the suit and he has filed the suit against the defendants for the relief of partition and other reliefs. During the course of trial, when the power agent of the 1st defendant was examined as D.W.1, a previous deposition which is said to have been given by the plaintiff in an earlier criminal proceedings in C.C.No.118 of 2012 on the file of the learned Judicial Magistrate, Paramathi, was marked as Ex.B.1. The revision petitioner / plaintiff has subsequently filed a petition to reject Ex.B.1 for the reasons stated by him in the petition. The said petition was dismissed. Aggrieved over that, the petitioner has preferred this Civil Revision Petition.

3. The learned counsel for the petitioner submitted that since the deposition is given by a living person, the same ought not to have



been marked by the 1st defendant as Ex.B.1. The 1st defendant could be confronted about the previous statement of a person by calling him as a witness and confront him about his deposition in the earlier case. In support of the above contention, he cited the decisions of this Court held in C.R.P.(PD)No.136 of 2009 dated 16.07.2009.

4. The learned counsel for the respondents submitted that since the certified copy of the deposition was marked as Ex.B.1 and it is only a public document, it is admissible in evidence and hence, Ex.B.1 need not be struck off; the learned trial Judge has rightly dismissed the petition and it does not require any interference.

5. Despite the plaintiff filed the suit, he did not examine himself. His wife seems to have been examined as P.W.1 after the plaintiff's side evidence was over. The defendants have given oral evidence and during that course, Ex.B.1, which is said to have been the deposition of the plaintiff's wife given in the earlier criminal proceedings in C.C.No.118 of 2012 on the file of the learned Judicial Magistrate, Paramathi was marked.



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6. The proper course for the 1st defendant would be to confront about the said deposition with the person, who has given the same. In the judgment of this Court in C.R.P.(PD)No.136 of 2009 dated 16.07.2009 [*Vasanthi vs. N.S.Palanisamy*] referred by the learned counsel for the petitioner, it is held as under;

“10.The dispute in the present matter relates to a will. It was the case of the respondent that in a previous criminal proceeding the first revision petitioner has admitted the execution of will which was denied subsequently in her statement. Therefore, it was only to contradict the evidence of the first petitioner, the respondent proposed to use her evidence given earlier in the criminal proceeding. However, the fact remains that the first petitioner was not examined as a witness. Even before examining her as a witness on the side of the petitioners / defendants the respondent has taken steps to mark her deposition as exhibit by recalling P.W.1. The proper course would be to cross-examine the first petitioner on the basis of her previous statement given in a judicial proceeding and to cite her attention to the relevant portion of her evidence. It is always possible for the parties to put such questions even in the form of question and answer. Therefore, I am of the view that the course adopted by the learned trial Judge in marking the deposition of the petitioner in an earlier criminal proceeding has no sanction of law. Therefore the order impugned in this Civil Revision Petition is liable to be set aside.”



7. But it seems that the 1st defendant was constrained to produce the document and marked as Ex.B.1 due to the non-examination of the plaintiff as witness. Given the special circumstances of the case, the learned trial Judge has allowed the marking of the above deposition as Ex.B.1, however subject to the objection. Despite the document was marked as Ex.B.1, its relevancy and evidentiary value etc. can be agitated by the parties during arguments and it is for the learned trial Judge to render a finding on this aspect in the judgment. Since the document has already been marked as Ex.B.1 and the plaintiff, who is the deponent did not choose to examine himself as a witness, I do not find any reason for interference.

8. With the above observations, this Civil Revision Petition is disposed of.

9. Taking into consideration of the long pendency of the suit, it will be appreciable if the learned trial Judge disposes the suit at the earliest. Hence, the learned Sessions Judge [Fast Track Mahila Court], Namakkal, is directed to dispose of the suit in O.S.No.150 of 2015 as



expeditiously as possible. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs.

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Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

The Sessions Judge [Fast Track Mahila Court],
Namakkal.



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R.N.MANJULA, J.

sri

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