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CRP.(PD).No. 2848 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.(PD).No. 2848 of 2019

and

CMP.Nos. 18650 & 21296 of 2019

1. Abitha Banu
2. A.Mansoor Alikhan

... Petitioners

Versus

1. S.P. Appavoo (Died)
2. A. Pari
3. Rani
4. Nagalakshmi

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 26.06.2019 passed in I.A.No.2 of 2019 in O.S.No. 10171 of 2010 on the file of Principal Judge, City Civil Court, Chennai.

For Petitioners	: Mr.A. Mansoor Alikhan [Party-in-Person]
For R1	: Died
For RR 2 to 4	: Mr.A.Pari Ms.Rani Ms. Nagalakshmi ---



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 26.06.2019 passed in I.A.No.2 of 2019 in O.S.No. 10171 of 2010 on the file of Principal Judge, City Civil Court, Chennai.

2. The revision petitioners herein are the defendants and the 1st respondent herein is the plaintiff in the original suit proceedings.

3. On a careful perusal of the records, it is seen that the first respondent/plaintiff filed the suit in O.S.No.10171 of 2010 before the learned Principal Judge, City Civil Court, Chennai, for declaring that the plaintiff is the owner of the property in S.Nos.3 and 4, Block No.1, measuring an extent of 3375 sq.ft., situated at Thirukumarapuram, Kodambakkam, Puliyur Village at No.109, morefully described in the schedule thereunder, and for mandatory injunction directing the defendants to demolish the superstructure put up in the suit property and to hand over the vacant possession of the suit property, morefully described in the schedule against the defendants 1 & 2. The defendants 1 & 2 have denied all the allegations made in the plaint and strongly



objected to the suit by way of filing written statement. During the pendency of the suit proceedings, the petitioners/defendants filed I.A.No.2 of 2019 seeking to eschew the evidence of DW1. After perusing the records, the trial Court dismissed the said application by order dated 26.06.2019 on the ground that "no valid reason" was assigned by the petitioners/defendants. Aggrieved by the said order, the petitioners/defendants have filed this revision.

4. The contention of the 2nd petitioner/2nd defendant is that, after filing proof affidavit, the first defendant, namely, Abitha Banu developed physical ailment and was diagnosed as if she was suffering from Acute Lumbo Sacral strain and was advised by the Doctor to take rest and not to walk long distance. Therefore, she is not in a position to appear before the Court and hence, the defendants pray for eschewing the evidence of DW1-Abitha Banu and seek permission of this Court to examine the 2nd defendant as witness on the side of the defendants. Further, the first defendant is a Parda Woman. Therefore, the defendants pray to examine the 2nd defendant as a witness on the side of the defendants.



5. The contention of the 2nd plaintiff is that the 2nd plaintiff was personally heard and in this case, the ground for eschewing the evidence of DW1 is that she fell ill, for which, no document has been filed. Even as per the affidavit, she is suffering from Acute Lumbo Sacral strain and the Doctor advised her to take rest and not to walk long distance. The ailment so alleged is not so serious. Therefore, she can be brought to the Court through a vehicle or she can be examined through an Advocate Commissioner. Furthermore, the 1st defendant filed her proof affidavit and only to create multiplicity of proceedings, the defendants have filed the above revision and hence, the impugned order is not to be entertained and he prays for dismissal of the above revision.

6. As per the submission of the revision petitioners/defendants, the second defendant's wife, namely, Abitha Banu is not giving evidence due to illness and seeking permission to examine himself as a witness on behalf of his wife also. Furthermore, the 1st defendant is a Parda Woman and she may be exempted from giving evidence and she is not in a position to give evidence before the trial Court. But the trial Court has failed to consider all those points and erroneously dismissed the



application and they prayed to set aside the findings of the trial Court.

7. The contention of the 3rd respondent is that the defendants illegally grabbed the property and the finding of the trial Court is that he is not able to contact the counsel and realize the ex-parte decree and also preferred Execution Application before the Trial Court and the same was taken up by the executing Court and is also not able to realize the ex-parte decree passed in this suit.

8. During the pendency of the suit proceedings, the plaintiff was examined as PW1 and the second defendant is praying to eschew the evidence of DW1. The plaintiff filed the proof affidavit and cross examination was not done by the plaintiff. Admittedly, she is a Parda Woman and so, the husband of the first defendant was a witness on behalf of his wife also, and the trial Court has failed to appreciate the facts narrated in her affidavit and erroneously dismissed the application. Hence, this Court is inclined to allow the revision filed by the petitioners/defendants.



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9. Accordingly, this Civil Revision Petition is allowed. The order dated 26.06.2019 passed in I.A.No.2 of 2019 in O.S.No. 10171 of 2010 on the file of Principal Judge, City Civil Court, Chennai. is hereby set aside. The 2nd petitioner/2nd defendant is directed to let in evidence on behalf of his wife also as a witness and further, the trial Court is directed to dispose of the suit as expeditiously as possible, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs in this revision. Consequently, connected Miscellaneous Petitions are closed.

30.11.2022

msm

Speaking Order : Yes/No

To

1. The Principal District Judge,
City Civil Court, Chennai.

2. The Section Officer
V. R. Section
High Court of Madras.



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T.V.THAMILSELVI, J.

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