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W.A.No.2297 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.A.Nos.2297 of 2022
and
C.M.P.No.17526 of 2022

P.S.Mallikarjun

...Appellant

Versus

Income Tax Officer,
City Circle Office of
the Income Tax,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 11.08.2022 made in W.P.No.20575 of 2022.

For Appellant

: Mr.M.Balasubramanian

For Respondent

: Mrs.Hema Muralikrishnan,
Senior Standing Counsel.



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JUDGMENT

Mrs.Hema Muralikrishnan, learned senior standing counsel takes notice for the respondent. By consent of the parties, the writ appeal is taken up and disposed of.

2. The appellant has filed the Writ Appeal against an order dated 11.08.2022 passed in W.P.No.20575 of 2022. The writ petition was filed by the appellant espousing the cause of his wife for a simple mandamus. The specific case of the petitioner is that the petitioner's wife has filed a suit in C.S.No.803 of 2011 against one P.M.Elavarasan and the said P.M.Elavarasan filed cross suit in C.S.No.159 of 2012 wherein the parties have been examined. The suits have been transferred to the IV Additional City Civil Judge, City Civil Court, Chennai and renumbered as O.S.Nos.110 and 111 of 2020. Under these circumstances, the appellant appears to have sent a representation on 01.09.2021 along with the copies of the sale deeds to the respondent herein for necessary legal action to be initiated against the said P.M.Elavarasan. The learned single Judge, after considering the arguments, at



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the time of admission, has dismissed the writ petition and also imposed costs of Rs.50,000/- on the ground that neither the petitioner's wife nor the said Ilavarasan has been made a party in the said writ petition. The relevant portion of the order reads as follows:

6. The petitioner refers to a suit filed by his wife against the third party. Neither the wife nor the third party are before me in this Writ Petition. Therefore, it is more than abundantly clear to me that the petitioner is simply seeking to perpetrate his private grievance as against the third party in the guise of a good citizen. Such attempt, in my view, is apparently mischievous and I have no intention of encouraging the same.

7. In light of the narration as above, this Writ Petition is dismissed with costs of Rs.50,000/- payable by the petitioner to the Cancer Institute, Adayar, Chennai, within two weeks from today.

3. We have considered the arguments advanced by the learned counsel for the appellant and learned standing counsel for the respondent.

4. We are in agreement with the views expressed by the learned Single Judge while dismissing the Writ Petition. Therefore, there is no merit in the present Writ Appeal. That apart, the appellant cannot rely on Section 120 of



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the Indian Evidence Act, 1872, to justify in filing of the Writ Petition. Section 120 of the Indian Evidence Act, 1872 reads as under:-

120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial. - In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

5. Only in a proceeding initiated before a Court of law or any authority, the appellant could appear and depose evidence on behalf of his wife. Therefore, the Writ Petition could not have been filed by the appellant as a witness of his wife. It was for the appellant's wife to have filed the said Writ Petition after impleading the proper and necessary parties.

6. We are therefore inclined to dismiss this Writ Appeal. We however expunge the cost imposed on the appellant, considering the fact that the appellant's wife may have a case against the said P.M.Ilavarasan. The learned City Civil Judge, before whom the suits are pending, shall take up the cases,



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proceed and dispose of the same, preferably within a period of twelve (12) months from the date of receipt of a copy of this Judgment.

7. This Writ Appeal is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(S.V.N., J.) (C.S.N., J.)
18.10.2022

Internet : Yes
Index : Yes / No
vsi

To
Income Tax Officer,
City Circle Office of
the Income Tax,
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