



C.R.P (PD). No.1169 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.03.2023**

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P (PD). No.1169 of 2022
and C.M.P.No.6154 of 2022

M.Anjappa

...Petitioner

Vs

J.Parvathi

..Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order and decretal order dated 23.12.2021 passed in I.A.No.1 of 2021 in O.S.No.222 of 2018 by the learned Additional District Judge, Hosur and allow the Civil Revision Petition.

For Petitioner : Mr.K.Sathyabal

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the order dated 23.12.2021 made in I.A.No.1 of 2021 in O.S.No.222 of 2018 filed under Order 3 Rule 1 and 2 and Section 151 of C.P.C to permit the special Power of Attorney Holder, Mr.A.Lakshman, who is the petitioner's son to conduct the suit proceedings.

2.The petitioner herein is the defendant in the suit O.S.No.222 of 2018



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filed by the respondent/plaintiff on the file of the Principal District Court, Krishnagiri for the relief of specific performance and other consequential reliefs. The defendant also contested the suit. Now the suit is posted for examination of defendant's side witness. Since the petitioner is an octogenarian and due to his health condition, he is unable to appear before the Court to adduce his evidence. He executed a Power of Attorney in favour of his son to depose on behalf of him. The petitioner / defendant has filed an application I.A.No.1 of 2021 on the file of the Additional District Court, Hosur seeking to permit his son as a Special Power of Attorney Holder to conduct the suit proceedings. The said application was objected by the plaintiff. On hearing both sides, the learned trial Judge dismissed the said application holding that if he has suffered ailment owing to his age and illness, he can be examined through an Advocate Commissioner. Aggrieved by the same, the defendant has preferred this revision.

3.Though notice has been served on the respondent, there is no representation on behalf of her either in person or through counsel.

4.On perusal of the records, it is seen that the plaintiff has filed the suit



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for specific performance and the defendant also contested the suit. Now, the suit is posted for defendant's side evidence. Since the defendant is aged about 80 years old and suffered with illness, he gave the Power of Attorney to his son to contest the suit on behalf of him, but the trial Court has not accepted it and stated that if he has suffered with illness, he can be examined through the Advocate Commissioner.

5.Considering the fact that the petitioner is aged about 80 years old and owing to his health condition that he could not hear and speak as alleged in the affidavit filed in support of this petition, he would not be able to adduce evidence and also the fact that petitioner's son is entitled to depose on behalf of his father, no prejudice would be caused to the plaintiff by examining the son of the defendant. The trial Court, without considering the said aspect, has erroneously dismissed the said application. However, there is no defence available to the plaintiff. He can work out the same before the Power of Attorney Holder, who is going to be examined as D.W.1.

6.Accordingly, the impugned order passed by the learned Additional District Judge, Hosur in I.A.No.1 of 2021 in O.S.No.222 of 2018 dated 27.12.2021 is set aside and the Civil Revision Petition is hereby allowed. No



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costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

13.03.2023

Speaking Order: Yes

Index : Yes/No

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Note: Issue order copy on 15.03.2023

To

1. The learned Additional District Judge, Hosur
2. The Section Officer,
V.R.Section, High Court, Madras



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T.V.THAMILSELVI, J.

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