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CRP No.2189 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2189 of 2019
and C.M.P.No.14113 of 2019

A.Rani

.... Petitioner

Vs

1. Somasundaram
2. Saradambal
Respondents

...

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.04.2019 in I.A.No.139 of 2018 in O.S.No.7 of 2014 on the file of Mahila Court, Perambalur and allow the I.A.No.139 of 2018 in O.S.No.7 of 2014 on the file of Mahila Court, Perambalur.

For Petitioner : Mr.P.R.Krishna Raj
for Mr.Shangar Murali

For Respondents : Mr.Dinesh Kumar
for R.1
: No appearance for R.2

ORDER

The second defendant examined a witness in order to prove a Will.

Unfortunately, for the second defendant, the witness had given up certain facts



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during the time of cross examination by the plaintiff. Finding that the witness had gone against her case, the second defendant had filed an application in I.A.No.139 of 2018 for the purpose of reopening the evidence of D.W.2 and for the purpose of cross examination of the said witness.

2. For the mere fact that the witness goes against the proof affidavit does not make the witness a hostile one. In fact, an opportunity was granted to the petitioner for the purpose of re-examination. At that stage, benefit was not availed for clarifying the evidence that was given by D.W.2.

3. Learned counsel for the petitioner would submit that he wants to summon and cross examine the witness only for the purpose of proving that the said witness is currently working for the plaintiff.

4. If that is the situation, the link between the witness and the plaintiff can be proved by way of production of documents. The entire case revolves around a Will that has been projected by the second defendant. The said Will can be proved by examination of any other party. The fact that one witness goes against the case of the plaintiff does not mean that heavens are going to fall and



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her case is going to be demolished. It is always open to the second defendant to examine the other attesting witnesses in order to prove that the document had in fact been executed. Apart from that, if the second defendant wants to prove that the witness is unworthy of being relied upon (though was produced before the Court by the second defendant), it is always open to the second defendant to let in evidence to substantiate the same. That does not mean that the second defendant gets a right to cross examine her own witness when “hostility” is not proved. Therefore, I do not find any merit in this revision.

5. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2023

Index:Yes/No
Speaking order/Non-speaking order
sr

To

The Sessions Judge,
Mahila Court,
Perambalur.

V.LAKSHMINARAYANAN,J.



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