



C.R.P.No. 2165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2165 of 2023

and

C.M.P.No. 13170 of 2023

Ramasamy

.. Petitioner

Vs

1.Pappathi

2.Aruna

3.Ambiga Devi

Palanisamy

4.Rajamanikam

5.Sellammal

6.Neethiyakumar

7.Boopathi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the proceedings / evidence of the DW5 dated 20.03.2023 made in O.S.No.63 of 2010 by the learned Subordinate Judge, Namakkal.

For Petitioner

: Mr. Sunil Kumar
for Mr. S. Sivakumar

ORDER



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Challenging the observation made by the trial Judge while recording the evidence of D.W.3, the first defendant has preferred this revision.

2. The learned counsel for the petitioner / first defendant submits that before the trial Court, D.W.3, Kuttiappan was examined as one of the attesor of the Will dated 20.09.1993. He was examined originally on 08.03.2023 elaborately. He was cross examined by the plaintiff and again he was recalled on 20.03.2023, on that day, in respect of another Will said to have been executed by one Kaliammal, was cross examined.

3. During the said cross examination, the witness, Kuttiappan deposed that he was not aware of the said Kaliammal. Subsequently, after completion of the evidence, he refused to sign the deposition. Further, he also deposed that he was not signed as attesor in the Will executed by Chinna Gounder. When he refused to sign in the deposition, the trial Judge made an observation that the said witness was signed as a witness in the Will, Chinna Goundar and not signed as a witness in the Kaliammal and



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deposition also typed in a wrong manner, so he refused to sign in the deposition but the said witness was examined in the open Court in the presence of both plaintiff and defendant counsel. To that effect, both the counsels signed in the said deposition. Therefore, Kuttiappan was examined on 20.03.2023 by the plaintiff in the presence of both the counsels in the open Court and what he deposed is recorded by the trial Judge.

4. Though the witness refused to sign in the deposition but he was present in the open Court and gave evidence was recorded by the trial Judge is sufficient. To that effect, the evidence recorded on 20.03.2023 can be taken into consideration. Therefore, the observation made by the trial Judge on 20.03.2023 in respect of not signing the deposition by the defendant as such is also perused. Without influence of the said observation, both the parties are entitled to rely the evidence of D.W.3.



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

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Index :Yes/No

Neutral Citation :Yes/No

AT

To

The Subordinate Judge, Namakkal.



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T.V.THAMILSELVI, J.

AT

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