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CRP No. 4067 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.11.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4067 of 2023
and
CMP.No.24888 of 2023

Kanniyammal

... Petitioner

Versus

Thirumal Naicker

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 14.03.2023 passed in I.A.No.1 of 2022 in O.S.No.11 of 2016 on the file of District Munsif – cum - Judicial Magistrate, Tirukalukundram.

For Petitioner : Mr. B.Vijayakumar

ORDER

The petitioner has filed this petition to set aside the fair and decretal order dated 14.03.2023 passed in I.A.No.1 of 2022 in O.S.No.11 of 2016 on the file of District Munsif – cum - Judicial Magistrate, Tirukalukundram.



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2. Heard Mr.B.Vijayakumar, learned counsel for the petitioner and perused the materials available on record.

3. Before the trial Court the respondent / plaintiff has filed a suit O.S.No.11 of 2016 for permanent injunction restraining the respondent / defendant, their men and agents from interfering with his possession over the suit property. The plaintiff was examined as P.W.1 and due to the medical condition, he is completely bedridden and it is not possible for him to give evidence. Thereafter, the plaintiff has filed an I.A.No.1 of 2022 under Order III Rule 2 of CPC, to permit the plaintiff's daughter Manjula, as Special Power of Attorney, to conduct the case and to give evidence on behalf of plaintiff. On considering both sides submissions, the learned trial Judge allowed the IA with a direction that the power agent can depose only about the facts within her personal knowledge and the same is upheld in the Judgement of Hon'ble Supreme Court of India relied on the side of the respondent in the case of ***“Janki Vashdeo Bhojwani and another vs.Indusind Bank Ltd and others reported in (2005) 2 SCC 217”***. Aggrieved the same, the petitioner has preferred the Civil Revision Petition.



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WEB COPY 4. The learned counsel for the revision petitioner submitted that in the year 1967 she purchased the property and enjoying the same as an absolute owner and she is also aged about morethan 70 years. Now at the time of trial the plaintiff with an ulterior motive filed application to conduct the trial through his daughter with an intention to drag on the proceedings and the same was erroneously allowed by the learned trial Judge.

5. On a perusal of the records, it reveals that both the petitioner and the respondent are morethan 75 years old and the case is pending from the year 2016 onwards. The revision petitioner submitted that to harass the defendant, the plaintiff has filed a vexatious suit, even without submitting proper documents. However, the plaintiff is entitled to represent through Power of Attorney as rightly observed by the learned trial Judge, which needs no interference by this Court.

6. On seeing the fact that both the parties are more than 75 years and the plaintiff also approached the Court from the year 2016, but during the trial the plaintiff has filed application to conduct the trial though Power of Attorney, as such shows that, he wants to drag on the proceedings. Therefore,



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T.V.THAMILSELVI, J.

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the learned trial Judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No

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To

- 1.The District Munsif – cum - Judicial Magistrate,
Tirukalukundram.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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