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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 19.10.2023

CORAM :

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

C.R.P.No.3084 of 2023

and

CMP.No.19088 of 2023

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1.G.Rubella

2.D.Victor Rajapandiyan

... Petitioners

Vs.

1. Rajammal

2.G.M.K.Kondappan

3. Loganayagi

4.Vasuki

5.D.Santhi

6.M.p.Arumugam

7.Komarayal

8.M.Velumani

9.Mageshwari

10.Aiyappan

11.Radhiga

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 05.06.2023 made in I.A.No.8 of 2022 in O.S.No.65 of 2019 on the file of III Additional District Court, Erode, Gobichettipalayam.



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For Petitioners : Mr.T.L.Thirumalaisamy  
For Respondents : Mr.N.Manokaran

### **ORDER**

The petitioner has filed this petition to set aside the fair and decreetal order dated 05.06.2023 made in I.A.No.8 of 2022 in O.S.No.65 of 2019 on the file of III Additional District Court, Erode, Gobichettipalayam.

2. Before the trial Court the petitioners have filed the suit in O.S.No.65 of 2019, for declaration, declaring that the sale deed executed by the defendants 1 to 5 infavour of the defendants 6 to 11 dated 06.06.2019, on the file of the Sub-Registrar Office, Gobichettipalayam as null and void and other consequential relief. The defendants also appeared and contested the case. Now the trial is commenced. The petitioners have filed an I.A.No.8 of 2022 in O.S.No.65 of 2019, before the learned III Additional District Judge, Gobichettipalayam, praying to appoint a Court commissioner to examine the 2nd petitioner as PW.1 in chief and cross and record his evidence. The 2<sup>nd</sup> petitioner met with an accident, and sustained



leg injury and he is unable to walk by undergone the operation on 22.06.2022 and plate also fixed, therefore he unable to work at least for a period of 6 months. Hence he prays to appoint the commissioner to proceed the matter.

3. The said application was contested by the defendant stating that the alleged accident was occurred on 22.06.2022. Therefore, he undergone operation, but he has not sustained with permanent dis-ability, in the discharge summary also not mentioned as, taking treatment for a period of 6 months. Further he contended that, in the School Annual Day function he distributing the prizes, so he is able to attend the Court proceedings.

4. Considering both sides submissions, the learned trial Judge concluded that there is no necessity to appoint an Advocate Commissioner to examine the 2nd petitioner as P.W.1 in chief and cross and record his evidence and accordingly dismissed the petition.



5. The learned counsel for the revision petitioner submitted that the 2nd petitioner had met with an accident and admitted at Ganga Hospital, Coimbatore on 22.06.2022 and had undergone operation in his left leg and open reduction and internal fixation was done by the Doctors, by fixing a plate, since the trial court is situated in the 2nd floor of the Court complex at Gobichettipalayam and no lift facility is available, due to the injury , he was not able to claim stair case to attend the Court to depose himself in the witness box, but he is ready and willing to depose the evidence before the learned trial Judge, if it is arranged in the ground floor.

6. The learned counsel for the respondent submitted that he is healthy person and able to attend the court proceedings, but to drag on the proceedings he made false allegation.

7. Considering the submissions made by both sides counsels, the 2nd petitioner had met with an accident and sustained leg injury. It is also admitted fact, therefore, this Court is inclined to set aside the findings given by the learned trial Judge in I.A.No.8 of 2022 in O.S.No.65 of 2019.



However, the learned III - Additional District Judge Erode,

Gobichettipalayam is directed to record the evidence of the 2nd petitioner, in anyone of the rooms available in the ground floor and dispose of the case as expeditiously as possible, preferably within a period of 6 months from the date of receipt of a copy of this order.

8. In view of the above, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

**19.10.2023**

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

1. The III Additional District Court, Erode,  
Gobichettipalayam.
2. The Section Officer,  
VR-Section, High Court of Madras.

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**T.V.THAMILSELVI, J.**

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