



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD).No.169 of 2017

and

C.M.P.No.685 of 2017

K.Rajendran

...Petitioner

Versus

1.Ganesamurthy

2.Minor Dinesh Kumar

3.Thangammal(died)

...

Respondents.

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order passed by the First Additional Sub-ordinate Judge of Coimbatore, dated 04.11.2016 in I.A.No.572 of 2016 in O.S.No.48 of 2009.

For Petitioner : Ms.S.Sowjanya
for M/s.Mathuvanthi Mathavan

For Respondent 2 :Mr.Karthik Raja
R2 minor rep. By R1

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order passed by the 1st Additional Sub-ordinate Judge of Coimbatore, dated 04.11.2016 in I.A.No.572 of 2016 in O.S.No.48 of 2009.



2. This revision arises against the order permitting re-open and recall of the plaintiff/P.W.1 at the instance of the Defendant.

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3. I have gone through the affidavit and I have to agree with Ms.S.Sowjanya, learned counsel for the revision petitioner that no reasons have been given in the affidavit. However, the learned Trial Judge has recorded the fact that at the time of arguments, it was brought to the notice of the Court that P.W.1/plaintiff had filed a fresh suit and the defendants wanted to cross-examine the plaintiff/P.W.1 on those issues. It has exercised the discretion in favour of the petitioner/respondent.

4. I do not want to interfere with the discretion so exercised while exercising powers under Article 227 of Constitution of India. However, there is a development which the learned counsel for the petitioner bring to my notice constraining me to modify the order passed by the learned Trial Judge. She would state that P.W.1 had suffered from paralytic stroke and he is unable to leave his house. She would further state he is not in a position to travel to the Court for the purpose of Cross-examination.



5. Therefore, the Trial Court is directed to verify if P.W.1 continues to suffer from the aftermath of paralytic Stroke. If it is convinced that the petitioner continues to suffer from the same, the Trial Court shall appoint an Advocate Commissioner to record the cross-examination of the petitioner/plaintiff/P.W.1 by the respondent/2nd defendant. The cross-examination shall be completed on one day and the report should be submitted to the Court by the end of the day or the next day. The cost for such appointment shall be borne by the 2nd defendant.

6. The suit being of the year 2009, the same shall be disposed of within a period of one month from the date of which the cross-examination is completed.

7. In case, the Court is convinced that P.W.1 is in a position to come to the Court, then it shall fix a date and on that date P.W.1 shall appear and on that day the cross-examination of P.W.1 should be completed. The day may be fixed by taking into consideration the convenience of the P.W.1.



8. With the above observations, this civil revision petition is closed.

Consequently, connected miscellaneous petition is closed.

06.07.2023

Index: Yes/ No

Speaking Order / Non-Speaking Order
nr

To

The learned 1st Additional Sub-ordinate Judge,
Coimbatore,



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V.LAKSHMINARAYANAN, J.

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