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C.R.P.(PD).No.3565 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3565 of 2019
and C.M.P.No.23373 of 2019

R.Muthukrishnan

... Petitioner

Vs.

Girija

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order dated 06.03.2019 passed in I.A.No.10978 of 2018 in O.S.No.5862 of 2016 on the file of the III Additional City Civil Court, Chennai.

For Petitioner : Ms.R.V.Gayatri

For Respondent : Mr.G.V.Sridharan

ORDER

This Civil Revision Petition arises against an order passed in I.A.No.10978 of 2018 in O.S.No.5862 of 2016 on the file of the learned



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III Additional City Civil Court, Chennai.

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2.The plaintiff had filed a suit for permanent injunction restraining the defendant, his men, agents, servants, representatives or anyone acting on his behalf from anyway interfering with her peaceful possession and enjoyment of the suit schedule 'B' mentioned property and to pay damages for use and occupation of the plaint 'A' Schedule property.

3.Pending the suit, the plaintiff gave power of attorney to one Perumal to depose on her behalf before the Court. According to the plaintiff, since she was sick and unable to come to the Court, she was constrained to appoint a power of attorney. The power of attorney entered the witness box and was also cross-examined by the defendant's counsel. Half way through the cross-examination, the power of attorney refused to enter the witness box, allegedly on the ground of threat and coercion by the defendant. Therefore, the plaintiff took out I.A.No.10978 of 2018 to eschew the evidence. The application found merit by the learned trial Judge and it was allowed. Against which, the defendant is before me.



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4.The fact that the plaintiff appointed a power of attorney is not in dispute. The fact that the power of attorney also deposed in Full in Chief Examination and was cross-examined part is also not in dispute. There is also no dispute that the power of attorney was and is unwilling to enter the witness box. The evidence of a party can be eschewed, if he had deposed in chief and does not present himself for cross-examination.

5.However, in this case, apart from the deposition in chief, he was also cross-examined by the learned counsel for the defendant and thereafter he did not entered the witness box. If the evidence is eschewed today, whatever admissions or concessions that the defendant would have extracted from the power of attorney would also be erased from the record.

6.The power to eschew does not permit the Court to eschew evidence which has gone partly or otherwise in favour of one party of the other.

7.Mr.G.V.Sridharan, learned counsel appearing for the plaintiff would submit that he now intends to take out an application for



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appointment of an Advocate Commissioner to examine the plaintiff herself as she is sick. It is always open to him to take that course of action since the power of attorney has refused to come to Court. However, that does not mean, the evidence already deposed on her behalf by her duly constituted power of attorney can be eschewed.

8. Consequently, the civil revision petition is allowed. The order eschewing the evidence of P.W.1 in I.A.No.10978 of 2018 dated 06.03.2019 is set aside. The evidence shall form part of the record. It is open to the plaintiff to examine herself by way of an Advocate Commissioner. It is left open to the defendant to argue that the principal cannot examine herself as the power of attorney has already been examined. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2023

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No

gvn/vs

To

The III Additional City Civil Court,
Chennai.

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V.LAKSHMINARAYANAN,J.

gvn/vs

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