



C.R.P(MD).No.2250of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.2250 of 2022

and

C.M.P(MD).No.10580 of 2022

1.M.Vareeth Jegaprema

2.Rosmary Joyce Metilda

... Petitioners/Petitioners/Plaintiffs

Vs.

1.M.Robert Bellarmin

2.Kingsly Mary Jenova

3.Adlin

4.Sathya Baama

5.Minor.Jones Rathina

... Respondents/Respondents/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records and set aside the Fair and Decreetal Order dated 18/08/2022 in I.A.No.5 of 2022 in O.S.No.23 of 2018 on the file of the learned I Additional District Judge, Tirunelveli and allow this Civil Revision with costs throughout.

For petitioners : Mr.G.Prabhu Rajadurai

For R4 and R5 : Mr.V.Nagarajan

ORDER

This Civil Revision Petition has been filed by the petitioners to set aside the fair and decreetal Order dated 18/08/2022 in I.A.No.5 of 2022 in O.S.No.23 of 2018 on the file of the Learned I Additional District Judge, Tirunelveli.



2.The petitioners are the plaintiffs in O.S.No.23 of 2018. The suit has been filed for a declaration of title over the suit schedule properties and for recovery of possession from the respondents 4 and 5 who are alleged to be the illegitimate wife of one of the petitioners' brother namely, Late.Gilbert Joseph Babu and a child born to them.

3.It is submitted that the petitioners mother Felix Bai has two sons and two daughters. The petitioners herein are the daughters. The first respondent and Late.Gilbert Joseph Babu are the sons. The property in question was purchased by the petitioner's mother from one Thangasamy. The said Late.Gilbert Joseph Babu got married to the second respondent. Through them, the third respondent was born.

4.The specific case of the petitioners is that their mother Felix Bai has executed a registered Will on 08.08.2004 which was attested by Mr.A.S.Ramnath, an Advocate, (Enroll No.410 of 1968) who is now said to be aged about 80 years. It is submitted that due to his advanced age, he has declined to come before the Court to give evidence. Therefore, the petitioners filed an application in I.A.No.5 of 2022 under Order 26 Rule 1 of CPC to permit examination of Mr.A.S.Ramnath as P.W.2 on behalf of the



petitioners. It is submitted that the Court has committed a grave error in rejecting the application. It is submitted that Mr.A.S.Ramnath had enrolled before the Bar Council of Tamilnadu in the year 1968. He is old and not in a position to appear physically before this Court due to age.

5.Per contra, the learned counsel for the respondents 4 and 5 submits that the order of the Trial Court is well reasoned and requires no interference. It is submitted that Mr.A.S.Ramnath still appears before the Court and therefore, the learned I Additional District Judge, Tirunelveli, has rightly dismissed the application. It is submitted that no records have been produced before the Trial Court to substantiate that Mr.A.S.Ramnath is not in a position to appear before the Court.

6.I have considered the argument advanced by the learned counsel for the petitioners and the learned counsel for the respondents 4 and 5.

7.Whether the said witness is physically incapacitated to appear before the Court or not cannot be decided. However, the fact remains that the witness is an octogenarian and he had enrolled before the Bar Council in the year 1968. It can be assumed that he is incapable of deposing evidence as a witness in a witness box in the Court.



C.R.P(MD).No.2250of 2022

8.However, the provision under Madras High Court Video Conferencing in Court Rules, 2020 allows to recording of the evidence through Video Conference. Therefore, I am inclined to dispose of the present Civil Revision Petition by directing the learned I Additional District Judge, Tirunelveli to permit the petitioners to examine Mr.A.S.Ramnath under the mechanism prescribed under Madras High Court Video Conferencing in Court Rules, 2020.

9.With the above observations, this Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The learned I Additional District Judge,
Tirunelveli.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD).No.2250of 2022

C.SARAVANAN,J.

dss

C.R.P(MD).No.2250 of 2022
and
C.M.P(MD).No.10580 of 2022

26.04.2023