



C.R.P.No.2333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2333 of 2023

K.Chandran

.. Petitioner

Vs.

Vinoth Singh

.. Respondent

Prayer: Petition filed under Article 227 of the Indian Constitution, against the fair and decreetal order made in I.A.No.4 of 2022 in O.S.No.334 of 2013 dated 14.02.2023 on the file of the Subordinate Court at Tambaram.

For Petitioner : Mr.P.Gunaraj

For Respondent : Mr.Rabi Anand
for Ms.Divya Ranjani

ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge at Tambaram in I.A.No.4 of 2022 in O.S.No.334 of 2013 dated 14.02.2023.



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2. The suit has been filed for the purpose of declaration of the title of the plaintiff and for a consequential direction to remove the superstructure and deliver the vacant possession of the same. Pending the suit, on service of summons, the defendant filed his written statement and issues have been framed and the matter is now at the stage of trial.

3. It is accepted by both sides that the plaintiff side evidence is over and it is posted for defendant's evidence. The defendant also filed his proof affidavit on 19.04.2022. Thereafter, he did not appear before the Court. The reason for his non-appearance, as stated in the affidavit in I.A.No.4 of 2022, is that he is suffering from heart ailment and it requires him to undergo an operation to fix the pacemaker and till the pacemaker is fixed, he will not be in a position to undergo the strain of trial.

4. Consequently, he filed an application to eschew his evidence as *DW1* and to permit his son to depose on his behalf. This application was stiffly opposed by the respondent therein who stated that the petitioner is hale and hearty and is carrying on business. He



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also stated that no medical certificate was produced in order to substantiate his alleged illness.

5. The learned Trial Judge marked the documents that had been produced by the defendant and came to the conclusion that there was no merit in the case and hence, dismissed the petition. Against the said order, the present revision.

6. Heard *Mr.P.Gunaraj*, learned counsel for the petitioner and *Mr.Rabi Anand*, learned counsel for the respondent.

7. *Mr.P.Gunaraj* would submit that the petitioner is suffering from heart ailment and should not be troubled in his advanced age to undergo the ordeal of trial. He would state, in his place, his son may appear and depose.

8. *Mr.Rabi Anand*, would state that the records that had been produced are not sufficient to substantiate the alleged illness as pleaded by the civil revision petitioner.

9. The suit has been pending for more than eleven years. The



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evidence of the plaintiff has been completed. The defendant also entered witness box and filed his proof affidavit on 19.04.2022. It is only thereafter he has been avoiding the process of trial.

10. Though he pleads that his situation is so bad that it requires operation, no evidence to substantiate the same has been produced before the Court. A defendant to a suit cannot avoid the witness box, as such an avoidance might result in the Court drawing adverse inference against him. This is more so in this case as the defendant has filed his proof affidavit and has thereafter been avoiding the witness box.

11. The learned Trial Judge has correctly appreciated the position and has dismissed the petition. In case the petitioner is so sick that he cannot grace the witness box, it is always open to him to produce the records before the Court to substantiate the same. Instead of seeking the permission of the Court to examine himself by way of an Advocate Commissioner, he wants to duck the litigation by filing an affidavit to eschew his evidence.



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12. Leaving it open to the petitioner to file an application to examine himself by way of an Advocate Commissioner, the civil revision petition stands dismissed. There shall be no order as to costs. Consequently, C.M.P.Nos.141921 of 2023 and 1284 of 2024 are closed.

08.07.2024

Neutral Citation : Yes/No

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V. LAKSHMINARAYANAN, J.

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