



CRP.(PD). No.3240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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C.M.P.No.17341 of 2024

Latha : Petitioner
versus

- 1.R.Chitra
- 2.R.Vasudevan
- 3.Manaswini
- 4.S.Nithya
- 5.The Branch Manager,
Andhra Bank Main Branch,
New No.143, Old No.73/B-1, Salai Road,
Lakshmi Complex, Tiruchirapalli – 620 018.
- 6.The Branch Manager,
State Bank of India,
Srirangam Branch, Trichy.
- 7.The Branch Manager,
Indian Bank,
Thiruvanaikoil Branch,
Sannadhi Street, Trichy – 620 005.
- 8.The Branch Manager,
City Union Bank Ltd.,



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Srirangam Branch,
Trichy – 620 005.

9.The Post Master General,
Central Region,
Trichirapalli – 620 001.

10.Life Insurance Corporation of India,
Srirangam Branch,
Trichy – 620 005. : Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 29.07.2024 passed in I.A.No.12 of 2024 in O.S.No.121 of 2018 on the file of the Additional District Court (Fast Track Court), Kancheepuram.

For Petitioner : Mr.L.Dhamodharan

ORDER

This civil revision petition arises against the order of the learned Additional District Judge (FTC), Kancheepuram. The revision challenges the order passed in I.A.No.12 of 2024 in O.S.No.121 of 2018 on 29.07.2024.

2. O.S.No.121 of 2018 is a suit filed by the civil revision petitioner seeking several reliefs with the main relief being one of partition and separate possession of A schedule property into three equal parts and allot



3. The defendants have filed their written statements and the matter is posted for trial. The evidence on the side of the plaintiff has been completed. When the matter was posted for the evidence of the defendants, the second defendant filed an application stating that she is conducting the suit on her behalf and on behalf of her son and daughter who are the defendants 3 and 4. She would plead that she had filed her proof affidavit and thereafter, the matter was posted for recording of her cross examination. She would allege that she fell sick with a viral fever and therefore, was not in a position to attend the court on 11.01.2024, on which date, her evidence was closed. To reopen the defendants' side evidence, she filed an application in I.A.No.11 of 2024. The learned Trial Judge allowed the application and reopened the evidence.

4. Thereafter, another application came to be filed by the second defendant in I.A.No.12 of 2024 pleading that on 04.02.2024, she underwent



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an operation for Ventral Hernia at the Maruthi Hospital in Tiruchirapalli. She would plead that she had developed some dehiscence and the stitches require daily dressing and secondary suturing. She would also state that as the wound has not been completely healed, she was not in a position to walk or travel. Hence, she wanted the court to appoint the Advocate Commissioner to take the evidence of her cross examination.

5. On service of notice, the plaintiff filed a detailed counter stating that the period of treatment, discharge summary, medical records for continuity of the treatment and the medical records regarding unhealthy condition of the second defendant/ first petitioner had not been obtained and therefore, her plea is not acceptable. .

6. The learned Trial Judge had the benefit of going through the medical certificate that had been produced by the petitioners. The medical certificate had been issued by one Doctor Maniya who had vouched the allegations made in the affidavit.



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7. Considering the overall circumstances, the learned Trial Judge allowed the application and appointed an Advocate Commissioner to record the evidence, against which the present revision.

8. I have heard Mr.L.Dhamodharan for the civil revision petitioner and perused the records.

9. Mr.L.Dhamodharan would submit that the certificate was given on 07.06.2004 and the period of advice against travel was for two months which had expired on 07.08.2004 and therefore, nothing prevented the second defendant to appear before the Court and to depose evidence. He would also state that if the party appears in court, the court will be in a position to note the demeanor of the witness which would not be possible in case the examination is done by an Advocate Commissioner. For this purpose, he would rely upon the judgment in ***Muhammad Zackria v. Abdul Karim Rowther 1956 (2) MLJ 371***. In addition, he would refer to the following two judgments viz.,

(a) a Judgment of Hon'ble Justice R.Banumathi in ***P.Kaliappa***



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Gounder v. M.Loganathan & Others, (2006) 1 LW 807; and

(b) an Order rendered by me on 06.07.2023 in ***K.Rajendran v.***

Ganesamurthy and others in C.R.P.(PD).No.169 of 2017.

Placing reliance on these judgments, he would argue that it is the duty of the Court to record evidence, and a liberal approach can be adopted if the concerned party agrees. However, when the parties do not agree and serious disputes arise regarding the examination of a witness through an Advocate Commissioner, the discretion should be exercised cautiously.

10. I have gone through the records and considered the arguments of Mr.L.Damodharan.

11. A perusal of the order impugned before me shows that the learned Judge had applied his mind to the record produced before him and decided to exercise his discretion. The letter dated 07.06.2024 is not a stand alone one and it has been supported by a solemn affidavit that has been filed by the Doctor, who had treated the second defendant. The said affidavit has specifically stated that the petitioner had undergone a surgery and had



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subsequently developed some complications, which require everyday attention. On account of the surgery, the Doctor treating her has stated that there was continuous bleeding and therefore, it was advisable for the second defendant not to travel.

12. The learned Trial Judge has exercised the discretion holding that it would not be possible for a person who is undergoing medical treatment to appear before the Court. In fact if I were to entertain the revision and grant the interim order, that would not only delay the proceedings which the plaintiff obviously does not want. Further, it would also be contrary to the order of this Court which has directed the learned Trial Judge to dispose of the suit at an early date. Taking into consideration the reasons that have been given in paragraph Nos. 11 and 12 in the order impugned, I am not inclined to entertain the revision

13. At this stage, Mr.L.Dhamodharan would submit that Advocate



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Commissioner T.C.Soundararajan has decided to examine the second defendant DW2 tomorrow i.e., on 10.08.2024. He pleads as the petitioner has been bonafidely pursuing this revision, has some difficulty in conducting the cross examination tomorrow. It is always open to Mr.L.Dhamodharan to make a request to the learned Commissioner to defer the examination of the party by a week. I am sure if he makes such a request, the learned Commissioner will accede to same.

14. With the above observations, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order/Non-speaking Order
Neutral Citation : Yes/No



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To

The Additional District Court (Fast Track Court), Kancheepuram.



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V.LAKSHMINARAYANAN, J.

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