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C.R.P.(PD).No.3555 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3555 of 2024
and C.M.P.No.19220 of 2024

Aadhimoolam

.. Petitioner

Versus

1. Periasamy
2. Prabhakaran
3. Duraisamy
4. Anjalai
5. Vaithiyalingam

6. Village Administrative Officer, Thuraimangalam,
6, Thuraimangalam,
Perambalur Taluk,
Perambalur District.

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 18.08.2023 passed in I.A.No.4 of 2022 in O.S.No.340 of 2019 on the file of the Additional District Munsif, Perambalur, by allowing the present Civil Revision Petition.

For Petitioner : Mr.Arun Kumar,
for Mr.E.Senthil Kumar

For Respondents : Dr.S.Suriya,



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C.R.P.(PD).No.3555 of 2024

Additional Government Pleader
for R6

ORDER

This Civil Revision Petition arises against the order of the learned Additional District Munsif, Perambalur in I.A.No.4 of 2022 in O.S.No.340 of 2019, dated 18.08.2023.

2. The civil revision petitioner is the first defendant in the suit. The suit in O.S.No.340 of 2019 was presented for declaration and for consequential relief. After receipt of the written statement, issues were framed and the matter was listed for trial. The first plaintiff also filed his proof affidavit. Thereafter, the parties realised that P.W.1 suffers from severe hearing impairment and therefore, will not be in a position to continue with his cross-examination. I have to note here that on 12.07.2022, the first plaintiff had entered the witness box, filed his proof affidavit and marked Exs.A1 to A7.

3. Realising the first plaintiff's physical inability, the plaintiffs had filed an application in I.A.No.4 of 2022 under Order III Rule 1 of the Code of Civil Procedure seeking permission from the Court for his daughter-in-



C.R.P.(PD).No.3555 of 2024

WEB COPY

law to depose on his behalf. As required by law, the Power of Attorney was marked, and the disability certificate issued to the first plaintiff was produced.

4. This application was opposed by the defendants stating that the cause title has not been properly amended and further, that it is an attempt to drag on the proceedings which has been pending from the year 2019. The learned Trial Judge allowed the application. Hence this Civil Revision Petition.

5. Heard Mr.Arun Kumar, learned Counsel for Mr.E.Senthil Kumar, learned Counsel for the petitioner and Dr.S.Suriya, learned Additional Government Pleader for the sixth respondent.

6. Mr.Arun Kumar would submit that the chief examination, having been given by the first plaintiff, the cross-examination cannot be that of the Power of Attorney. He would state that the Power of Attorney would have to file her proof affidavit on behalf of the first plaintiff and only thereafter, the cross-examination can be proceeded.



C.R.P.(PD).No.3555 of 2024

WEB COPY

7. A perusal of the impugned order shows that the learned Trial Judge, while allowing I.A.No.4 of 2022, took into consideration the apprehension that is expressed by Mr.Arun Kumar. The learned Judge held that it is not permissible in law for P.W.1 to file a proof affidavit and for his Power of Attorney to commence the cross-examination. The Court further directed the Power Agent to file her proof affidavit and thereafter proceed in the matter. No exception can be taken to the course as suggested by the learned Trial Judge.

8. A proof affidavit filed by one party is the chief-examination of that party. In case that party is unable to present in the Court, the evidence that has been given by the said party would have to be eschewed and a fresh proof affidavit has to be received from the Power Agent of the said person.

9. It is not in dispute that on 12.07.2022, P.W.1, Periasamy had filed his proof affidavit and marked Exs.A1 to A7. Thereafter, he filed I.A.No.4 of 2022 stating that he is not in a position to continue further on account of the hearing impairment from which he suffers. Therefore, the procedure



C.R.P.(PD).No.3555 of 2024

WEB COPY

that the Court would have to adopt for the purpose of proceeding further in the suit is to record that the evidence given by Periasamy, the first plaintiff is eschewed and thereafter, receive the proof affidavit from the Power of Attorney and then, present her to the defendant for being cross-examined. This has been made clear in the order, dated 18.08.2023. Therefore, the apprehension of Mr.Arun Kumar that the Court might proceed on the basis of the proof affidavit filed by Periasamy for the purpose of cross-examination of Minnalkodi, the daughter-in-law, is misplaced.

10. Apart from this fact, the Power of Attorney, not being in dispute, I do not find any merit in the defendants opposing the application filed by the first plaintiff seeking to appoint his daughter-in-law as his Agent. An adverse party cannot dictate terms to the other party as to how the latter should proceed in tendering evidence in the suit.

11. Therefore, making it clear that the said Minnalkodi will have to file a fresh proof affidavit and thereafter present herself for cross-examination, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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C.R.P.(PD).No.3555 of 2024

04.09.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Additional District Munsif,
Perambalur.



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C.R.P.(PD).No.3555 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.3555 of 2024
and C.M.P.No.19220 of 2024

04.09.2024