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CRP No.5022 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.5022 of 2023 and
CMP No.29263 of 2023

M.Amutha

... Petitioner

Vs.

C.Kumaran
...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 15.09.2023 made in I.A.No.3/2023 in O.S.No.331/2020 on the file of the Principal District Munsif, Erode.

For Petitioner : Mr.M.Guruprasad

ORDER

This Civil Revision Petition has been filed to set aside the the fair and decreetal order dated 15.09.2023 made in I.A.No.3/2023 in O.S.No.331/2020 on the file of the Principal District Munsif, Erode.



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2. The petitioner herein is the plaintiff in O.S.No.3/2023, who filed the suit for permanent injunction and mandatory injunction, with regard to the B schedule of the suit property, against the respondent herein/defendant. Pending suit, the wife of the respondent had filed I.A.3/2023 before the Trial Court seeking permission to depose evidence and mark documents on behalf of her husband. The above petition was allowed and assailing that order, the present civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that, in the above said suit, the respondent/defendant had entered appearance and he had filed written statement also. However, during Trial, while the case was posted for defendant side evidence, the wife of the respondent, namely, Lalitha had filed an application seeking permission to depose evidence on behalf of the respondent. The wife of the respondent is not a competent person to depose evidence on behalf of her husband. However, the Trial Court without considering the contentions raised by the petitioner, has allowed the application. Hence, the order passed by the Trial Court is liable to be set aside.



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4. Heard the learned counsel for the petitioner and I have perused the materials on record.

5. The facts reveals that the petitioner had filed the above said suit and pending suit, the wife of the respondent/defendant had filed I.A.No.3/2023 seeking permission to give evidence and mark documents on behalf of her husband, which was came to be allowed. The Trial Court by considering Section 120 of the Indian Evidence Act, observed that the wife of a party to the suit is a competent person to give evidence. Further, by relying upon the judgment of the ***Karnataka High Court in Shahikala and others Vs. Laxman Yadu Kadam and others in Regular Second Appeal No.1832/2005, dated 16.06.2023***, the Trial Court has decided that the spouse of the defendant can depose evidence and there is no legal bar to give such evidence. Mere examining the wife of the defendant will not affect the case and the petitioner has got every chances to cross examine her. In such circumstances, I find no reason to interfere with the order passed by the Trial Court and hence the civil revision petition is liable to be dismissed as it



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has no merits.

6. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court in I.A.No.3/2023 in O.S.No.331/2020, dated 15.09.2023 is upheld. Consequently, connected miscellaneous petition is closed. No costs.

05.01.2024

Index: Yes/No
Internet: Yes/No
mst

To

1. The Principal District Munsif, Erode.



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V.SIVAGNANAM, J.,

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