



C.R.P.(MD)No.1402 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.1402 of 2022
and C.M.P.(MD).No.5817 of 2022

V.Lakshmi

... Petitioners/Respondents

Vs.

V.Gnanavel

... Respondent/Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.5 of 2022 dated 21.06.2022 on the file of the District Judge, Theni.

For Petitioner : Mr.H.Thayumanaswamy

For Respondent : Mr.S.Muniyandi

ORDER

This civil revision petition has been filed against the order passed in I.A.No.5 of 2022 dated 21.06.2022 on the file of the District Judge, Theni.



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2.The facts in brief:

A probate O.P.No.1 of 2015 was filed by the respondent along with one Suseela against this revision petitioner seeking the relief of granting probate. Pending the process a petition was taken out by the respondent herein to examine two witnesses through commission. That was allowed. Against which, this revision has been preferred.

3.The petition was filed by the respondent with the following averments. The deceased Varadharaj executed a registered Will dated 21.01.2013, bequeathing the petition mentioned properties to them. Varadharaj died on 30.06.2013. So the petition was filed to probate the Will. Pending the application, the first petitioner namely Suseela died. The second petitioner has stated that his mother, the first petitioner, namely Suseela is one of the witness. But, she died pending the proceedings. One Ayyapparaj and one K.S.Kannan are the other two witnesses available now. Now, they are very old, bed ridden and unable to move nowhere. So, they must be examined through video conference.

4.That was resisted by the revision petitioner stating that if the facility is advanced to the witnesses, then proper cross examination



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cannot be made. Hence, they can be examined on Advocate Commissioner. That suggestion was accepted by the petitioners and Commissioner was also appointed.

5. Against which, this revision has been preferred on the ground that foundational facts were not pleaded by the respondent by complying Order 26 Rule 1 of C.P.C.

ORDER XXVI - COMMISSIONS

Commissions to examine witnesses

1. Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

1[Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.]

6. Now the grievance of the revision petitioner is that without insisting upon the production of medical certificate of the proposed



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witnesses, that application was allowed. But, reading of the order shows the contrary facts. As mentioned above, the proposal made by the respondent to examine the witnesses on commission was accepted by the revision petitioner's counsel. Now, he says that no such consent was made by them. Now, whatever it may be, unless the health condition of the proposed witnesses warranting their examination on commission then it may not be proper to examine them on commission.

7. But, during the course of the proceedings, it appears that even though interim stay order was granted by this Court, chief examination of those two witnesses were produced before the commissioner. Some other allegations has been made to the effect that the stay order was informed to the commissioner, but, inspite of stay order on to execute the warrant.

8. I do not enter into that controversy now.

9. To assess the health condition of the witnesses both are ordered to appear through video conference before this Court today. Both of them appeared today. Among the two witnesses Ayyapparaj was found to be healthy and he can attend the Court for cross examination, since the chief



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in affidavit was handed over to the commissioner. But, the learned counsel for the respondent submitted that Ayyapparaj is not able to speak and coherently also. But that cannot be the reason for avoiding the cross examination before the Court. So Ayyapparaj may appear before the enquiry Court for cross examination. So far as other witnesses namely K.S.Kannan, it appears that he is bed ridden. So he cannot be moved out of his bed. So cross examination of Kannan is permitted through Commission, who was already appointed in this case. For which, both parties must co-operate with the commissioner.

10. With the above said directions, this civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

Index : Yes / No

Internet : Yes / No

TM

To

1. The District Judge, Theni.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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