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C.R.P.(MD)No.2083 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.2083 of 2024 and
C.M.P.(MD)No.11870 of 2024

V.Thulasi

... Petitioner /Petitioner/
2nd Respondent

Vs.

1. The United Pentecostal Church in India,
Eastern District, Tamil Nadu,
Registration No.56/61,
Rep. By its General Superintendent,
Rep. by his power of attorney holder,
Pastor H.Rajendran

... 1st Respondent /1st Respondent/
Appellant

John J Kamalam(died)

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 12.02.2024 passed in I.A.No.4 of 2023 in A.S.No.37 of 2013 on the file of the Principal Sub Court, Nagercoil at Kanyakumari.

For Petitioners : Mr.M.P.Senthil

For R-1 : Mr.J.John Jayakumar

**ORDER**

Heard both sides.

2. The respondent Church filed O.S.No.509 of 2010 on the file of the Principal District Munsif, Nagercoil for declaration and permanent injunction. The suit was dismissed on 25.03.2013. Questioning the same, the plaintiff filed A.S.No.37 of 2013 before the Sub Court, Nagercoil. The decision of the trial Court was reversed and the first appeal was allowed and the suit was decreed as prayed for on 10.07.2013. The revision petitioner filed S.A.(MD)No.643 of 2013. During the pendency of the second appeal, John J.Kamalam passed away. The petitioner claimed that John J.Kamalam executed a will in favour of him. Thulasi came on record. The CMP in SA. itself was allowed on 10.02.2023 and the matter was remitted to the file of the first appellate Court. It was also specifically directed that Thulasi must prove the genuineness of the Will said to have been executed in his favour by John J.Kamalam. The matter was thus remitted to the file of the Principal Sub Court, Nagercoil.



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3. The petitioner filed I.A.No.4 of 2023 for examining one of the attesting witnesses through video conferencing mode. The attesting witness Thambi Raj is now said to be in Saudi Arabia. The petitioner chose to undertake before the Court below that Thambi Raj would come down to India and he would examine him physically. But then, it did not take place. In these circumstances, the Court dismissed I.A.No.4 of 2023 for default. Challenging the same, this civil revision petition came to be filed.

4. When the attesting witness is in abroad, the petitioner is entitled to examine him through video conferencing mode. Of course the procedures and formalities set out in the video conferencing rules will have to be complied with. The petitioner cannot drag on the matter indefinitely. I grant him two months from today. The petitioner shall inform the Court below as well as give written notice to the learned counsel for the plaintiff about the examination of the attesting witness as per the video conferencing rules.



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5. In this view of the matter, the impugned order is set aside. I.A.No.4 of 2023 is allowed. If the petitioner fails to conclude the examination of the attesting witness through video conferencing mode or physically within a period of two months from today, I.A.No.4 of 2023 will stand dismissed for default. This civil revision petition stands allowed on these terms. The appeal itself shall be disposed of on merits and in accordance with law within a period of five months from today. No costs. Consequently, connected miscellaneous petition is closed.

16.10.2024

Index : yes/No
Internet: Yes/No
PMU

Note : Issue order copy on 17.10.2024.

To

The Principal Sub Judge,
Nagercoil at Kanyakumari.



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G.R.SWAMINATHAN,J.

PMU

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