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CRP.No.3298 of 2024 and CMP.No.17622 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

CRP.No.3298 of 2024

and

CMP.No.17622 of 2024

K.G.Balu@Balu Naicker

... Petitioner / Petitioner / Plaintiff

Versus

Patrose (Died)

1. B.Thirunavukarasu
2. P.Bavani
3. B.Deivasigamani @ Rajendiran
4. Mohana Sundari
5. B.Prabath Sankar
6. P.Mangai
7. Azhagesan
8. Asokan
9. Dhanalakshmi
10. Karthikeyan

... Respondents / Respondents / Defendants

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.4 of 2023 in O.S.No.92 of 2015 on the file of the Additional District Munsif, Tiruvallur, dated 02.04.2024.



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For Petitioner : Mr.K.Balaji
For Respondents : No appearance

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ORDER

Unsuccessful plaintiff has preferred the present Civil Revision Petition.

2. The suit in O.S.No.92 of 2015 on the file of the Additional District Munsif, Tiruvallur, is filed seeking a declaration of the plaintiff's right and title over the schedule mentioned properties and for a consequential injunction restraining the defendants, their men, agents or subordinates from in any manner creating encumbrance or making any alienation with regard to suit schedule mentioned properties. The plaintiff has also sought to declare various settlement deeds as null and void. The defendants filed their written statement, and necessary issues were framed. Thereafter, the suit was posted for trial. At this stage, the plaintiff filed an application in I.A.No.4 of 2023 under Order XXVI Rule 1 and 2 CPC seeking appointment of an Advocate Commissioner to examine the revision petitioner / plaintiff. Upon hearing either side, the Court below *vide* order dated 02.04.2024, dismissed the application on the ground that, as per medical certificate, the treatment has been taken by the revision petitioner / plaintiff with Dr.A.Arputha Mary, who is having nursing home at Sunguvarchatram, Kanchipuram. The person who



can travel from Kannur Village, Tiruvallur to Sunguvarchatram, Kanchipuram, for treatment can very well attend the Court in Tiruvallur for adduced his evidence. Therefore, the reason stated for examination through an Advocate Commissioner is not satisfied and hence, the application was dismissed. Aggrieved over the same, the plaintiff has preferred the present Civil Revision Petition.

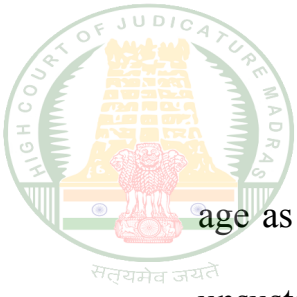
3. Though notice to Respondents 3 to 6 was served through the lower Court Counsel Mr.M.S.Muthukumar, none appeared before this Court. The name of Respondents 1 & 2 were also printed in the daily cause list. When the matter was called the respondents remained absent.

4. The learned counsel appearing for the revision petitioner would submit that the Court below failed to note that the revision petitioner is suffering from several ailments and is bedridden, undergoing continuous treatment. In this regard, Dr.A.Arputha Mary issued a disability certificate on 26.11.2023, which is marked as Ex.P1, certifying that the revision petitioner / plaintiff is unable to move from his bed. Furthermore, the Court below failed to properly consider the genuineness of the medical certificate.



Considering the fact that the petitioner is 88 years old, that itself is sufficient to infer that he may not be in position to personally appear before the Court to depose in the suit.

5. It is seen from the amendment of the plaint that the revision petitioner / plaintiff was stated to be 82 years old in the year 2022. It is seen from the medical report marked before the Court below shows that the revision petitioner / plaintiff is now aged about 88 years old and suffers from age-related ailments, being bedridden. Therefore, Ex.P1 clearly proves that the revision petitioner / plaintiff is bedridden and suffering from age related health issues. The Court below without considering the fact that the revision petitioner / plaintiff resides in Kannur Village, Tiruvallur, which is very near to Sunguvar Chathiram, Kacheepuram District, erroneously concluded that a person who can travel from Kannur Village, Tiruvallur to Sunguvar Chathiram, Kancheepuram District for treatment can easily attend the Court in Tiruvallur, for adducing his evidence. Accordingly, the findings of the trial Court are liable to be set aside, and an Advocate Commissioner should be appointed to record the revision petitioner / plaintiff's evidence at his residence. The Court below without considering the petitioner's advanced



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age as established in Ex.P1, erroneously dismissed the application, which is unsustainable in law.

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6. In view of the above, the order dated 02.04.2024 passed in I.A.No.4 of 2023 in O.S.No.92 of 2015 on the file of the Additional District Munsif, Tiruvallur, is liable to be set aside and is hereby set aside.

7. The Court below shall appoint the Advocate Commissioner and proceed with the matter in accordance with law.

8. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.10.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

M. JOTHIRAMAN, J.



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To

The Additional District Munsif, Tiruvallur.

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