



CRP.(MD).No.2538 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CRP.(MD).No.2538 of 2022

and

C.M.P.(MD).No.12460 of 2022

against

I.A.No.1 of 2021

in

O.S.No.150 of 2012

Vasantha

.. Petitioner/Respondent/Plaintiff

Vs.

Gnanambal

.. Respondent/Petitioner/Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 23.08.2022 passed by the District Munsif-Cum-Judicial Magistrate, Thirumayam in I.A.No. 1/2021 in O.S.No.150/2012.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondent : -No Appearance-



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ORDER

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The Plaintiff in O.S.No.150 of 2012 on the file of the District Munsif-Cum-Judicial Magistrate, Thirumayam is the Civil Revision Petitioner.

2.The above said Suit was filed for the relief of Declaration of title, recovery of possession and permanent injunction. After the Plaintiff side evidence was closed and when the Suit was posted for Defendant side evidence, the Defendant has filed I.A.No.20 of 2021, seeking to appoint an Advocate Commissioner to examine her.

3. A perusal of the said affidavit reveals that the Petitioner is bed ridden and she is suffering from Diabetes. A counter was filed disputing the above said averments. The Trial Court has proceeded to allow the application in the interest of justice. Challenging the same, the present Civil Revision Petition is filed.



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4. According to the Learned Counsel appearing for the Civil Revision Petitioner, the Defendant is hale and healthy and she has not produced any medical records to show that she is bed ridden or unable to travel. In such circumstances, the Trial Court ought to have allowed the Application.

5. The learned Counsel appearing for the Civil Revision Petitioner contends that under Order 26 Rule 4 of the Code of Civil Procedure, 1908 says that only if the Defendant is located outside of the Jurisdiction of the Court, such an application cannot be entertained.

6. Though, the Respondent/Defendant has been served on 04.01.2023, she has not chosen to appear either in person or through Counsel.

7. In the affidavit filed in support of I.A.No.01/2021, the Defendant has contended that she is bed ridden and unable to travel. No



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medical records have been produced before this Court, to establish the same. In such circumstances, this Court finds that the order of the Trial Court accepting the averments in the affidavit and allowing the Application, is not legally sustainable. The order of the Trial Court is hereby set aside and the Revision Petition stands allowed. No costs. Connected Writ Miscellaneous Petition stands closed.

03.02.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

nst

To

1.The

District Munsif-Cum-Judicial Magistrate,
Thirumayam.

2.The Section Officer,

VR Record Keeper,
Madurai Bench,
High Court of Madras.



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R.VIJAYAKUMAR,J.

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