

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Thursday the 19th day of September 2024

I.A.No.9/2024

in

O.S.No.195/2017

1. Mrs.S.Vijayalakshmi

2. Miss.Banumathi

Rep by Power Agent K.Subramaniyam

... Petitioners/ Plaintiffs

/VS/

1. Mr.R.Senthilkumar

2. Mr.K.S.Gopalasamy

3. Mrs.G.Aruna devi

4. Mrs.G.Dharini

5. Mrs.Kalaiselvi

...Respondents/ Defendants

This petition is coming on 12.09.2024 for final hearing before me in the presence of Mr.S.Jagadheesan, Advocate for the Petitioners and Mr.M.Ganeshkumar, Advocate for the 1st and 5th Respondents and the 2nd to 4th Respondents are called absent set exparte in main suit and upon perusing the records, and this court made the following:

ORDER

This petition filed under order 26 rule 4 of CPC to appoint advocate commissioner to record evidence in the above case.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The petitioner is the power agent of the plaintiffs in the suit proceedings. The main suit is filed for delivery of possession and removing encroachments against

the defendants. The petitioner already been suffering sugar complaint and for that he taking insulin periodically. Because of the ailment of petitioner's health condition became worsen on day by day. For the past fifteen days the petitioner became very sick and in continuation the decease he could not proceed his day to day work. The petitioner unable to stand for a long time and under this circumstances the case was posted for trial. The doctors advised the petitioner not to travel outside and if he travel out side he could lost his conscious and fell down and it would cause very un-comfort for petitioner. Under the above said circumstances the advocate commissioner has to be appointed for the purpose of recording evidence on his side. Hence, this petition.

2. The brief averments of Counter statement filed by the 1st Respondent and adopt by the 5th Respondent as follows :-

2.1. The petition is not maintainable both in law and on facts. The main suit was posted for trial on 10.11.2022. Thereafter the plaintiffs have used several methods to prevent trial and cause delay to the above suit. The plaintiffs being fully aware that the petitioner is 81 years old, had appointed the petitioner as their agent recently. Now the plaintiffs with malafide intentions have mischievously come up with this petition citing age related ailments in order to drag on proceedings.

2.2. The petitioner's admission that he is a person of extremely old age and suffers from infirmity of body and mind do not quality him for a credible witness under section 118 of evidence act.

2.3. The plaintiffs who are aged 42 and 40 years respectively at the time of filing of the main suit are capable of letting in evidence before this court. The petitioner who is a power agent cannot seek permission before this court to examine him through an Advocate/Commissioner. If the petitioner is not in a position to attend his day to day work is incapable of giving evidence. The plaintiffs can always appoint another power of attorney holder at any time.

2.4. The petitioner has filed an application of appoint him as her power agent

only after the case was posted in the list. In the said application he had mentioned that 1st plaintiff is a resident of Tiruppur and have to look after her child and the 2nd plaintiff is not in a position to appear before this court and hence permission was sought before this court and the same was allowed. At this stage the above application for appointment of Advocate/Commissioner to examine the petitioner is not maintainable. The said fact clearly shows that the petitioner and the plaintiff are purposely evading evidence in order to drag on the above case. Hence, the petition to be dismissed.

3. Point for consideration:-

Whether the petition under order 26 rule 4 of CPC to appoint advocate commissioner to record evidence is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. On perusal of records, the main suit is filed by plaintiffs for the relief of directing the defendants to hand over and deliver the vacant possession of the B schedule property to the plaintiffs after removing the encroachments by the defendants. The plaintiffs filed petition on 21.01.2023 to permit the K.Subramaniam who is the petitioner in this application to proceed the case on behalf of the plaintiffs and the said application was allowed on 26.02.2024 and the plaint should be amended.

4.2. Now the power agent Subramaniam filed this petition to examining him by way of appointing an advocate commissioner to record his evidence. The respondents/defendants in their counter stated that the petitioner file this petition to drag on proceedings. Hence, this case is in the stage of trial and this court considering the age of the petitioner, the nature and circumstances and an opportunity to be given to both sides to established their case, in the interest of justice this petition is allowed.

In the result, this court appoints Tmt.K.R.Punithavathi (MS.No.2341/2011) as Advocate Commissioner to examine the K.Subramaniam who is the power agents of

the plaintiffs and to record the evidence himself by following order 18 rule 4 of CPC and directed to file report and deposition on next hearing. The Advocate Commissioner fee is fixed Rs.6000/- to be paid directly by the petitioners/plaintiffs. Report and Evidence Deposition by 18.10.2024.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 19th day of September 2024.

Sd/N.Renuga

District Munsif,

Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga

District Munsif,

Sulur.

Draft/ Fair Order

I.A.No.9/2024 in

O.S.No.195/2017

Dated : 19.09.2024

DMC, Sulur