

IN THE COURT OF SUBORDINATE JUDGE OF PALLADAM

**PRESENT: Thiru.K. Yuvaraj, B.A.,B.L.,
Subordinate Judge, Palladam**

Tuesday of 04th March, 2025

IA No.3/2025

in

OS No.370/2018

P.Subbathal

... Petitioner / Plaintiff

/Vs/

1. S.Senniyappa Gounder (Died)
2. S.Subramaniam (Died)
3. A. Vasanthamani
4. A. Sangeetha
5. A. Bharathi
6. S. Palanathal
7. S.Subramanian
8. S.Ramathal
9. N.Maheswari
10. S.Velraj
11. M.Subramanian
12. N.Thangavel

... Respondents / Defendants

This petition is coming on 04.03.2025 for final hearing before me in the presence of Thiru.D.Sunderraj,B.A.,B.L., Advocate for the petitioner and Thiru. A.Chinnasamy.B.A.,B.L., Advocate for the 3rd Respondent to 5th Respondent and Thiru. M.Ponnusamy, B.A.,B.L., Advocate for the 10th Respondent and Thiru.V.Satheeskumar.B.A.,B.L., Advocate for the 12th Respondent. The 6th Defendant to 9 Defendants and 11th Defendant set exparte. Upon hearing both side arguments and on perusal of all connected material records and having stood over till this day for consideration, this court delivered the following..

ORDER

This application was filed by the Petitioner / Plaintiff for appointment of Advocate commissioner to visit the residential place of the plaintiff and record her cross examination.

2. The Learned counsel for the Petitioner / Plaintiff argued that this Petitioner / Plaintiff filed the suit for Partition and she is at the age 78 years with ailments of Heart diseases and further more she was examined herself as PW1 on 08.03.2024 and through her Ex.A1 to Ex.23 were marked and she was appeared on 12.04.2024 for subjecting herself for Cross examination. Then after she was hospitalized due to Cardiac issues and she was treated at Kovai Medical Center and Hospital from 26.08.2024 to 31.08.2024, because of which she was bedridden and unable to attend this court for subjecting herself for cross examination. Hence this application for appointment of Advocate Commissioner to record the cross examination at her residential house.

3. Per contra, the Learned counsel for the Respondents argued by filing a detailed counter that this Petitioner / Plaintiff was hale and healthy but in order to avoid the Court proceedings she was not appearing before this court and prayed for dismissal.

II. Now point for consideration is whether this petition is allowed?

1. Heard Both sides. Perused entire records. Admittedly this main suit was filed for the relief of Partition by the plaintiff as against the D1 to D7 and it is more than 10 years old suit. Further it is admitted on both sides that plaintiff was examined as PW1 and through her EX.A1 to Ex.A23 were marked on 08.03.2024 and she was appeared before this court for subjecting herself for cross examination on 12.04.2024, but on that day at the request

of the Respondents / Defendants the case was been adjourned for cross examination of PW1 then after she was hospitalized due to Cardiac issue.

2. The Learned counsel for the Petitioner / Plaintiff filed Memo along with the discharge summary of the plaintiff from Kovai Medical Center and Hospital, on careful perusal of records since it is the suit for Partition and the learned counsel for the plaintiff fairly argued that the plaintiff is having husband and two sons those who are well acquainted with the facts of the case. Further according to the learned counsel for the petitioner/ plaintiff if at all they move an application for the scarping of plaintiff evidence as PW1 it might create an adverse inference over their claim and prayed for proper adjudication.

3. On careful perusal of records in a suit for Partition all rights of the parties will be decided after the end of Trial. Hence for that appointment of Advocate Commissioner to examine a 78 years old women that too with severe ailment is not necessary to meet the ends of justice. Since the petitioner/ plaintiff is ready to examine either spouse or sons of the plaintiff to depose on behalf of the petitioner/ plaintiff this court taking note of all facts and circumstances decides that this application is dismissed with the liberty to the Petitioner / Plaintiff to subject either spouse of the petitioner/ plaintiff or sons of the plaintiff to adduce evidence on their side.

In the result, with this observation this application is dismissed. No costs.

Dictated to the stenographer, transcribed and typed out by her, corrected and pronounced by me in open court this 04th March 2025.

Subordinate Judge,
Palladam.

Fair / Final Order

IA. 3/2025 in OS 370/2018

Date: 04.03.2025