

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present: Thiru B.C. Gopinath, M.L.,
Additional District and Sessions Judge,
Srivilliputtur.**

Friday, the 1st day of July 2022

I.A.No.2/2022

in

O.S.72/2017

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Rajapalayam, Palayapalayam
Kottimukkalur Sathiriya Rajukkal
Periya Savadi, Moondru Bakastharkalin Sangam
(Registration No. 259/2011), through its President
Thiru.K.S. Sahadevaraja and Secretary K.T. Ramasubramaniaraja

... Petitioner / Plaintiff

/vs/

Rajapalayam, Palayapalayam
Sathiriya Rajukkal Kottimukkalur Poorviga
Periya Savadi, Aaru Kudumbathar Nala Sangam
(Registration No. 191/2015),
Door No. 50, Dharmaraja Periya Theru,
Palayapalayam, Rajapalayam
through its President Thiru.K.P.A. Anantharaja

- 2) Tr. K.P.A. Anantha Raja
- 3) Tr. K.R. Dharmakrishna Raja
- 4) Tr. K.D. Jayagurudeva Raja
- 5) Tr. K.K. Ramaraj Raja
- 6) Tr. K.R. Krishnama Raja
- 7) Tr. K.K. Madasamy Raja

- 8) Tr. K.R. Ragupathi Raja
- 9) Tr. K.B. Rajagopala Raja
- 10) Tr. K.D. Suresh Raja
- 11) Tr. K.A. Duraivenkatta Raja
- 12) Tr. K.S. Jaganatha Raja
- 13) Tr. K.N. Ramasubramania Raja
- 14) Tr. K.P. Sathasiva Raja
- 15) Tr. D. Kajendra Raja
- 16) Tr. K.G. Venkatesan
- 17) Tr. S.K. Ramasubramania Raja
- 18) Tr. K.A. Kesavaraja
- 19) Tr. K.A. Jaganatha Raja
- 20) Tr. M.K. Balakrishna Raja
- 21) Tr. N.P. Chandra Raja
- 22) Tr. A. Perumal
- 23) Indian Bank,
Rajapalayam Branch,
Tenkasi Road,
Rajapalayam through its Branch Manager.

... Respondents / Defendants

This petition came before me for final hearing on 22.06.2022 in the presence of Thiru. P.M. Sureshkumar, Advocate for the petitioner, and Thiru.K. Kalidoss, Advocate for the respondents, and Thiru.R. Perumalsamy, Advocate for the respondents 17 to 19, and the respondents 20 to 23 were being set exparte, and upon hearing arguments on petitioner side and perusing the case records, this Court passed the following....

ORDER

This is a Petition under Order 26 Rule 2 and section 151 CPC for appointment of an Advocate Commissionr to examine the petitioner/plaintiff side witness named K.T. Ramasamyraja aged about 95 years.

1) Case of the Petitioner in brief:

The Petitioner is the plaintiff. They have filed the above suit for declaration. The plaintiff's Association has been registered under the Tamil Nadu Societies Registration Act 1975 and it has elected President and Secretary. The respondents 2 to 16 were acting independently and it was brought to the notice of the Association. The respondents 2 to 16 acted against the interest of the society and also sold certain properties. K.T. Ramasamyraja who gave a complaint against the respondents 2 to 16 on 21.12.2014 is 95 years old and he is prepared to give evidence about this. But however his physical health does not allow him to go out side although he is mentally stable. His evidence will answer various questions with regard to the issues involved in the case and hence an Advocate Commissioner may be appointed to record his deposition.

2) Counter statement filed by the respondents 1 to 16 and adopted by the respondents 17 to 19.

The averments with regard to the society has been denied. The averment that the Plaintiff Society member gave a complaint on 21.12.2014 with regard to the activities of the respondents 2 to 16 has been denied. It is not proper

to expect a 95 years old man to let in evidence. He may not be competent to depose and he will have questionable memory. Examining him will not be helpful to the case in any manner and it would only result in harassment to a super senior citizen. The petitioner/plaintiff has filed this application only to delay finality to the proceedings and hence the petition is liable to be dismissed.

3) The Learned Counsel for the petitioner contended that the petitioner is old and he is not healthy enough to come to the court and let in evidence. He would further state that it is a fit case for appointment of an Advocate Commissioner to record the evidence of the petitioner at the earliest instance.

4) Now the Point for Consideration is whether an Advocate Commissioner can be appointed for examining the witness at his residence.
Point:

5) Records show that the plaintiff has filed the suit to declare that the plaintiff society is functioning lawfully and the 1st defendant society is defunct. There are also various relief of permanent injunction restraining interference, mandatory injunction to tender accounts against by the defendants and to declare the sale deeds of the defendants null and void apart from various other relief. Issues were framed on 03.10.2018 and trial commenced before Principal District Court, Srivilliputtur on 14.03.2019. As of now, PW1 has been cross examined and the matter is posted for further PWs. It is at this stage the plaintiffs have come forward with this application to examine one K.T. Ramasamyraja, a senior member of the

plaintiff Association to speak about the alleged complaint that he gave against the respondents 2 to 16 on 21.12.2014 along with one K.S. Duraivenkatraja and one K.K. Padmanabaraja. The petitioner/plaintiff has alleged that the said witness is 95 years old and although he is mentally stable, he is physical weak and therefore cannot appear before this court. Hence he may be examined through an Advocate Commissioner.

6) The respondents 2 to 16 have resisted this prayer on the ground that the memory and faculties of a 95 years old man will be very much disturbed and it is not possible for him to depose like any other normal man. While appreciating this contention, it is no doubt true that a person who is 95 years old will naturally be weak due to age. But however it cannot be said that he will lack the mental orientation to depose. The plaintiff alleges that the evidence of this witness is vital for his case and interest of justice would only require this court to appoint an Advocate Commissioner to examine him in the presence of the Counsel for both sides.

7) Having considering the submissions and materials, it would only be appropriate to direct the Advocate Commissioner so appointed for the purpose of recording the evidence of the witness to pose certain preliminary proceedings to ascertain the mental status and ability of the witness to depose before recording the statement. If he is satisfied, he can go ahead to record the evidence. The point is answered accordingly.

In the result, the petition is allowed. Thiru. Hancilal, Advocate is appointed as Advocate Commissioner to examine the petitioner/plaintiff's side witness. He shall, after giving due notice to both side in advance, examine the petitioner/plaintiff side witness at his residence and ensure that the evidence is recorded in the presence of both side following the Rules of evidence. The Advocate Commissioner shall also ensure that all safety protocols for pandemic are adhered to by all concerned during the process. His remuneration is fixed at Rs.5000/- payable by the petitioner forthwith directly to the Commissioner. The Advocate Commissioner shall return the executed warrant along with the evidence recorded on or before 28.07.2022.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 1st day of July 2022.

Additional District and Sessions Judge,
Srivilliputtur.

To:-

Tr. Hancilal,
Advocate / Advocate Commissioner.

Additional District & Sessions Court,
Srivilliputtur,
I.A.No.2/2022
in
O.S.72/2017
DRAFT / FAIR/ ORDER
Dated : 01.07.2022