
(1924) 11 MAD CK 0068
In the Madras High Court

Vellai Nachiar

APPELLANT

Vs

A.K.R.M.M. Meiyappa Chetty and Others

RESPONDENT

Date of Decision : 14-11-1924

Acts Referred:

Citation : AIR 1925 Mad 905

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—It is most unfortunate that this Civil revision petition, which was filed in the year 1916, should have taken eight years for being disposed of by this Court. I have no materials on which I can say on whom is the blame for this most extraordinary delay.

2. On the merits of the petition, however, I am clearly of opinion, that it ought to be allowed. The petitioner applied for a review of the judgment on the ground that the judgment was given by the Court as on the consent of the parties, whereas, as a matter of fact, she never authorised the compromise. For this purpose, it was obviously necessary for her to give evidence in support of her review petition. I find that the parties had all been served with notices by the 18th of April 1916. The petition was taken up again for hearing on the 19th, that is, on the following day. At the bearing of the application on that day, the plaintiff's Vakil would appear to have stated that the plaintiff was not present. The hearing of the petition was adjourned to the 26th of April and I find in the B diary a note to the effect that the petitioner's Pleader undertook to produce the petitioner on that day. On the 26th of April the note is to this effect; "The plaintiff refuses to appear to be examined in Chambers. Her Vakil has no evidence at all, having taken no steps for it. He asked for time, I refuse to grant." The learned Subordinate Judge dismissed the review petition on the ground that there was no evidence, having refused the plaintiff's application, no doubt made late in the evening on the 26th of April for the issue of a commission for her examination at her residence in Madura. In the affidavit filed by the plaintiff she states that she

is a gosha lady and zenana woman and that she is not allowed to appear in Court or other public places according to the custom of the community and the practice prevailing in the Sivaganga zemindar's family. The other side opposed the application, though no counter-affidavit indeed could have been filed, because of the application itself being made late in the evening on behalf of the petitioner without previous notice. The undertaking by the petitioner's Vakil to produce her in Court seems to me to amount merely to a representation that he would use his best endeavours to persuade the lady to appear and cannot as between the lady and her Pleader on the one side and the Court on the other be taken to be undertaking given by the lady herself, I have not the slightest doubt that the Pleader used his best endeavours to persuade the lady to appear, if not in Court, at least in the Chambers of the Judge, and that she refused to do so. In these circumstances, the learned Judge was clearly wrong in refusing her application for the issue of a commission for her examination at her residence. As the learned Vakil for the respondent hinted in the course of his argument, very probably the learned Subordinate Judge might have felt somewhat irritated, when after the so-called undertakings given by the Pleader, he was not able to produce his client for examination in Court. However, that may be, the lower Court was clearly wrong in seeking to compel the personal attendance in Court of the lady in the circumstances. Her petition for the issue of a commission was not, I find, dismissed on the ground that she was not a gosha lady but merely because there had been a representation previously made by the Pleader that he would produce her in Court. The very fact that in spite of his repeated representations the Pleader was unable to produce her in Court must have impressed the learned Subordinate Judge with the insistence made by the plaintiff for her examination at her residence either by the Judge or by a commissioner specially appointed for the purpose, The dismissal of the review petition having followed as the necessary result of the dismissal of the petition for the issue of a commission, I set aside the order of the lower Court dismissing the review petition and direct that it must be restored to file, heard and disposed of. The order of the lower Court dismissing the petition for the issue of a commission is also set aside and that petition will also be heard on its merits, if necessary after affording the other side an opportunity to file any counter-affidavit that they may be advised to file. If the lower Court should come to the conclusion that the petitioner is a lady that does not appear in public places, I have no doubt that effect will be given to it by ordering the issue of a commission for her examination.

3. The learned Vakil, for the respondent asks that I should give a special direction that the only evidence that should be accepted on the review petition should be the evidence of the petitioner herself. I cannot possibly accede to this contention or request. The pleader, who appeared for the petitioner when he found himself in the position that he was not able to adduce in support of the petition the main evidence of his client, might have thought that such other evidence as she could produce would be fruitless. In these circumstances, I

cannot possibly give any order that no evidence in addition to the evidence of the petitioner should be received.

4. The review petition will be taken up for hearing at the stage at which it was, before it was dismissed by the lower Court and proceeded to be heard and disposed of. The costs of this Civil revision petition will be provided for in the final order to be made on the review petition by the lower Court.