

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1287 of 2014

and

M.P. No.1 of 2014

Subbathal
(Through her General Power Agent
Mr.M.Natarajan)

.. Petitioner/1st Defendant

Vs.

1.Thangavel
2.Thangaraj

.. Respondents/Plaintiffs

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 25.07.2013 in I.A.No.218 of 2011 in O.S.No.99 of 2007 on the file of the Sub-Court, Gobichettipalayam, Erode District.

For Petitioner : Mr.I.C.Vasudevan
For Respondents : Mr.M.Guruprasad

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 25.07.2013 in I.A.No.218 of 2011 in O.S.No.99 of 2007 on the file of the Sub-Court, Gobichettipalayam, Erode District.

2.The respondents/plaintiffs filed a suit in O.S.No.99 of 2007 for partition and separate possession of 1/3rd share in the suit property stating that originally the suit property belongs to one Karuppanna Gounder and he had three daughters, who are defendants in the suit. The third defendant/Saraswathi has sold her share to the plaintiffs vide sale deed dated 16.04.2007. The first defendant had also filed a suit in O.S.No.21 of 2010 against the respondents/plaintiffs seeking the relief of declaration and permanent injunction stated that she is in possession and enjoyment of the suit property, she prescribed title by way of adverse possession by ouster. Both the suits are tried simultaneously.

3.During pendency of the suit, the son of the first defendant/Subbathal has come forward with an application in I.A.No.218 of 2011 for recognising him as power agent and permit him to act and proceed with the suit on behalf of the first defendant and to depose evidence. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the first defendant.

4.Learned counsel for the revision petitioner submits that for the past one year, the first defendant/Subbathal has lost her hearing sense of both ears. When the first defendant consulted the Doctor, he stated that even with the help of the hearing aid, she will not be able to hear as she has completely lost her hearing sense. Therefore, the first defendant has executed a power of attorney deed dated 15.06.2011 in favour of her son viz., Natarajan to conduct the case on her behalf. To prove the same, the said Natarajan was examined as P.W.1 and the Doctor, who treated the first defendant was examined as P.W.2. Hearing evaluation report issued to the first defendant was marked as Ex.C1, which says that there is severe profound hearing loss of the first defendant/Subbathal, that her left ear has totally lost the hearing sense and that she is advised to fix hearing aid. So the first defendant/Subbathal is unable to appear and depose before the Court. He further submits that power agent is the son of the first defendant and he sought for permission only to give instruction to the counsel and conduct the case on behalf of the first defendant. He fairly conceded that as per Section 119 of Evidence Act, if the witness is unable to communicate verbally, the Court shall take the

assistance of an interpreter or a special educator in recording the statement. Therefore, he prayed for allowing the revision.

5. Resisting the same, learned counsel for the respondents submits that as per the dictum of the Apex Court, power agent is not entitled to depose the evidence as he is not personally aware of the fact. The first defendant has filed a written statement stating that her marriage was performed in the year 1974 and from the year 1987 - 1988 onwards, she prescribed title by way of adverse possession by ouster. At that time, the power agent is only 12 years old. He fairly conceded that the first defendant has appointed her son as power agent only to conduct the case. But he objected him to depose on her behalf. Therefore, he leaves the matter for Court's consideration.

6. Considered the rival submissions made on both sides and perused the materials available on record.

7. Originally, the suit property belongs to one Karuppanna Gounder and he has three daughters, who are defendants in the suit. The first defendant/Subbathal has filed a written statement

stating that she prescribed title by way of adverse possession by ouster. But the third defendant/Saraswathi had sold her share to the plaintiffs/respondents vide sale deed dated 16.04.2007. On the basis of the sale deed, the suit has been filed for partition and separate possession of 1/3rd share.

8.As per clause(c) of para-18 of the Apex Court decision reported in **2010 (10) SCC 512 (Man Kaur (Dead) by Lrs. v. Hartar Singh Sangha)**, "the attorney-holder cannot depose or give evidence in place of his principal for the acts done by the Principal or transactions or dealings of the principal, of which principal alone has personal knowledge."

9.Admittedly, the application was filed under Order 3 Rule 2 C.P.C. for recognising the son/petitioner as power agent of the first defendant and to depose and to mark documents on her behalf. The respondents/plaintiffs have filed a detailed counter and objected the same.

10.Now the learned counsel for the revision petitioner has given an undertaking that the power agent/Natarajan will only

assist his counsel to get along with the trial and he will not be examined before the Court. Under such circumstances, I am of the view, son of the first defendant/Subbathal can be recognised as her power agent and he is permitted to assist his counsel at the time of trial. It is made clear that the first defendant/Subbathal has to be examined before the Court after following the procedure mentioned in Section 119 of Evidence Act, since she lost her hearing sense.

11. With the above direction, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

11.12.2015

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Index: Yes/No

To
The Sub-Court, Gobichettipalayam, Erode District.

R.MALA,J.

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