

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.2613 of 2015

and

M.P.No.1 of 2015

D.Jagannathan
S/o.Dharmaiyya

.. Petitioner/3rd Defendant/Petitioner

Vs.

1.Sakthivel
S/o.Mariyappan
Rep. By his Power Agent
M.Moorthy
S/o.Muthukrishnan

.. Respondent/Plaintiff/Respondent

2.J.Dakshinamoorthy

3.J.Thiagarajan

4.M.Kamala

5.P.Valarmathi

Kasaimmal (Died)

(Amended as per order in I.A.No.49/2011 dated 10.08.2011)

.. Respondents/Defendants 1, 2 & 4, 5/
Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 20.04.2015 made in I.A.No.36 of 2015 in O.S.No.10 of 2009 on the file of the Principal District and Sessions Judge, Thiruvavarur.

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.N.Rajan, for R1

ORDER

The revision petitioner who is the third defendant in O.S.No.10 of 2009 has come forward with the present Civil Revision Petition challenging the impugned order dated 20.04.2015 made in I.A.No.36 of 2015 in O.S.No.10 of 2009.

2. The third respondent/revision petitioner has filed the application in I.A.No.36 of 2015 in O.S.No.10 of 2009 for removing the power of attorney appearing on behalf of the plaintiff stating that the suit has been filed by the plaintiff through his power agent, however at the time of trial, the plaintiff himself entered the witness box and deposed before the Court. Hence, the revision petitioner herein was constrained to file the application to remove the power agent of the

plaintiff. However, the Trial Court without considering the submissions made by the 3rd defendant/revision petitioner, dismissed the application in I.A.No.36 of 2015, against which the present Civil Revision Petition has been preferred.

3. Challenging the order passed by the Trial Court, the learned counsel for the revision petitioner would submit that once a power of attorney has been appointed, the power of attorney alone is having a right to get into the witness box and depose before the Court and the plaintiff/principal has no business to depose before the Court. In the present case, since the plaintiff/principal has appeared before the Court as witness, the power of attorney executed in favour of the power agent has to be revoked and thus, the learned counsel for the revision petitioner prayed for allowing the revision by setting aside the order passed by the Trial Court.

4. Resisting the same, the learned counsel appearing for the respondent would submit that the principal alone is the competent person to depose about the fact which he/she is personally aware of. Further, it is a well settled dictum of the Hon'ble Apex Court that 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. Hence, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. The plaintiff has filed the suit through his power of attorney against six defendants. Now, the revision petitioner who is the third defendant has come forward with this Civil Revision Petition for removal of the power of attorney, since the plaintiff/principal himself got into the witness box and deposed before the Court. In the decision of the Hon'ble Apex Court reported in **2010 (10) SCC 512 (Man Kaur (Dead) by Lrs. v. Hartar Singh Sangha)**, in clause-(c) of para-18, it was held that "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".

7. Further, Order III, Rules 1 and 2 CPC, empowers the holder of

power of attorney to "act" on behalf of the principal. In my view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

8. In the instant case, merely because the plaintiff/principal got into the witness box and deposed about the sale agreement, it will not amount to abuse of process of Court. The Trial Court has considered the said aspect in proper perspective and has come to a correct conclusion.

9. At this juncture, it is submitted by the learned counsel for the respondent that since this Court had already directed the Trial Court to

dispose of the applications in I.A.Nos. 120 and 121 of 2014 within a period of one month and dispose of the main suit within a period of two months thereafter, only with a view to drag on the proceedings the revision petitioner has come up with this vexatious petitions.

10. Considering the said submission made by the learned counsel for the respondent, I am also of the view that only with a view to drag on the proceedings, without even considering the basic relationship of the power of attorney and the principal, the revision petitioner has filed the vexatious application in I.A.No.36 of 2015 for removal of the power of attorney of the first respondent/plaintiff.

11. In these circumstances, the Civil Revision Petition stands dismissed as vexatious, imposing a costs of Rs.5,000/- to be paid to the Chief Justice Relief Fund. Further, the Trial Court is also directed to dispose of the suit in O.S.No.10 of 2009, within a period of one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

04.11.2015

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Note : Issue order copy on 05.11.2015

To
The Principal District and Sessions Judge,
Thiruvarur

R.MALA, J.

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Dated : 04.11.2015