

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

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THE HONOURABLE MR.**JUSTICE D.HARIPARANTHAMAN**

**CRP (PD) No.4060 of 2015
and M.P.No.1 of 2015**

Aboorvammal (Deceased)
R.Venkateswaran (Deceased)
1.V.Uma
2.Sangeetha
3.Karthick Jagan

... Petitioners

vs.

R.Padmanabhan

... Respondent

Civil Revision Petition has been filed against the order dated 07.07.2015 made in I.A.No.3322 of 2015 in OS.No.6120 of 2009 on the file of XIII Assistant City Civil Court, Chennai.

For petitioners : Mr.M.L.Ramesh

For Respondent : Mr.B.V.Sureshkumar

ORDER

The revision petitioners are the legal heirs of one R.Venkateswaran, who was one of the plaintiffs in OS.No.6120/2009 on the file of 13th City Civil Court, Chennai. The respondent herein is the defendant therein.

2.After the death of the said R.Venkateswaran, the revision petitioners filed IA.No.12017/2011 in OS.No.6120/2009 to implead them as plaintiffs 4 to 6 and to contest the suit through their power agent. The aforesaid application was allowed on 13.10.2011 and the

revision petitioners became plaintiffs 4 to 6 represented through their power agent.

3.While so, the respondent / defendant filed IA.No.3322 of 2015 in OS.No.6120 of 2009 under Order XVI Rule 2 and Order XIX Rule 2 r/w Section 151 of the Civil Procedure Code to summon the revision petitioners viz., Mrs.V.Uma, Miss.Sangeetha (minor) and Master Karthik Jagan, who are the signatories of the general power of attorney deed dated 24.06.2011 and also to direct the revision petitioners to produce their bank passbook and the sale deed which was recently executed and further to direct to summon one V.Ramalingam, Notary, who notarised the document dated 24.06.2011 as well as S.Bakiyalakshmi, who is one of the plaintiffs, for the purpose of cross examination.

4.In the affidavit filed in support of the application in IA.No.3322/2015, it is alleged that the signatures of the revision petitioners in the power of attorney deed dated 24.06.2011 are forged one.

5.The trial court allowed the aforesaid application by order dated 07.07.2015. Hence, the revision petitioners themselves as principals filed the present Revision Petition questioning the aforesaid order.

6.Heard both sides.

7.The learned counsel for the revision petitioners brought to my notice the following passage at para 7 of the order questioned before this court:

"The counsel for the respondent contended that the principal has appeared before this court and has stated that she has signed the power hence the petitioner cannot question the power deed. The counsel for the petitioner has contended that she was forced to tell lie in the court by the respondent."

8.The learned counsel for the revision petitioners further submitted that Mrs.V.Uma, who executed the power of attorney deed on behalf of herself and also on behalf of her minor children, is present before this court, besides being present before the trial court. However, the trial court committed grave error in allowing the application seeking wide prayer.

9.The learned counsel for the revision petitioners also submitted that if the principal appeared and stated that she has executed the general power of attorney deed in favour of the power agent, then the trial court is not justified in allowing the application. According to the learned counsel for the revision petitioners, if the respondent is

aggrieved and his contention is that the signatures found in the power of attorney deed are forged one, then he is at liberty to take appropriate proceedings as per law and he could not seek one such prayer as sought for in the aforesaid application.

10. On the other hand, the learned counsel for the respondent vehemently contended that the revision petitioners committed fraud on the court and the signatures found in the power of attorney deed are forged one. The learned counsel for the respondent also requested this Court to compare those signatures and forcibly submitted that this Court need not interfere with the order of the trial court.

11. I have considered the submissions made on either side.

12. As stated above, IA.No.12017 of 2011 was filed by the power agent to implead the revision petitioners in O.S.No.6120/2009 as plaintiffs 4 to 6 and the same was allowed on 13.10.2011.

13. While so, the respondent/defendant filed IA.No.3322/2015 in OS.No.6120/2009 seeking so many directions as stated above. The trial court thought it fit to allow the application as prayed for.

14.It is admitted by the learned counsel for the revision petitioners at the time of hearing this Revision Petition that the power agent, while filing IA.No.12010/2011 in OS.6120/2009 to implead the revision petitioners as plaintiffs in the suit, should have also filed another application under Order 3 Rule 1 r/w Rule 16 of the Civil Procedure Code seeking permission to permit him to represent the principals. But the power agent did not file one such application.

15.The respondent/defendant has also not questioned the order dated 13.10.2011 made in IA.No.12017/2011 in OS.No.6120/2009 on the ground that the revision petitioners did not file an application under Order 3 Rule 1 of CPC r/w Rule 16 of the Civil Rules of Practice, to represent them through their power agent. Then it is different matter.

16.On the other hand, the respondent / defendant filed IA.No.3322 of 2015 in O.S.No.6120 of 2009 with the following prayer:

"For the reasons stated in the accompanying affidavit, it is humbly prayed that the Hon'ble Court be pleased to summon the deponents viz. Mrs.V.Uma, Miss Sangeetha (Minor), Master Karthick Jagan signatories of the General Power of Attorney dated 24.06.2011 directing them to produce their Bank Pass Book and recently executed sale deed. Also direct Mr.V.Ramalingam the Notary who had notarized the document dated

24.06.2011 and as well S.Bakayalakshmi, original plaintiff for the purpose of cross examination and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice."

17.The trial court allowed I.A.No.3322/2015 in O.S.No.6120/2009 on 07.07.2015. Though it is repetition, I like to extract the passage in para 7 of the order that is questioned before this court:

"The counsel for the respondent contended that the principal has appeared before this court and has stated that she has signed the power hence the petitioner cannot question the power deed. The counsel for the petitioner has contended that she was forced to tell lie in the court by the respondent."

Therefore, the principal was present before the trial court and stated that she executed the power deed dated 24.06.2011.

18.Under such circumstances, I am of the view that the trial court committed error in allowing IA.No.3322/2015 in O.S.No.6120/2009. Hence, I have no hesitation in interfering with the same.

19.At the same time, I hereby record that the trial court cannot proceed with the matter without an application being filed by the revision petitioners under Order 3 Rule 1 CPC r/w Rule 16 of Civil Rules of Practice seeking permission to represent through their power agent and the same has to be considered by the trial court, after hearing the respondent/defendant.

20.In the result, the order dated 07.07.2015 made in IA No.3322 of 2015 in OS No.6120 of 2009 passed by the XIII Assistant City Civil Court, Chennai is set aside.

21.The Civil Revision Petition is allowed with the above said observation. No costs. Consequently, connected Miscellaneous Petition is closed.

26.10.2015

Index:Yes/No
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To

1.The XIII Assistant City Civil Court, Chennai.

D.HARIPARANTHAMAN, J.

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C.R.P. (PD) No.4060 of 2015

26.10.2015