

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP [PD] No.4579/2015 & MP.No.1/2015

M.Velu

.. Petitioner

Vs.

K.Muthuswamy

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying for setting aside the order passed dated 11.08.2015 in Ia.No.631/2015 in Os.No.87/2006 on the file of the learned Principal District Munsif, Vellore.

For Petitioner : Mr.R.Margabandhu

ORDER

Challenging the order passed in IA.No.631/2015 in OS.No.87/2006 dated 11.08.2015, for recognising the Power of Attorney, the present Revision has been filed by the petitioner/defendant.

2 Learned counsel for the petitioner would submit that the respondent/plaintiff has filed a suit in OS.No.87/2006 for specific performance and the petitioner/defendant contested the same and to avoid entering the witness box, now the plaintiff/respondent has filed an application in

IA.No.631/2015 to permit his Power of Attorney, to conduct the case. The Trial Court, after hearing both sides, has allowed the application, without considering the fact that the Power of Attorney is not entitled to depose evidence as he is not the person who is aware of the subject matter in toto. Hence, the learned counsel for the petitioner prayed for setting aside of the order dated 11.08.2015 made in IA.No.631/2015 in OS.No.87/2006.

3 The above Civil Revision Petition is heard in length at the time of admission and since the Revision is disposed of at the admission stage itself, notice to the respondent is hereby dispensed with.

4 The respondent as a plaintiff, filed a suit for specific performance on the basis of the Sale Agreement dated 05.03.2003. After issuance of notice and after receipt of the original documents, the defendant/petitioner herein, raised the defence stating that the document is only a security for the loan transaction. But, during the pendency of the suit, the plaintiff filed an interlocutory application in IA.No.631/2015 for recognising one M.Dasaradhan [son of the respondent herein] as the Power of Attorney and to represent the suit and give evidence on behalf of him. The Trial Court has allowed the said application and recognised the son of the respondent herein as the Power Agent. The main contention raised by the learned counsel for the petitioner is that the

plaintiff is only the competent person to speak about the Sale Agreement, viz., whether it is a Sale Agreement or a security given at the time of obtaining the loan and in order to avoid entering the witness box, the plaintiff has filed the said application. The said contention, in the eye of law, does not hold good because as per the Dictum of the Apex Court, even the Power of Attorney can depose only if he is personally aware of the facts ; otherwise he cannot do so and the person on whose behalf he has been appointed as the Power Agent, is the competent person to depose. In the case on hand, the plaintiff has appointed his own son as his Power of Attorney who is aware of the facts and hence, the Trial Court has considered the aspect in proper perspective and came to the right conclusion in allowing the Interlocutory Application in IA.No.631/2015 in OS.No.87/2006.

5 Hence, I do not find any reason to interfere with the order passed by the Trial Court and the Revision deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed and the order passed by the Trial Court in IA.No.631/2015 in OS.No.87/2006 is affirmed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

10.12.2015

AP

R.MALA, J.

AP

To
The Principal District Munsif
Vellore.

CRP [PD] No.4579/2015

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