



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.09.2015**

CORAM:

WEB COPY

THE HONOURABLE **MR. JUSTICE P.DEVADASS**

C.R.P. (PD) (MD) No.1981 of 2015 and 1964 of 2015

In C.R.P.No.1981 of 2015:

K.Nagarajan : Petitioner/ 2nd Respondent
/ 2nd Defendant

Vs.

1.R.Ramasamy : 1st Respondent/1st Petitioner/
Power Agent of Plaintiff

2.R.Vasanthi : 2nd Respondent/Principal/
Plaintiff

3.A.P.Sankar

4.M.Periyasamy : Respondents 3 & 4/
Respondents 1 & 3/Defendants
1 & 3

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 18.08.2015 in I.A.No.900 of 2015 in O.S.No.106 of 2013 on the file of Additional District Munsif Court, Karur.

In C.R.P.No.1964 of 2015:

A.P.Sankar : Petitioner/ 1st Respondent
/ 1st Defendant

Vs.

1.R.Ramasamy : 1st Respondent/1st Petitioner/
Power Agent of Plaintiff

2.R.Vasanthi : 2nd Respondent/Principal/
Plaintiff

3.K.Nagarajan

4.M.Periyasamy : Respondents 3 & 4/
Respondents 2 & 3/Defendants
2 & 3

PRAYER in both Petitions: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 18.08.2015 in I.A.No.900 of 2015 in O.S.No.106 of 2013 on the file of Additional District Munsif Court, Karur.



For Petitioner : Mr.G.Sridharan
For R2 : Mr.S.Anand Chandrasekar
For Sarvabhuman Associates

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C O M M O N ORDER

Since these Civil Revision Petitions are connected, they were tagged together, heard together and are being disposed of together.

2. O.S.NO.106 of 1993 has been instituted in the Court of Additional District Munsif, Karur by one Vasanthi. Her husband Ramasamy acted as her power agent and represents her throughout the trial court proceedings.

3. The defendants filed their written statement. Pleadings are completed. Issues framed. The suit was put on trial. Evidence closed. Plaintiff's side arguments was over.

4. At this juncture, plaintiff filed I.A.No.900 of 2015 seeking to recognize R.Ramasamy, the husband of R.Vasanthi as power agent and continue the proceedings on her behalf. This I.A was opposed tooth and nail by the defendants.

5. The trial court, referring to Order III Rule 2 C.P.C and also certain case laws, came to the conclusion that procedure is only an handmaid of justice and it is not equivalent to any substantive right and any irregularity pointed out in this regard also does not go to the root of the matter and thus, permitted R.Ramasamy to continue as power agent in the proceedings and recording of the evidence of the defendants' side is over and the defendants are yet to commence their arguments.

6. At this juncture, 1st defendant filed C.R.P.No.1964 of 2015 and 2nd defendant filed C.R.P.No.1981 of 2015.

7. The sum and substance of the arguments of the learned counsel for the revision petitioners is that a power agent to act on behalf of a party to a suit must get leave of the Court and the power deed also has to be recognized. However, this was not done. This is an irregularity. Thus, as an incompetent person's evidence lacks legal sanctity.

8. On the other hand, the learned counsel for the respondent reiterated what was argued before the trial court here also.

9. I have anxiously considered the rival submissions, perused the materials on record and also the impugned order of the trial court.

10. The suit has been filed for a declaration that the decree obtained in an earlier suit is null and void and not binding upon the plaintiff Vasanthi since she was not a party to the earlier suit and in the earlier proceedings, the decree, which has been obtained in a collusive suit.



11. At the time of filing the suit, the plaint was verified by the power agent Ramasamy and the power deed also has been filed along with the plaint. Trial went on.

12. Order III, Rule 2 C.P.C deals with power agent and recognition thereof. Filing of a power agent petition along with power deed and recognized the power deed are routine practices in a Civil Court. The said provision speaks about one person acting on behalf of the other as an agent. In a legal proceeding, that cannot be done orally. The power deed has to be executed and court has to be satisfied with the reasons stated to act as an agent for principal. Though the husband and the wife are equal partners, but at times, the husband may act as an agent for his wife, as in the present case. The plaintiff Vasanthi has executed the power deed in favour of her husband Ramasamy.

13. Admittedly, no I.A seeking leave of the court has been filed by the plaintiff. Admittedly, the plaintiff opened her eyes almost as the last leg of the trial. By that time, the trial is nearing completion. Defendants says that it is an irregularity. Even evidence given by the power agent lacks legal sanctity.

14. Procedure is only handmaid of justice. Several decisions have been relied on by the trial court. Procedural formalities are not equivalent to substantive right. The present procedural deviation is a curable defect and it does not go to the root of the matter. The trial court is right in proceeding further.

15. In the circumstances, the impugned order of the trial court is upheld and the Civil Revision Petitions are dismissed. No costs. Consequently, connected M.P.s are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge, Karur.

2. The Additional District Munsif, Karur.

+lcc to M/S.G.Sridharan, Advocate in SR.No.56001

+lcc to M/S.Sarvabhuman Associates, Advocate in SR.No 55719

+lcc to M/S.R.Murali, Advocate in SR.No. 56003

TS/05.10.2015/3P - 6C NGM-SS/SAR -II

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