

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3934 of 2014

and

M.P.No.1 of 2014

1. S.Kothainayagam
2. M.Ayyasamy
rep.by their Power Agent
Sivasubramaniam

... Petitioners

vs.

A.Gowhar John Begam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 30.01.2014 passed by the learned Principal District Munsif, Coimbatore in I.A.No.2561 of 2013 in O.S.No.917 of 2013.

For Petitioners : Mr.S.Gunalan

For Respondent : Mr.V.Pavidas

ORDER

The revision is filed by the defendants, aggrieved by the order passed by the Court below in dismissing their application filed under Order 3 Rule 2 of the Code of Civil Procedure to permit them to

conduct the case through the power of attorney, in a suit filed by the respondent/plaintiff seeking compensation for loss, sufferings and hardship caused to her.

2. The brief facts of the case is as follows:

The revision petitioners/defendants 1 and 2 are the wife and husband and they are living abroad and not in a position to conduct the proceedings in the suit filed by the plaintiff. They have executed a general power of attorney on 29.12.2009 and 28.08.2013 in favour of one Sivasubramaniam, who is the father of the first defendant and father-in-law of the second defendant. The said application was dismissed by the Court below, after contest by the parties, though the power of attorney in Clause 8 has specifically empowered the agent to institute, commence, prosecute, carry on or defend or resist all suits, and other actions and proceedings to continue to defend and prosecute the cases or be added as a party or be non-suited or withdraw the same concerning the parties. It is held by the learned trial Judge that there is no specific mention about the power given to this petitioner to defend the suit in question. Further, as the parties are residing in Canada, the proper procedure had not been adopted. Challenging the

said order of dismissal, the present revision has been preferred.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

4. It is seen that the suit is filed by the plaintiff for recovery of Rs.1,00,000/- by way of compensation for the lot of sufferings and hardship caused to her. The plaintiff, who is the owner of the suit property had let out the same to the defendants, on a monthly rental basis in the year 2004. In 2009, the defendants seem to have approached the plaintiff for the purchase of the said property. The plaintiff also agreed to sell the property, which was reduced to writing as the plaintiff was also in need of money. However, the defendants did not complete the sale before the time prescribed. The first defendant had paid an advance of Rs.1,75,000/- under the agreement. The defendants who were in occupation of the house as tenants had defaulted the payment of monthly rents, inspite of demands. There was a suit filed in O.S.No.636 of 2010 on the file of the Additional District Court, Coimbatore for specific performance by the father of the first defendant, which ended in dismissal. The case of the plaintiff is that neither the sale come through on time nor the monthly rents were paid by the defendants, which instigated the

plaintiff to file the present suit seeking recovery of damages.

5. Order 3 Rule 2 of the Code of Civil Procedure is about the recognized agents viz., persons holding powers of attorney authorizing them to make and do such appearances, applications and acts on behalf of such parties. When the Code specifically empowers the power of attorney to represent a party, there cannot be any impediment for the power agent to prosecute the suit, as long as the power deed is valid. The term 'acts' would not include deposing instead of a principal. In other words, if the power of attorney has rendered some acts in pursuance of the power, he may depose for the principal, but he cannot depose for the principal for the acts done by the principal, of which the principal alone has personal knowledge. However, this stage has not arisen in this suit as the defendants have not even filed their written statement. If the power of attorney holder does not have a personal knowledge he cannot be examined in evidence, however he may be permitted to represent the defendants as their agent. The said principle is enunciated in the judgment reported in **2010 (6) CTC 652**

[Man Kaur (D) by LRs. vs. Hartar Singh Sangha], which is also followed by this Court in **2014(2) CTC 810 [Nanda Govind vs. Dr.Abraham Koshy and another]**. Though the suit filed in the year 2013, the defendants herein have not been able to file their written statement as the sanction for the power of attorney has not been granted.

6. It is stated by the counsel for the respondent/plaintiff that the suit is already now decreed ex parte. Hence, the application would become infructuous. However, even to set aside the exparte decree the sanction of the Court is required to file it through the power of attorney. Therefore, this Court is of the view that the defendants may be permitted to represent through the power of attorney only for the purpose of representing the principals, till the stage of the trial. At the stage of the trial, still the power of attorney could be permitted to enter the witness box on behalf of their principals, provided he had personal knowledge about the transactions. However, I am not getting into the said discussion, as it is irrelevant at this stage.

7. When admittedly, the power of attorney is in force and it is

father of the first defendant, who is the power agent and Clause 8 of the Power Deed specifically enables the power agent to do all such acts, with respect to Court proceedings, there is no impediment for allowing the application.

8. In the result, the order dated 30.01.2014 passed by the learned Principal District Munsif, Coimbatore in I.A.No.2561 of 2013 in O.S.No.917 of 2013 is set aside and this Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

22.12.2016

vj2

Index: Yes/No

Internet: yes

To

The Principal District Munsif, Coimbatore

PUSHPA SATHYANARAYANA.J

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