

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.4782/2014

Sulochana : Petitioner
versus

Shyamala : Respondent

PRAYER: Revision filed against the order dated 16.6.2014, in I.A.No.39 of 2014, in O.S.No.426 of 2010 on the file of the Subordinate Judge, Tambaram.

For petitioner : Mr.A.E.Chellaiah, Senior counsel
for Mr.C.Vasanthakumari Chellaiah
For respondent : Mr.M.Deivanandam

ORDER

The respondent filed an application in I.A.No.39 of 2014 before the Subordinate Court, Tambaram, to recognize the power of attorney and permit the power agent to conduct the civil suit in O.S.No.426 of 2010. The application was allowed by the Trial Court.

2. The order is challenged in this civil revision petition primarily on the ground that even before passing the order under Order 3 Rule 1 and 2 CPC, the power agent filed written statement in the suit and as such, the order is bad in law.

3. The learned senior counsel for the petitioner contended that the written statement was filed by the power agent even without recognition of the power of attorney by the Trial Court. According to the learned senior counsel, the power agent has acted on behalf of the Principal even earlier to this order by filing objection to the report submitted by the Advocate Commissioner on 23 February 2010 and by filing written statement. The Trial Court without considering the earlier actions undertaken by the power agent mechanically passed the impugned order invoking Order 3 Rule 1 and 2 of CPC. The order is therefore bad in law and as such, it is liable to be set aside.

4. The learned counsel for the respondent justified the impugned order.

5. The petitioner filed the suit against the respondent in O.S.No.426 of 2010 praying for a decree of declaration and consequential injunction.

6. The factual matrix indicates that the respondent on appearance before the Trial Court filed a written statement through the power agent. Similarly, the power agent filed objection to the Commissioner's report. It is also a matter of record that permission was not taken earlier by the power agent to represent the principal and more particularly before filing written statement and objection to the report filed by the Advocate Commissioner.

7. The respondent filed an application in I.A.No.39 of 2014 to accept the power of attorney and recognize the power agent so as to enable him to conduct the proceedings.

8. Order 3 Rule 1 and 2 of CPC permits appearance in Court by recognized agent or by pleader. Rule 2 of Order 3 specifically provides appearance on the strength of power of attorney.

9. The respondent executed a power of attorney in favour of her power agent. I.A.No.39 of 2014 was filed on 7 September 2013 along with a copy of the power of attorney. The matter was kept pending by the Trial Court. It is true that even without recognition from the Trial Court, the power agent acted on behalf of the Principal. However, the fact remains that the Trial Court permitted such acts on the part of the power agent. It is also an admitted position that application in I.A.No.39 of 2014 was allowed, thereby recognizing the power agent as the authorized agent of the respondent. The recognition of the power agent on 16 June 2014 would relate back inasmuch as the power of attorney was executed as early as on 20 August 2007, even before filing written statement and objection to the Commissioner's report by the power agent. The order passed by the Trial Court under Order 3 Rule 1 and 2 CPC is nothing but procedural so as to help the party to appear before the Court through power agent. Even if the power agent signed the written statement without obtaining an order under

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Order 3 Rule 1 and 2 CPC, such act would not be a nullity. It would at best, be treated as an irregular one, which can be regularized at a later point of time. The Trial Court by recognizing the power of attorney by order dated 16 June 2014, rectified the earlier defect. The petitioner is therefore not correct in contending that the earlier act done without recognition of the power of attorney would not be saved by passing an order at a later point of time under Order 3 Rule 1 and 2 CPC. I am therefore of the view that there is absolutely no merits in the contention taken by the petitioner.

8. In the upshot, I dismiss the civil revision petition. No costs. Consequently, M.P.No.1/2014 is also dismissed.

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Index:Yes/no
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To
The Subordinate Judge, Tambaram

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