

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1063 of 2016
and C.M.P.No.5884 of 2016

V.K.Sekar

... Petitioner

Vs

V.Chandrasekar
Rep by his Power of Attorney
D.Loganathan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.01.2016 passed in I.A.No.1601 of 2015 in O.S.No.674 of 2013 by the Hon'ble Additional District Munsif, Alandur.

For Petitioner : Mr.S.M.Muralidharan
For Respondent : Mr.R.Balachanderan

ORDER

This revision petition stands listed today for admission. The sole respondent has entered appearance. As he had filed a caveat, a notice was served on the counsel. Learned counsel for the petitioner and the respondent are present. The respondent has also filed a counter. Hence, this Court deems it appropriate to hear the Civil Revision Petition on merits and dispose of the same at the time of admission itself.

2. The arguments advanced by Mr.S.M.Muralidharan, learned counsel for the petitioner and by Mr.R.Balachanderan, learned counsel for the respondent are heard. The grounds of revision, counter filed by the respondent, the certified copy of the impugned order and other documents produced in the form of typed set of papers are also perused.

3. The Original Suit No.674 of 2013 came to be filed by the revision petitioner for a permanent injunction restraining the respondent herein, who is the 1st defendant in the above said suit and one Loganathan, the 2nd defendant, not to interfere with his peaceful possession and enjoyment in respect of the suit property and for costs. The 2nd defendant has also made a counter claim seeking a mandatory injunction directing the plaintiff to quit the property and leave the plaint schedule property in the possession of the 2nd defendant, after removing his belongings found in the said property, for damages for use and occupation from 01.02.2014 and for future damages from the date of counter claim. By making such a counter claim, he wanted to claim that the property was in joint possession of the plaintiff and the 2nd defendant.

4. While so, the trial began and the evidence on the side of the plaintiff was over. The 2nd defendant Loganathan entered the box on the side of the defendants and deposed as D.W.1. Thereafter, the 2nd defendant Loganathan came forward to file I.A.No.1601 of 2015 on behalf of the 1st defendant, holding out that he had got a Power of Attorney, with a prayer to permit him to do all acts and things in

respect of the suit, on behalf of the 1st defendant Chandrasekar. The respondent/plaintiff raised an objection for the said application not against his prayer for permitting him to make appearance as Power Agent of the 1st defendant, but against the attempt made by him to again re-call him as a witness to depose what the 1st defendant was expected to depose.

5. The learned trial Judge, after hearing both sides, overruling the objection raised by the revision petitioner/plaintiff, allowed the application by order dated 19.01.2016. The said order is under challenge in the present revision.

6. The decreetal order simply states the following :

"1. that the petition be and the same is hereby allowed.

2. that the both parties do bear their own costs."

The prayer made in the petition is to the following effect :

"to grant leave to petitioner [Loganathan] to appear, act and on behalf of the 1st defendant" [petitioner/1st defendant V.Chandrasekar] on his behalf as his power agent as empowered under the registered Power of Attorney dated 22.08.2013."

However, in paragraph No.4 of the supporting affidavit, it has been averred as follows:

" Under these circumstances I am filing this petition to permit me to appear and give evidence on behalf of my Principal, the 1st defendant before this Hon'ble Court in the main suit in O.S.No.674 of 2013."

Curiously, the words 'give evidence' is not found in the prayer part of the affidavit and also in the petition and in fact, the omission makes the prayer, somewhat nebulous and meaningless as the sentence contained the prayer appears to be incomplete. For the sake of convenience, the prayer portion is again re-produced:

"I most respectfully pray that this Hon'ble Court may be pleased to grant leave to me *to appear, act and on behalf of the 1st defendant Mr.V.Chandrasekar, in the main suit, on his behalf as Power Agent, as empowered under the Power of Attorney dated 22.08.2013.*"

7. It will be quite obvious that the omission of the words 'give evidence' gives ambiguity and the middle part of the prayer becomes meaningless. This omission could be either accidental or deliberate, so as to misguide the opposite party and the Court. What the petitioner seeks is, to come on record as Power Agent to contest the case on behalf of the 1st defendant without venturing to substitute himself as a witness for deposing the facts known to the 1st defendant, namely, the Principal. Of course, the petitioner has produced a certified copy of the registered deed of general Power of Attorney and the petition has been filed properly. But, the attempt made by the respondent herein/petitioner in the Interlocutory Application is to get a double role as a witness for himself and also as a speaker voicing the facts to be deposed by the 1st defendant. Be that as it may, the respondent herein/2nd defendant, who has now come forward with the petition seeking permission to act as the Power Agent of the 1st defendant, could have been incorporated in his proof affidavit filed as D.W.1 all the facts within his knowledge and the fact, he came to

know on information which he believes to be true. If he wants to depose more, that too, regarding the facts known to the 1st defendant V.Chandrasekar, it will be nothing, but an attempt to appoint a person for deposing what the person who is expected to depose as a witness knows personally. Considering the nature of the prayer and the stage at which, such petition came to be filed and especially, the averment made in paragraph No.4 of the supporting affidavit, this Court is of the view that the Court below did not properly appreciate the intention behind the filing of the petition and the same resulted in a blanket order which came to be passed to the effect that the petition was allowed, without clarifying to what extent, permission was granted to the respondent herein to act on behalf of the 1st defendant.

8. Hence, this Court is of the considered view that it is a case in which, this Court has to clarify the order, as to the extent to which the permission is granted, while confirming the order of the trial Court. Accordingly, the Civil Revision Petition is disposed of, confirming the order of the trial Court permitting the respondent herein to appear on behalf of the 1st defendant V.Chandrasekar as Power Agent, with a clarification that he cannot depose as a witness on behalf of the 1st defendant, as he has already deposed as a defendant's side witness [D.W.1] on behalf of the 2nd defendant and that he may call any other witness to depose on behalf of the 1st defendant for which, there shall not be any impediment.

With the above clarification, the order of the trial Court shall stand confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.04.2016

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P.R.SHIVAKUMAR, J.

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To
The Additional District Munsif,
Alandur.

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