

Reserved On: 29-09-2016

Delivered On: 20-10-2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-10-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1177 of 2016
and
CMP No.6416 of 2016

1.G. Saraswathi
2.A. Santhi

... Petitioners

vs

V. Venkatavaradhan

.... Respondent

Civil Revision Petition filed under Section 227 of the Constitution of India against the order and decretal order dated 05.03.2016 passed in I.A.No.1575 of 2016 in O.S.No.9094 of 2010 on the file of VII Additional City Civil Court, Chennai.

For petitioners : Mr.T.S. Baskaran

For respondent : Mr.K.S. Kumar

ORDER

Challenging the order passed in the application in I.A.No.1575 of 2016 in O.S.No.9094 of 2010 on the file of VII Additional Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed a suit in O.S.No.9094 of 2010 for Partition, Permanent Injunction and Mesne Profits. The defendant filed his written statement and is contesting the suit. When the suit was taken up for trial, after completion of the plaintiffs' side evidence, D.W.1 was examined and was cross-examined by the Power of Attorney Holder of the plaintiffs. When the suit was posted for further evidence on the side of the defendant, the defendant took out an application in I.A.No.1575 of 2016 to decide the preliminary objection, raised by the defendant, in permitting the Power of Attorney Holder of the plaintiffs to argue the case in the suit in O.S.No.9094 of 2010.

3. Admittedly, D.W.1 was cross examined by the Power of Attorney holder of the plaintiffs in full, which was also recorded by the trial Court in the Order, which is under challenge. However, the

trial Court allowed the application in I.A.No.1575 of 2016, finding that the power of attorney holder of the plaintiffs is not entitled to address and cross examine the witness of the defendant and only the plaintiffs should argue the matter and cross examine the defendant's side witness in person or through an Advocate.

4. The trial Court should not pass orders in the application, filed by a party, just for asking. When the trial Court had permitted the Power of Attorney holder to cross examine D.W.1 all of a sudden, it took " U " turn and allowed the application in I.A.No.1575 of 2016 stating that the power of attorney holder cannot cross examine and argue the matter on behalf of the plaintiffs. The trial Court has not taken into consideration the order passed by this Court in MP Nos.2, 2 and 2 of 2013 in CRP Nos.2481 to 2483 of 2013. The said Civil Revision Petitions were filed before this Court against the orders passed in I.A.Nos.15359 of 2011, 520 of 2012 and 10272 of 2012 in the suit in O.S.No.9094 of 2010 under Order 3 Rule 2 of the Civil Procedure Code read with Rules 32 and 33 of the Advocates Act, 1961 to recognise the Power of Attorney Mr.M. Govindaraj to conduct and to plead/argue the Civil Revision Petitions on behalf of the plaintiffs before this Court. This Court heard the arguments of Mr.M.

Govindaraj, the power of attorney holder of the plaintiffs and also Mr.K.S. Kumar, learned counsel, appearing for the respondent. The learned counsel, appearing for the respondent, had no objection for allowing the petitions filed under Order 3 Rule 2 of the Civil Procedure Code read with Rules 32 and 33 of the Advocates Act. The learned counsel requested the Court to fix a date for final hearing of the Civil Revision Petitions. Hence all the petitions were allowed.

5. It is relevant to extract the order passed in M.P.Nos.2, 2 and 2 of 2013 in CRP Nos.2481 to 2483 of 2013 dated 13.12.2013, which reads as follows:

“ These three petitions have been filed under Order III Rule 2 of the Code of Civil Procedure and Rules 32 and 33 to recognise the Power of Attorney, M. Govindaraj, who is the husband of the first petitioner, to conduct and plead/argue the above said Civil Revision petitions on behalf of the petitioners 1 and 2.

2. Heard Mr.Govindaraj, party-in-person appearing on behalf of the petitioners 1 and 2 and the learned counsel appearing for the respondent.

3. The learned counsel for the respondent has no objection in allowing these petitions and has also requested this Court to fix a date for final hearing of these civil revision petitions.

4. In view of the above, that, these petitions are allowed. Mr.Govindaraj, who is none other than the husband of the first petitioner has been recognised as Power Agent of the petitioners and the date is fixed for final hearing of the civil revision petitions on 02.01.2014.

5. The Registry is directed to carryout necessary amendment in all the civil revision petitions and list the same for final hearing on 02.01.2013”.

6. From the order passed in the above Petitions, it is clear that this Court had recognised the power of attorney holder to conduct and to plead/argue the Civil Revision Petitions on behalf of the plaintiffs and the respondent had no objection for allowing the petitions.

7. Pursuant to the Order dated 13.12.2013, the power of attorney holder M. Govindaraj argued the Civil Revision Petitions before this Court on behalf of the respondents therein (who are the plaintiffs in the suit in O.S.No.9094 of 2010). This Court disposed of the Civil Revision Petitions by Order dated 15.06.2015.

8. This Court, while disposing of the Civil Revision Petitions in CRP (NPD) Nos.2481 to 2483 of 2013, observed as follows:

“ 6. The learned counsel appearing for the revision petitioner contended that the applications filed by the said M. Govindaraj on behalf of the plaintiffs are not maintainable for the reason that he was not recognised as the Power Agent of the plaintiffs as on the date of filing of those applications. Further, the learned counsel submitted that the said Power Agent had filed an application in I.A.No.17864 in O.S.No.9094 of 2010 under Order 3 Rule 2 of CPC to recognise him as Power Agent of the plaintiffs. The learned counsel also submitted that the petitioner-defendant had already filed his counter in the said application. Since this Court by Order dated 13.12.2013 allowed the applications in M.P.Nos.2, 2 and 2 of 2013

filed in the above Civil Revision Petitions and recognised the said M. Govindaraj as Power Agent of the plaintiffs, the trial Court has to follow the said order in the application filed by the plaintiffs in I.A.No.17864 of 2014 under Order 3 Rule of CPC. "

9. The plaintiffs also filed an application in I.A.No.17864 of 2014 under Order 3 Rule 2 of Civil Procedure Code read with Rules 32 and 33 of the Advocates Act, 1961 to recognise the Power of Attorney holder M. Govindaraj for conducting/pleading/arguing the suit in O.S.No.9094 of 2010 on behalf of the plaintiffs. By Order dated 07.07.2015, the trial Court allowed the application. The order passed by the trial court has not been challenged by the defendant. Therefore, it has become final.

10. Ignoring all these orders, the VII Additional Judge, City Civil Court, Chennai, has passed the present order, finding that the power of attorney holder of the plaintiffs is not entitled to address and cross examine the witness of the defendant on behalf of the plaintiffs. When the order passed in I.A.No.17864 of 2014 has become final, which was also not challenged by the defendant, the trial court should not have passed the present order. By Order dated

07.07.2015 in I.A.No.17864 of 2014, the trial Court permitted M.Govindaraj, power of attorney holder to conduct/plead/argue the suit in O.S.No.9094 of 2010.

11. The trial Court is not the appellate authority to reverse the order passed in the application in I.A.No.17864 of 2014. When the power of attorney had obtained leave under Order 2 Rule 3 of the Civil Procedure Code read with Rules 32 and 33 of the Advocates Act, he is entitled to cross examine and argue the matter before this Court. When the trial Court had allowed him to cross examine D.W.1, he cannot be prevented from cross examining the other witnesses and arguing the matter before the trial court on behalf of the plaintiffs.

12. In an unreported judgment, relied upon by the learned counsel for the respondent dated 05.11.2015 made in the Writ Petition in W.P.No.21015 of 2015, the Division Bench of this Court declined to grant permission to the petitioner therein, who is a third party, to address the court on behalf of his principal.

13. In the case on hand, in M.P.Nos.2, 3 and 2 of 2013 in CRP (NPD) Nos.2481 to 2483 of 2013, the respondent had no objection for allowing the applications, thus, this Court permitted the power of attorney to argue the Civil Revision Petitions for the respondent therein. That apart, the trial Court also allowed the application in M.P No.17864 of 2014, filed under Order 2 Rule 3 of the Civil Procedure Code read with Rules 32 and 33 of the Advocates Act.

14. Since the permission was already granted to the power of attorney to conduct/plead and argue the case by the trial court, the ratio laid down by the Division Bench of this Court is not applicable to the present case. Since the Power Agent is none other than the husband of the first plaintiff, this Court had allowed the Power Agent to argue the Civil Revision Petitions on behalf of the plaintiffs. The second plaintiff is the sister of the first plaintiff.

15. For the reasons stated above, the fair and decreetal order passed in the application in I.A.No.1575 of 2016 in O.S.No.9094 of 2010 are liable to be set aside. Accordingly, the same are set aside. The application in I.A.No.1575 of 2016 stands dismissed. However,

the leave granted by the trial Court in the application in I.A.No.17864 of 2014 is confined only to the suit in O.S.No.9094 of 2010. The Power Agent cannot appear on behalf of the plaintiffs in other proceedings without leave of the Court.

16. The VII Additional Judge, City Civil Court, Chennai is directed to dispose of the suit in O.S.No.9094 of 2010, on merits and in accordance with law, within two months from the date of receipt of a copy of this order and report the same to the Registry of this Court. With these observations, the Civil Revision Petition stands allowed. No costs. Consequently, connected CMP is closed.

20-10-2016

sr

Index:yes/no
website:yes/no

To

The VII Additional Judge, City Civil Court, Chennai

M. DURAISWAMY,J.,

sr

Pre-Delivery Order in
C.R.P(PD)No.1177 of 2016

20-10-2016