

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1333 of 2017
& C.M.P.No.6213 of 2017

M.Vanathi
Petitioner

..

Vs.

G.R.Thyagasundara Mudaliar
Respondent

..

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and judgment dated 14.03.2017 passed in C.M.A.No.1 of 2017 on the file of the learned Subordinate Judge, Tiruvarur and the fair and decreetal order passed in I.A.No.413 of 2016 in O.S.No.110 of 2016 dated 11.01.2017 on the file of the District Munsif Court, Tiruvarur.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.S.Giridharan

Caveator

ORDER

This Civil Revision Petition has been filed against the decree and judgment dated 14.03.2017 passed in C.M.A.No.1 of 2017 on the file of the learned Subordinate Judge, Tiruvarur and the fair and decreetal order passed in I.A.No.413 of 2016 in O.S.No.110 of 2016 dated 11.01.2017 on the file of the District Munsif Court, Tiruvarur.

2. The petitioner is the first defendant and the respondent is the plaintiff in O.S.No.110 of 2016. The suit is one for declaration that the power of attorney deed dated 01.06.2012 registered as document No.140/2012 on the file of the Sub-Registrar, Tiruvarur, is a document coupled with interest and irrevocable and hence, its revocation is valid under law and for consequential injunction restraining the defendant from causing any interference to the peaceful administration and management and maintenance of KVR Krishna Agencies, Indian oil petroleum corporation retail outlet at Kattur and the current account number with the second defendant in getting supply of petroleum products from the third defendant in due course of the business.

3. According to the respondent, the petitioner is a dealer in petroleum products and running the business in the name and style of 'KVR Krishna Agencies'. The petitioner has appointed the respondent as a power agent to run the business. As per the power of attorney, the respondent can put up superstructure and borrowed money on personal security and property security of the respondent. The said power of attorney is acted upon and the respondent has invested huge amount and run his business. The petitioner wantonly cancelled the power of attorney and disturbed the respondent to run his business. The power of attorney is coupled with interest and is irrevocable one. In such circumstances, the respondent filed the suit for the above stated reliefs.

3. The respondent also filed I.A.No.413 of 2016 for grant of interim injunction. The petitioner filed a counter denying the averments made by the respondent and contended that the respondent is only a power agent and the power has given only to run the business. Whenever the petitioner asked the respondent to produce the accounts, he used to avoid the same and hence, the petitioner could not file the income tax documents. Therefore, the

petitioner cancelled the power of attorney and thereafter, the respondent started acting against the interest of the petitioner, who is the principal. The respondent, who has personal account, has transferred the amount and filed income tax returns showing himself as proprietor of KVR Krishna Agencies. If the respondent suffers any damages in the cancellation of power deed, he can be compensated and balance of convenience is in favour of the petitioner. No prima facie case made out in favour of the respondent.

4. Before the learned trial Judge, both the petitioner and the respondent did not let any oral evidence and they marked some documents. The learned trial Judge after considering the averments in the affidavit, counter affidavit, documents filed by the parties, granted interim injunction, against which, the petitioner filed C.M.A.No.1 of 2007. The learned first appellate Judge after considering all the materials on record and documents relied upon by the counsel for the respondent, dismissed the appeal holding that the respondent has made out prima facie case and he will be put to irreparable loss, if injunction is not granted and his business will not be carried out properly, against which, the present civil

revision petition is preferred by the petitioner/first defendant.

5. Heard the learned counsel for the petitioner and also the caveator and perused the documents available on record.

6. The contention of the learned counsel for the respondent/caveator is that the petitioner appointed the respondent as her power agent to run the business. As per the power of attorney, the petitioner has authorised the respondent to put up the construction at his own costs and borrowed money on his personal security and property security. Pursuant to the same, the respondent has invested huge amount and he is running the business. In view of the same, power of attorney is coupled with interest and is irrevocable and cannot be revoked unilaterally.

7. On the other hand, learned counsel appearing for the petitioner submitted that the respondent is only a power agent of the petitioner. There is no clause, which prohibits cancellation of power of attorney. The respondent is acting against the interest of the petitioner, unless the injunction is vacated, the petitioner will be put to irreparable loss and hardship.

8. The above said contention put forth by the learned counsel for the petitioner is untenable and unsustainable. The petitioner has not disputed the clauses-5 and 9 of the power deed as referred by the learned first appellate Judge that the respondent is authorised to put up the construction at his own costs and borrowed money on his personal security and property security.

9. According to the respondent, based on the above said clauses, he has invested huge amount. This contention of the respondent is also not disputed by the petitioner. It is also not disputed that the respondent is in possession of the property and he is carrying on the business after investing huge amount.

10. It is well settled that a power of attorney coupled with interest cannot be unilaterally cancelled. Considering all these facts, I hold that balance of convenience is in favour of the respondent and there is no prima facie case made out in favour of the petitioner. Both the Courts below have rightly appreciated the facts of the case and exercised the jurisdiction conferred on them in a proper and perspective manner. Therefore, there is no infirmity

or irregularity in the order warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 2016, the learned District Munsif, Tiruvarur, is directed to dispose the suit in O.S.No.110 of 2016 on merits and in accordance with law, as expeditiously as possible and in any event, not later than 31.08.2017. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2017

Index : Yes

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To

1. The District Munsif Court, Tiruvarur.
2. The Sub-Court, Tiruvarur.

V.M.VELUMANI, J.

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