

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2365 of 2015 &
M.P.No.1 of 2015

1.D.Selvaraj
2.P.Sekar
3.P.Karpagam

.. Petitioners

Vs.

1.N.Vanaja
2.K.Murugesu Naicker
3.Ilampuzhal Selvam
4.M.Shankar
5.M.Bhaskaran
6.M.Dharman
7.K.Ramachandran
8.K.Parthiban
9.Suguna
10.Sathish Kumar
11.Anand Babu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.04.2015 made in I.A.No.243 of 2014 in I.A.No.182 of 2007 in O.S.No.92 of 2007 on the of the III Additional District Court, Thiruvallore at Poonamallee.

For Petitioners : Mr.V.Sitharanjandas

For Respondents : Mr.S.Natanarajan for R1
Mr.K.V.Ananthakrishnan
for R2, R4 to R6
R3 & R7 to R11 - Given up

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ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.04.2015 made in I.A.No.243 of 2014 in I.A.No.182 of 2007 in O.S.No.92 of 2007 on the of the III Additional District Court, Thiruvallore at Poonamallee.

2. The petitioners are the defendants 6 to 8, the first respondent is the plaintiff, respondents 2 to 6 are the defendants 1 to 5 and the respondents 7 to 11 are the defendants 9 to 13 in O.S.No.92 of 2007. The first respondent filed suit for declaration that the first respondent is the absolute owner of the suit schedule property and other consequential relief. The respondents 2, 4 and 5, who are the defendants 1, 3 and 4, filed written statement in the month of September 2007. The first petitioner filed written statement in the month of December 2009. The petitioners 2 and 3 filed a memo, adopting the written statement filed by the first petitioner in the month of December 2009.

3. The petitioners filed I.A.No.243 of 2014 in I.A.No.182 of 2007 in O.S.No.92 of 2007 to revoke the leave granted to the first respondent for filing of the suit on 05.04.2007 in I.A.No.182 of 2007 and to reject the plaint.

4. According to the petitioners, the suit was filed by the first respondent through her Power of Attorney. The said power of Attorney was executed outside India and the same was not registered in India as per Section 18 of Indian Stamp Act. The procedure as required under Section 18 of the Indian Stamps Act was not followed and therefore the said document is inadmissible in evidence. In view of such failure, the Power of Attorney is invalid and the Power Agent has no authority to file the suit and conduct the case. The learned Judge, without considering these facts, permitted the Power Agent to file the suit by allowing I.A.No.182 of 2007.

5. The first respondent through her Power Agent filed counter affidavit and submitted that the present application is not maintainable. The petitioners have not challenged the order passed in I.A.No.182 of 2007, accepting the Power of Attorney and permitting the agent to file suit dated 05.04.2007. It is not open to the petitioners to seek cancellation of the

order, after seven years, without challenging the same and the said order has become final.

6. The petitioners cannot seek two reliefs in one application for revocation of leave granted and to reject the plaint. The petitioners have not made out any case for rejection of plaint. The first respondent also submitted that she has executed another Power of Attorney, dated 30.01.2015, ratifying all the acts done by the Agent in the earlier Power of Attorney and the same was registered in Sub Registrar's Office at Saidapet.

7. The learned Judge, considering the averments made in the affidavit, counter affidavit and judgments relied on by the learned counsel for the petitioners, dismissed the application holding that the Courts have no power to revoke its own order and petitioners having not filed any appeal or revision against the said order is not entitled to relief sought for in the present application. The learned Judge also held that a plaint can be rejected as per the provisions of Order VII Rule 11 C.P.C. and cannot claim rejection of plaint under Section 151 of C.P.C. The petitioners have not made out any case for rejection of plaint as per the Order VII Rule 11 C.P.C.

8. Against the order dated 30.04.2015 made in I.A.No.243 of 2014 in I.A.No.182 of 2007 in O.S.No.92 of 2007, the present Civil Revision Petition is filed by the petitioners.

9. The learned counsel for the petitioners submitted that the learned Judge erred in dismissing the application on the ground that the Court has no power to revoke its own order. The learned Judge failed to see a leave granted to file the suit can be revoked at any time, when the irregularity in granting leave has been pointed out. The learned Judge failed to see that the Power of Attorney, dated 02.03.2007 is not authenticated as per Section 85 of Indian Evidence Act and the same is inadmissible in evidence as per Section 35 of Indian Stamps Act. Since the Power Deed executed outside India, the Power Agent has not followed mandatory provision as required under Section 18 of the Indian Stamps Act and the Power of Attorney is inadmissible in evidence. The petitioners can object to the admissibility of the documents only when it was produced for marking as exhibits. The respondents 2 to 6 / defendants 1 to 5 already objected to Power of Attorney in the written statement filed in the year 2007 itself and petitioners were implead only as in the year 2009.

10. In support of his contentions, the learned counsel appearing for

the petitioners relied on following Judgements:

- (i) AIR 1941 Madras 6 (Thinnappa Chettiar Vs. Krishna Rao)**
- (ii) 2007 (5) MLJ 1381(Habibunnisa Beevi Vs.Perumal)**
- (iii) AIR 1932 Lahore 388 (Notified Area Committee Vs. Kidar Nath)**
- (iv) AIR 1936 Lahore 321 (Punjab Zamindars Bank Vs. Madan Mohan)**
- (v) 2007 (4) CTC 144 (Parthi Balaiah Chetty Vs. Prema Sudhamani)**
- (vi) AIR 1984 Delhi 363 (M/s.E.C. and E.Co. Ltd., Vs. M/s. J.E. Works, Sirsa)**
- (vii) 2013 (6) CTC 227 (Omprakash Vs. Lazminarayan)**
- (viii) 2013 (2) CTC 832 (D.Balachandran Vs. T.C.Shanmugam)**

11. The learned counsel for the first respondent submitted that the Court has no power to revoke its own order. The petitioners having failed to file any appeal or revision cannot seek to revoke the said order in the same Court. In addition to the same, the first respondent had executed another power of Attorney, dated 30.01.2015 ratifying the acts done by the Agent as per the earlier Power of Attorney and the same has been registered in Sub Registrar Office, Saidapet and prayed for dismissal of the Civil Revision Petition.

12. In support of his contentions, the learned counsel for the first

respondent relied on following Judgement:

2011 (1) CTC 286 (K.Santhanam Vs. S.Kavitha through her sub power agent K.Seerappan through her Power Agents)

13. Heard the learned counsel for the petitioners and respondents and perused the materials available on record.

14. From the materials available on record, it is seen that the first respondent filed suit in the year 2007 through her Power Agent, who is her husband. I.A.No.182 of 2007 was filed for permission to file suit through Power Agent. The said application was allowed and suit was numbered in the year 2007. The respondents 2 to 6, who were the only defendants at that time did not challenge the said order, even though in the written statement filed by them in the year 2007, disputed the Power of Attorney. The petitioners were impleaded as defendants in the year 2009 and they have not challenged the said order. They filed application in the year 2014 in the same Court for revocation of said order and for rejection of plaint, after commencement of trial. The reasons given by the petitioners seeking said relief are not valid and acceptable.

15. The contention of the learned counsel for the petitioners that the objections can be made only at the time of marking of documents is without any merits. A reading of affidavit shows that the petitioners are seeking cancellation of order, permitting the petitioners to file suit through their power agent. They are not challenging the marking of documents as inadmissible. The petitioners are also seeking rejection of plaint. The petitioners cannot seek two reliefs in one application. Further, the petitioners have not made out any case for rejection of plaint, as they have not mentioned any ground as contemplated under Order VII rule 11 C.P.C.

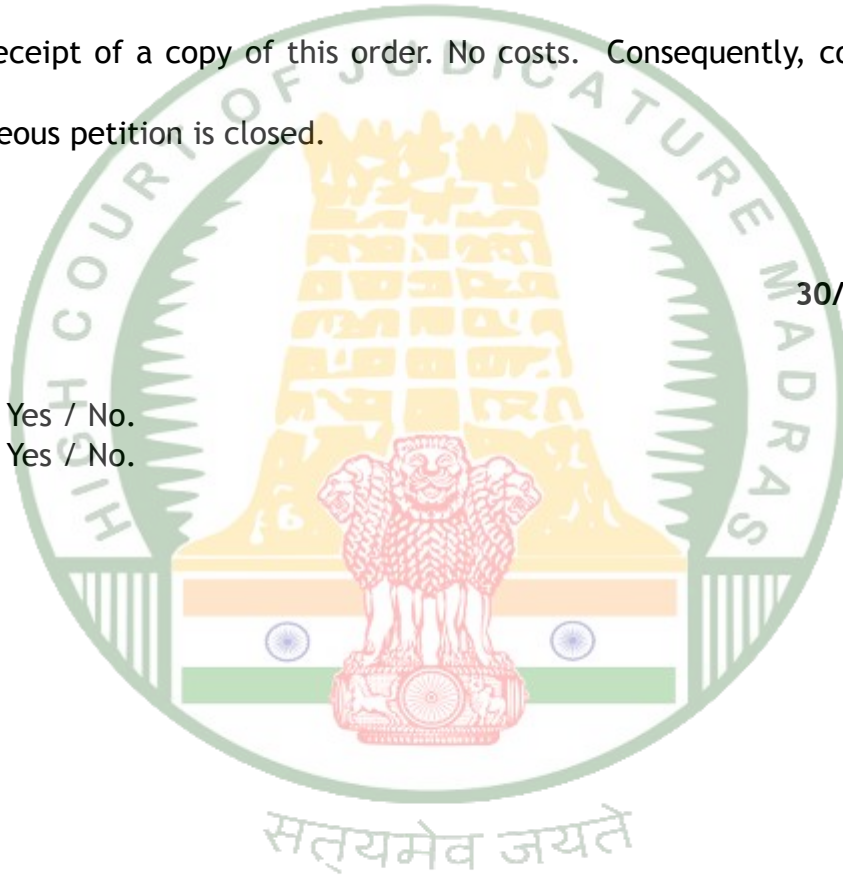
16. In view of the above facts, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.04.2015.

17. In the result, this Civil Revision Petition is dismissed. The learned III Additional District Judge, Thiruvallore, is directed to dispose O.S.No.92 of 2007 and O.S.No.94 of 2011, on merits and in accordance with law, as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

30/06/2017
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Index : Yes / No.
Internet : Yes / No.

dm/rns



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V.M.VELUMANI, J.

dm

To

The III Additional District Court,
Thiruvallore at Poonamallee.



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