

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2597 of 2013
and
M.P.No.1 of 2013**

A.Rajesh

.. Petitioner

Vs.

R.Devi

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.04.2013 in I.A.No.13 of 2013 in O.S.No.4 of 2008, on the file of the District Judge, Thiruvannamalai.

For Petitioner : M.Selvam

For Respondent : Mrs.G.Sumithra

ORDER

The plaintiff is the revision petitioner and he has filed the suit for declaration and permanent injunction against the respondent herein in O.S.No.4 of 2008 on the file of the District Judge, Thiruvannamalai.

2.The case of the petitioner is that he as a plaintiff has adduced evidence in the said suit as PW1 and the plaintiff's side evidence was closed. In the meantime the defendant/respondent herein filed I.A.No.47 of 2012 under Order 3, Rule 2 CPC r/w Rule 16(3) of Civil Rules of Practice to recognize one V.Sakthikumar as her power of attorney agent and permit him to examine as her witness. The said I.A. was allowed by order dated 06.09.2012. Thereafter, after closure of plaintiff's side evidence, the defendant/respondent has filed an application in I.A.No.13 of 2013 under Order 18, Rule 3(A) of CPC to permit her to enter into witness box after examination of her power of attorney agent.

3.The said application was opposed by the revision petitioner by contenting that the power of attorney agent cannot speak generally regarding the averments contained in the written statement and he cannot steps into the shoes of the principals. The defendant can be examined as a witness only once. Either the power of attorney agent or of the principal can appear and depose as DW1. Both of them cannot appear separately and give a split evidence of the defendant. The present petition is not maintainable either in law or on facts.

Hence the revision petitioner prays to dismiss the same.

4.The learned District Judge after conducting elaborate enquiry was allowed the above application by order and decree dated 05.04.2013. The revision petitioner has come up with this civil revision petition by questioning the veracity of the said order.

5.I heard Mr.M.Selvam, learned counsel appearing for the petitioner and Mrs.G.Sumithra, learned counsel appearing for the respondent and perused all the materials available on records.

6.This Court has perused the material available record and considered the rival submission on either side. The learned counsel for the revision petitioner argued that when the defendant filed application in I.A.No.47 of 2012 to recognize her power agent and to permit the power agent to give evidence as DW1 on her behalf and the said application was allowed, she cannot file the present application seeking permission of the Court to permit her to lead evidence after her power of attorney agent give evidence as DW1. The said application is not at all maintainable.

7. In support of the contention of the revision petitioner, the Learned Counsel for the revision petitioner has placed reliance on the decision of this Court reported in **1998 (2) CTC 468** in the case of **Chithambaram v. Rathinam** wherein it is held that Order 18, Rule 3(A) will come into play only where the witnesses are to be examined prior to parties to the proceedings.

8. Per contra, the learned counsel for the respondent contented that the lower court is right in allowing the application filed by the respondent seeking permission under Order 18, Rule 3(A) CPC. The defendant can adduce evidence after examination of her power of attorney agent and there is no bar to give evidence as DW2. The learned counsel further contented that the order passed by the learned District Judge is perfectly and legally correct and the same is not warranted interference by this Court.

9. On a careful consideration of the arguments and perusal of records, it is to be pointed out that when the respondent has filed a petition to recognize her power agent and to permit him to examine as DW1 and he was also examined as DW1, the question of granting permission to the principal i.e., the defendant does not arise.

10. In order to have thorough view of the matter, it is advantageous to extract Order 18, Rule 3(A) CPC, which reads as follows:

"3A. Party to appear before other witnesses:- Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

11. The gist of the provision goes to the effect that it is incumbent upon the party to the case to get prior permission from the Court to examine himself at a later date after examination of any other witness and for granting such permission, the Court is statutorily required to record reasons. Therefore the said provision is applicable only if any private party is examined as witness but here the power of attorney was examined on behalf of the principal. In a case of ***Secretary to Government of India, Ministry of Defence, New Delhi and another v. Indira Devi and others*** reported in ***AIR 2003 Andhra Pradesh 329***, the Hon'ble Division Bench of Andhra Pradesh High Court has held that once a person files a suit on behalf of the party, as a General Power of Attorney holder, he enters into the shoes of that party and except to the extent of personal knowledge, he

is entitled to depose on other facts. Therefore the trial court committed error in allowing the application.

12. In yet another case in ***M. Kumar v. S. Subbiah Kone & Another***, reported in **2009 (5) MLJ 1460**, this Court has dealt with the same issue of seeking permission to examine later by the Principal after examining his agent first and held that the same is not permissible. As such the respondent herein cannot seek permission under Order 18, Rule 3(A) of CPC and the said petition is not maintainable. The defendant can give evidence if the same is within his knowledge only but he cannot be allowed to give evidence when the agent has already deposed his behalf. Thus whether recording any reason to that effect there is no justification by the learned District Judge to allow the application filed by the respondent under Order 18, Rule 3(A) CPC. Therefore the order is required to be interfered with by this Court.

13. In the light of the discussion made above, this Court is of the considered view that the order and decree passed by the learned District Judge, Thiruvananthapuram by permitting the respondent herein to advance evidence after her power of attorney agent was examined as

DW1 is liable to be set aside.

14.In the result:

a) this Civil Revision Petition is allowed by setting aside the order and decree passed in I.A.No.13 of 2013 in O.S.No.4 of 2008, dated 05.04.2013, on the file of the District Judge, Thiruvanamalai;

b) the trial Court is hereby directed to take up the suit on day to day basis, without giving any adjournment to either parties and dispose of the same within a period of three months from the date of receipt of a copy of this order, since the suit is for the year 2008. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs.

13.04.2017

Note:Issue order copy on 12.06.2017.

Internet:Yes/No.

Index:Yes/No.

vs

To

The District Judge,
Tiruvannamalai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.2597 of 2013
and
M.P.No.1 of 2013**

13.04.2017

<http://www.judis.nic.in>