

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No. 553 of 2012
and M.P.No.1 of 2012

Selvi

...Petitioner

Vs

1.Jayalakshmi

2.The Commissioner
Tambaram Municipality
Tambaram, Chennai

...Respondents

[R2 is not a necessary party, hence given up]

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 06.01.2012 made in I.A.No.1223 of 2011 in O.S.No.114 of 2010 on the file of the District Munsif Court, Tambaram.

For Petitioner : Mr.K.Meenakshisundaram
For Respondents : M/s Achari & Antoni Associates [for R1]

ORDER

The first respondent filed a suit against the petitioner and the Commissioner of Tambaram Municipality in O.S.No.114 of 2010 before the learned District Munsif, Tambaram for permanent and mandatory injunction. The suit was opposed by the petitioner by filing written statement.

2. During the course of trial, the Power Agent of the first respondent filed an application in I.A.No.1223 of 2011 to give evidence on behalf of the principal. The application was opposed by the petitioner by filing counter, wherein, a contention was taken that the Power Agent was not in the know of things and as such, he is not competent to give evidence. The learned trial Judge, notwithstanding the objection raised by the petitioner, allowed the application and permitted the Power Agent to tender evidence. The said order is under challenge in this civil revision petition.

3. The learned counsel for the petitioner contended that a bare reading of the plaint would make it clear that the statements were personal to the first respondent and the Power Agent was not in the picture. Such being the factual position, the trial Court was not correct in permitting the Power Agent to give evidence.

4. I have also heard the learned counsel for the first respondent.

5. There is no dispute that the suit in question was filed only by the first respondent. The first respondent appears to have given Power of Attorney to one P.Jeganathan, to give evidence on her behalf. The learned

trial Judge allowed the application with an observation that it is possible for the petitioner to prove her case by documentary and oral evidence and by way of cross examination of Power Agent. The observation made by the learned trial Judge appears to be the reason for filing this revision petition.

6. It is trite that that the Power Agent would be competent to give evidence only in respect of those matters which are personal to him. This legal position was clarified by the Supreme Court in **Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others [(2005) 2 SCC 217]**. The Supreme Court in the said judgment made it clear that the Power of Attorney holder cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

7. The application in question was filed to receive the Power of Attorney and permit the Power Agent to give evidence on behalf of the principal. The question of evidentiary value of the evidence so tendered by the Power Agent is a matter to be considered by the trial Court in the light of the law declared by the Supreme Court in **Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others** (cited supra). It is always open to the petitioner to draw the attention of the Court with respect to the legal position regarding the evidence given by the Power agent with respect to the transactions that took place prior to his appointment as Power Agent.

The order passed by the learned trial Judge is clarified to the above extent.

K.K.SASIDHARAN,J.

gms

The civil revision petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2017

gms

To

1.The Commissioner
Tambaram Municipality
Tambaram, Chennai.

2.The District Munsif Court,
Tambaram.

C.R.P.(P.D.) No. 553 of 2012

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