



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.2049 of 2017

P.Rajendran

Represented through his power of attorney

Ramuthai

W/o. Rajendran

... Petitioner/Petitioner/Power agent of the
Plaintiff

Vs.

P.Padammal

... Respondent/Respondent/Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, to direct the Execution Court (Principal Subordinate Court), Dindigul to number the Execution Petition filed by the petitioner herein in O.S.No.11 of 2010.

For Petitioner : Mr.M.Santhoshkumar

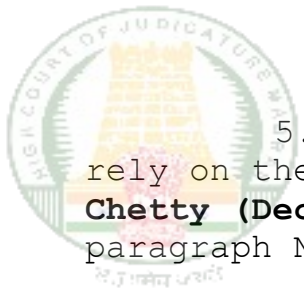
O R D E R

This Civil Revision Petition has been filed seeking a direction to the Execution Court (Principal Subordinate Court), Dindigul to number the Execution Petition filed by the petitioner in O.S.No.11 of 2010.

2. The money suit in O.S. No.11 of 2010 was filed by one Rajendran before the learned Principal Subordinate Judge, Dindigul District. The said suit was decreed in favour of him and due to illness, he was not able to file Execution Petition before the same Court. Hence, he has given Notarized Power of Attorney on 20.06.2015 to his wife, who is the petitioner herein.

3. The grievance of the petitioner is that Execution Petition has not been numbered as the petition has been re-presented through power of attorney, who is none other than wife of the plaintiff.

4. The learned counsel for the petitioner submits that on earlier occasion, the petition was returned for amendment and after carrying out the amendment and rectifying the defect only, the petition was re-presented. But the learned Principal Subordinate Judge, Dindigul has again returned the petition without numbering the same by holding that power of attorney executed by the plaintiff has not been registered. The learned counsel for the petitioner would further submit that registration of power of attorney is not mandatory and the learned Principal Subordinate Judge, Dindigul District ought not have returned the petition.



5. In support of his contention, the learned counsel would rely on the judgment reported in (2007) 4 MLJ 829 (In **Parthi Balaiah Chetty (Deceased) and Others Vs.D.Krishna Rao and Others**, wherein in paragraph No. 8 it has been held as follows:

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"8. The learned counsel for the applicants/petitioners relied upon a decision, of the Division Bench of the Delhi High Court in Electric Construction and Equipment Co.Ltd V.Jagjit Electric Works Sirsa (Haryana) AIR 1984 Del. 363 for the proposition that presumption under Section 85 cannot be raised in this case. However, it is seen from the said judgment that for raising a presumption under Section 85 of the Evidence Act, two conditions are to be satisfied. The first is that the document should have been executed before the Notary Public and the second is that it should be authenticated by the Notary Public. In this case, the document shows the execution by all the principals and it is attested by the Notary Public in all the pages. Therefore, Section 85 of the Evidence Act is prima facie satisfied in this case. As I have earlier observed, it is always open to the respondents in the course of trial of the Testamentary Original Suit to show that the caveators had neither assembled at Chennai and executed the power nor was it authenticated, but at this stage the presumption under Section 85 of the Evidence Act is in favour of the Caveators and the rebuttal of such presumption can be done by the applicants/plaintiffs only by proper evidence at the stage of trial of the TOS."

6. The aforesaid judgment is squarely applicable to the present case. In view of the same, the learned Principal Subordinate Judge, Dindigul District, is directed to number the Execution Petition and proceed with the same in accordance with law.

7. In the result, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Dindigul.

Copy to : The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.M.ARUL SWAMINATHAN Advocate in SR. No. 87376

CM

JS/MR.KKR/SAR.3/11.12.2017/2P-4C

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