



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 738 of 2017
and
CMP (MD) No. 3393 of 2017

Valarmathi

... Petitioner

vs.

- 1) Arulraj Ponnaiah
- 2) The Sub Registrar,
Moolaikaraipatti,
Tirunelveli Main Road,
Moolaikaraipatti Village,
Nanguneri Taluk,
Tirunelveli District.
- 3) The Inspector General of Registration,
State of Tamil Nadu,
Kadarkarai Salai,
Chennai City.
- 4) The State of Tamil Nadu,
Rep by its
The District Collector,
Kokkikulam Village,
Tirunelveli District.
- 5) Sermadurai
- 6) Velladurai

... Respondents

Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 01.03.2017 made in I.A.No.182 of 2017 in O.S.No.134 of 2015 on the file of the Additional District Munsif Court, Nanguneri, Tirunelveli District.

For Petitioner : Mr.S.Siva Thilakar

ORDER

This revision petition is directed against the order passed by the Trial Court allowing the application filed by the plaintiff to permit his father to give evidence on his behalf, based on the power of attorney document executed by the plaintiff in favour of his father.



2.The revision petitioner herein/2nd defendant has opposed the petition by way of a counter, stating that the averment of the plaintiff that he is employed in a foreign country and unable to come to India to contest the case itself, is false and the father of the plaintiff is neither a party to the suit nor a person competent to speak about the plaint documents. Hence, he cannot depose about the facts of the case.

3.It was contended by the revision petitioner before the Trial Court that the person who is sought to give evidence as witness on behalf of the plaintiff, has not obtained any permission of the Court to act as power agent of the plaintiff and the alleged power of attorney document is not a registered one and cannot be relied upon.

4.After hearing both sides, the Trial Court reserving its opinion regarding the genuineness of the power of attorney document, has held that since the plaintiff has expressed some inability to attend the Court and depose, he has authorised his father to do so. By permitting the said application, no prejudice will be caused to the 2nd defendant/revision petitioner.

5.Reiterating the counter averments, the revision petitioner submitted that there is no provision of law which permits third party to give evidence on behalf of the contesting party and therefore, the order of the Trial Court is erroneous and liable to be set aside.

6.Perusal of the application and the order of the Trial Court which is impugned before this Court indicates that an application under Order 8 Rule 2 has been filed by the plaintiff seeking permission of the Court to produce the evidence on his behalf through his father whom he has appointed as Power Agent. It is not an application to substitute the plaintiff by power agent. It is only a leave sought by the plaintiff to permit his father to give evidence on his behalf, for which, he has authorised his father under a power of attorney deed.

7.It is always open to the revision petitioner to challenge the genuineness of the power of attorney document and also the competency of the witness to speak about the facts of the case, while the witness mounts into the witness box. The right of cross-examination to impeach the veracity of the evidence of the witness and the documents relied by the witness is always available to the revision petitioner. Therefore, preventing a witness from mounting the witness box at the threshold is not fair. It may lead to injustice, depriving a party from recording his evidence. Therefore, this Court finds no reason to interfere with the order of the Trial Court by way of revision.



Hence, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

WEB COPY

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif Court,
Nanguneri,
Tirunelveli District.

+1 cc to Mr.S.Siva Thilakar , Advocate in SR.No. 51677

nbi

AE/JC/SAR3/24.05.2017/3P/3C

CRP (PD) (MD) No. 738 of 2017

10.04.2017