

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.236 of 2014
& M.P.Nos. 1 of 2014 & 1 of 2015

1.Shilda Chandraganthi
2.Kristopher
3.Vincent Jakkesh
4.Jensi Kristilla

.. Petitioners

Vs.

1.T.V.Nagarajan
2.Janaki
(Respondents 1 and 2 are
represented by power of attorney
agent R.Asaithambi)

3.Krishnan
4.Velmurugan
5.Muthu

.. Respondents

(Respondents 3 to 5 remained
exparte in the suit and hence
they are given up in the revision)

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
20.12.2013 made in I.A.No.211 of 2013 in O.S.No.47 of 2013 on
the file of the District Munsif Court, Dharmapuri.

For Petitioners : Mr.S.M.S.Shriram Narayanan

For R1 and R2 : Mr.S.Ganesh

R3 to R5 : Given up

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.12.2013 made in I.A.No.211 of 2013 in O.S.No.47 of 2013 on the file of the District Munsif Court, Dharmapuri.

2. The petitioners are the defendants 1 to 4, respondents 1 and 2 are the plaintiffs and the respondents 3 to 5 are the defendants 5 to 7 in O.S.No.47 of 2013 on the file of the District Munsif Court, Dharmapuri. The respondents 1 and 2 filed the above suit through their Power Agent namely, Asai Thambi, for declaration to declare the sale deed dated 02.02.1989 bearing document No.104/1989 executed by the respondents 3 to 5 in favour of the husband of first petitioner and for injunction. The Power Agent Asai Thambi filed I.A.No.211 of 2013 under Order III Rule 2 C.P.C. for permitting him to conduct the case as Power Agent of the respondents 1 and 2 based on two General Power of Attorney deeds both dated 25.11.1999 executed by the respondents 1 and 2.

3. According to the respondents 1 and 2, they are living in Salem and in order to maintain the suit property and conduct the case, they executed the deeds of Power of Attorney to the Power Agent Asai Thambi.

4. The petitioners filed counter affidavit and contended that the deeds of Power of Attorney are of the year 1999 and the Power Agent has to prove whether the principals are alive or not and that power given to the Power Agent is to conduct the case in respect of the property in S.No.131 measuring 2 Acres 54 cents and not for the suit property, which is situate in S.No.130/4A measuring 50 cents and prayed for dismissal for the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application holding that whether the deeds of Power of Attorney relate to the suit property or not can be decided only at the time of trial.

6. Against the said order dated 20.12.2013 made in I.A.No.211 of 2013 in O.S.No.47 of 2013, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondents 1 and 2 and perused the materials available on record.

8. The learned counsel for the petitioners filed two General Power of Attorney deeds, both dated 25.11.1999 and a copy of the plaint in the typed set of papers and referred the schedules and description of the properties in both the deeds of Power of Attorney and plaint.

9. From these schedules, it is clear that the respondents 1 and 2 have not given power to the Power Agent Asai Thambi in respect of the suit property situate in S.No.130/4A measuring 50 cents. The deeds of Power of Attorney relate to the property situate in S.No.131 measuring 2 Acres 54 cents. The learned Judge has failed to consider the schedules in both the deeds of Power of Attorney and the plaint and committed an error in allowing the application. Even before numbering the plaint, it has to be verified as to whether the Power Agent has authority to file the suit on behalf of the plaintiff. On the other hand, the learned Judge erred in holding that whether the Power Agent has authority to file the suit and conduct the case can be decided only during trial. The learned Judge has

committed an irregularity and therefore, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

20.02.2018

Index : Yes/No

kj/nmm

To

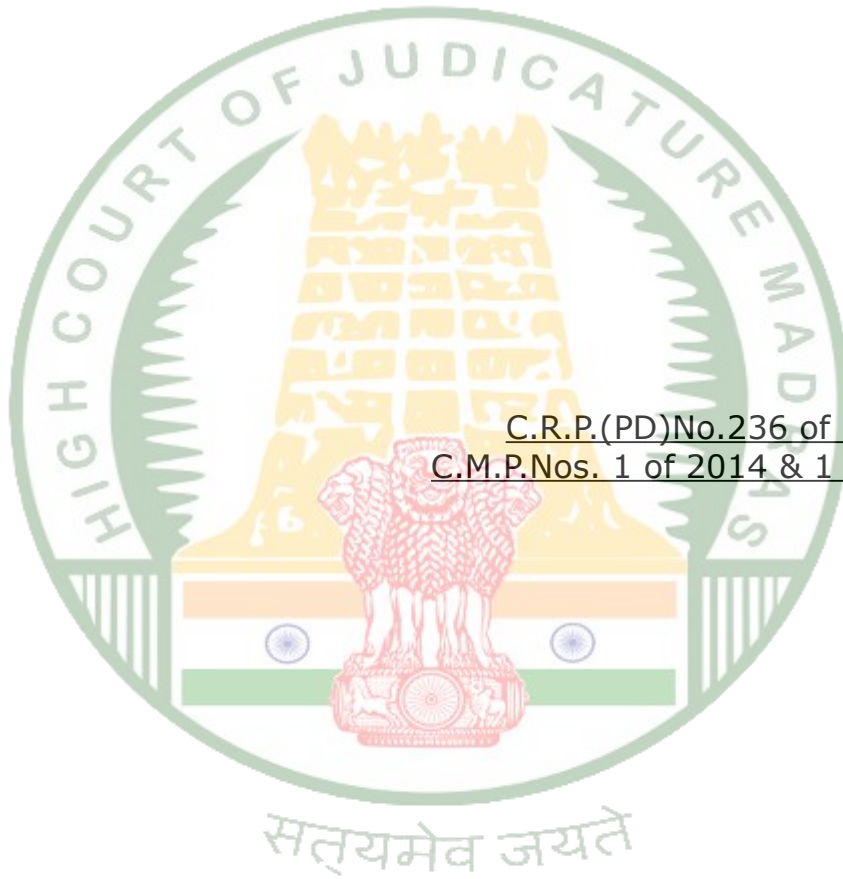
The District Munsif
Dharmapuri.



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V.M.VELUMANI, J.

kj/nmm



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