

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.2.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1381 of 2016 and C.M.P.No.7685 of 2016

Rajendra Kumar @ Raaj Golcha ... Petitioner/Plaintiff

Vs

Monique Juliette Paul (died)

Giardina Erika
Rep. by her Power Agent
Saveries Gilles

... Respondent/Defendant

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 13.10.2014 made in I.A.No.141 of 2014 in O.S.No.1433 of 2012 on the file of the II Additional District Munsif, Puducherry.

For Petitioner

: Ms.Savitha Devi for
M/s.R.Meenal

Respondent

: Mr.B.Balavijayan

ORDER

The petitioner herein has filed suit in O.S.No.1433 of 2012 before the II Additional District Munsif, Puducherry against Monique Juliette Paul for permanent injunction. Pending suit, she passed away. The respondent herein is her legal heir. Originally, defendant was represented by Saveries Gilles, the respondent herein. After the death of the defendant, Saveries Gilles filed I.A.No.141 of 2014 as her power agent seeking permission to represent the respondent. He produced a power of attorney alleged to have been given by the defendant to him on 12.12.2012. It is made to appear that the power was executed by the defendant in Paris and then the same is attested by the Indian Embassy. The said application was allowed by the court below. Challenging the said order, the petitioner has preferred the present Civil revision petition before this Court.

2 According to the petitioner, power document was not adjudicated before the registering authority in Pondicherry within three months from the date of execution as mandated in Section 18 of the Indian Stamp Act. Without considering the valid objection of the petitioner, the court below allowed the application. Hence, the order passed by the court below is liable to be set aside.

3 Per contra, the leaned counsel for the respondent would submit that the said application is filed to accept the representation as principal in the aforesaid suit. Hence, the application filed by the respondent is in accordance with the provisions of law. Therefore, the court below rightly allowed the application.

4 In **MAN KAUR (DEAD) BY LRS. VS. HARTAR SINGH SANGHA [(2010) 10 SCC 512]** the Hon'ble Supreme Court has made clear the legal position as to who should give evidence in regard to matters involving personal knowledge can be summarised as follows:

"(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of

which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it

may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

5 In view of the legal position laid down by the Hon'ble Supreme Court, a Power Agent can be acted upon on behalf of his principal in the light of the aforesaid decision of the Hon'ble Supreme Court. No prejudice would be caused to the petitioner by allowing the said application. Therefore, there is no error or illegality in the order passed by the court below. It is open to the petitioner to raise all the objections raised before this court at the time of trial in the suit.

6 The Civil revision petition is dismissed with the above observations. No costs. Connected miscellaneous petition is closed.

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20.02.2018

Speaking/Non speaking order

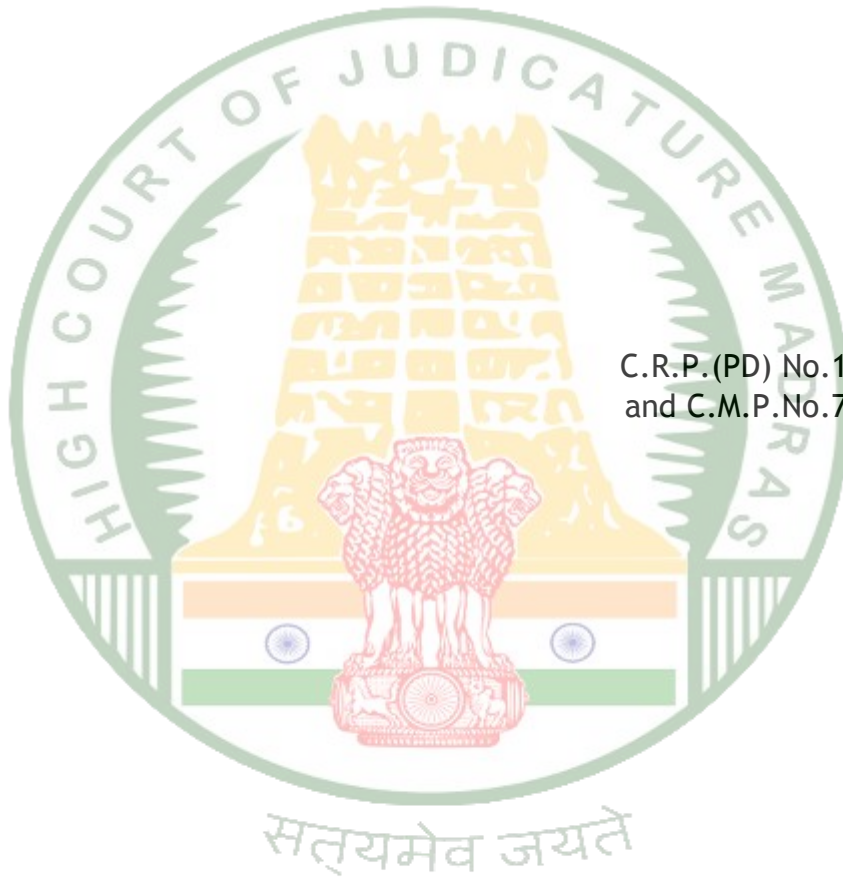
Index: Yes/No

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To

The II Additional District Munsif, Puducherry.

D.KRISHNAKUMAR,J.
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