



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1551 of 2017
and C.M.P.(MD) No.8644 of 2017

Ganesan

... Petitioner/Petitioner/Defendant

-vs-

1. Jeyaseelan
2. K.Abisha
3. K.Jegan
4. K.Arul Inba Seelan ... Respondents/Respondents/Plaintiffs
(Respondents 1 to 4 are represented
by their Power of Attorney Holder
John Premkumar, S/o.John Rose)

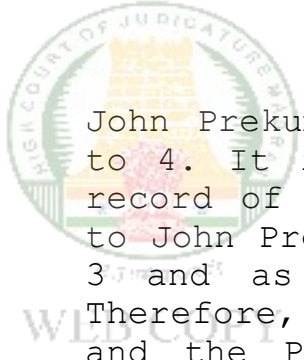
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair and Decreetal order dated 18.07.2017 passed in I.A.No.871 of 2016 in O.S.No. 133 of 2015 on the file of the Principal District Munsif Court Padmanabhapuram and allow the present Civil Revision Petition.

For Petitioner : Mrs.J.Anandhavalli
For Respondent-4 : Mr.K.Sreekumaran Nair
For Respondents 1 to 3 : No Appearance

O R D E R

The revision petitioner is the defendant in O.S.No.133 of 2015 on the file of the Principal District Munsif Court, Padmanabhapuram and in the suit, the plaintiffs sought for permanent injunction, etc. During pendency of the suit, the petitioner/defendant had filed I.A.No.871 of 2016 seeking to reject the plaint and the said application was dismissed on the ground that no specific reasons have been assigned for rejecting the plaint. Challenging the said order of dismissal, the petitioner/defendant are before this Court.

2. It is the case of the revision petitioner that he has right over the subject property and is in possession and enjoyment of the property and as such, the present suit was filed by one



John Prekumar in the capacity of Power Agent of the plaintiffs 1 to 4. It is the further case of the petitioner that as per the record of the Sub Registrar Office, Thiruvattar, the Power given to John Prekumar was subsequently cancelled by the plaintiffs 1 to 3 and as such, there is no cause of action for the suit. Therefore, no purpose would serve in keeping the suit endlessly and the Power Agent has as of now no right to represent the plaintiffs in the suit. Since the suit is filed on the basis of an order of attachment, which was later on raised, the present suit has to be dismissed on account of change of circumstances.

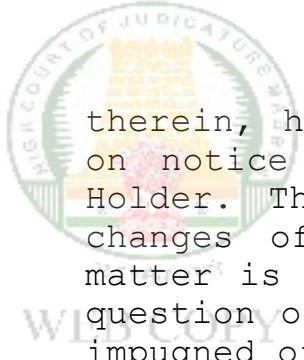
3. Per contra, learned counsel appearing for the respondents / plaintiffs has contended that the defendant has no right to question the validity of the Power of Attorney, as the cancellation of Power Deed is not proper and valid. Moreover, the defendant has no vested interest over the property, as the sale consideration for the plaint schedule property was not paid. It is further contended that once the petition filed under Order 7 Rule 11 was dismissed by the Court, there is no provision to file yet another petition on the ground of change of circumstances and therefore, it is submitted that the order of the Trial Court is perfectly valid and it does not warrant any interference by this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The main contention raised by the petitioner in respect of rejection of the plaint is that the General Power of Attorney given to one John Premkumar was lifted by the plaintiffs 1 to 3 on 16.07.2015 and as such, there is no base for filing the suit. Since the another suit in O.S.No.97 of 2014 was filed by the plaintiffs through the Power Agent and consequent to cancellation of the Power Deed, the said suit was also not maintainable. It is also stated that the order of attachment granted in O.S.No.97 of 2014, was subsequently raised in I.A.No.227 of 2016 on 19.07.2016 and citing above reasons, the defendant had filed the application for rejection of the plaint.

6. On the contrary, the plaintiffs have stated that the cancellation of Power of Attorney had taken place among the plaintiffs and the since there was some dispute with regard to cancellation of Power Deed among themselves, the plea raised by the defendant to that effect does not hold good.

7. Be that as it may, this Court finds that the Trial Court had not gone into all these aspects in detail in the order regarding change of circumstances, validity of power of attorney, <https://e-services.ecmcd.gov.in/e-services> specific findings have been given in that regard. Moreover, the suit in O.S.No.97 of 2014, which was dismissed as withdrawn based on the oral request made by the 2nd plaintiff



therein, has been restored by this Court for fresh consideration on notice to all the parties, including the Power of Attorney Holder. Therefore, considering the fact that there are several changes of circumstances, this Court is of the view that the matter is liable to be remanded for passing afresh orders on the question of rejection of the plaint, by setting aside the present impugned order.

8. In the result,

a) this civil revision petition is allowed, by setting aside the order dated 18.07.2017 passed in I.A.No.871 of 2016 in O.S.No. 133 of 2015 by the learned Principal District Munsif, Padmanabhapuram and the matter is remanded back to the learned Principal District Munsif, Padmanabhapuram for fresh consideration;

b) the learned Principal District Munsif, Padmanabhapuram, after restoration of the suit in O.S.No.97 of 2014, pursuant to the order of this Court dated 18.07.2018, is directed to proceed with I.A.No.871 of 2016 in O.S.No. 133 of 2015 and pass suitable orders after giving notice to all the parties concerned, including the Power of Attorney Holder, within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

The Principal District Munsif,
Padmanabhapuram.

+ 1 CC TO Mrs.J.ANANDHAVALLI, ADVOCATE IN SR No. 73919

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TE/RP/SAR-4 : 12/10/2018 : 3P/3C

C.R.P. (PD) (MD) No.1551 of 2017
18.07.2018