



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2018
Pronounced on : 24.07.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.1742 and 1810 of 2017 and
CMP (MD) Nos.9435 and 9634 of 2017 and
CMP (MD) No.5063 of 2018

K.Virumu Ammal

Through her power agent namely,
G.Indu Nesan

.. Petitioner in both the CRPs

vs.

Sivanandi
Palsamy

.. Respondent in CRP (MD) No.1742/2017
.. Respondent in CRP (MD) No.1810/2017

Prayer in CRP (MD) No.1742 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order made in I.A.No.220 of 2014 in O.S.No.148 of 2010 dated 16.06.2017, on the file of the District Munsif Court-cum-Judicial Magistrate, Rameshwaram.

Prayer in CRP (MD) No.1810 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order made in I.A.No.223 of 2014 in O.S.No.69 of 2010 dated 25.07.2017, on the file of the District Munsif Court-cum-Judicial Magistrate, Rameshwaram.

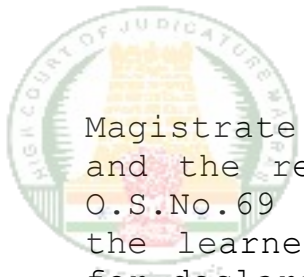
For Petitioner : Mr.M.Thirunavukkarasu
(In both the CRPs)

For Respondents : Mr.S.Ramesh (In CRP.No.1742/17)
Mr.A.L.Kannan (In CRP.No.1810/17)

COMMON ORDER

The issue involved in both the Civil Revision Petitions are one and the same. Hence, the following common order is being passed in these Civil Revision Petitions.

2.The revision petitioner in both the Civil Revision Petitions is the defendant in O.S.Nos.69 of 2010 and 148 of 2010. The respondent in C.R.P. (MD) No.1742 of 2017 filed a suit in O.S.No.148 of 2010 on the file of the learned District Munsif-cum-Judicial



Magistrate at Rameswaram for declaration and permanent injunction and the respondent in C.R.P.(MD)No.1810 of 2017 filed a suit in O.S.No.69 of 2010 against the revision petitioner on the file of the learned District Munsif-cum-Judicial Magistrate at Rameswaram for declaration and permanent injunction.

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3.The case of the revision petitioner is that since she is an aged woman, not in a position to attend the Court due to her old age and health ailments, hence she appointed her grandson Dinakaran as her power agent to defend the above suits. To that effect she filed petitions before the Lower Court and the said Dinakaran was held as the power agent of the defendant / petitioner. He was also examined in Chief as DW-1 by filling proof affidavit and the suits were adjourned from time to time for cross examination of the of DW-1 from 07.07.2014 to 15.10.2014 since the plaintiff in the above suits had not turned up to cross examine the DW-1, Dinakaran, the Lower Court closed the evidence of DW-1 on 15.10.2014 and posted the suits for further evidence of defendant.

4.It is the further case of the revision petitioner that when the suit was posted for further evidence of defendant, the power agent of the defendant viz., Dinakaran had gone abroad for avocation. Therefore, the defendant/ revision petitioner filed applications in I.A.Nos.220 of 2014 and 223 to 2014 to authenticate her yet another grandson namely Indu Neshan as power agent to represent the above suits on her behalf. The respective respondents herein have filed counter affidavit and objected to allow the above application.

5.The trial Court upon considering the arguments on either side, was pleased to dismiss both the applications, holding that power agent cannot be allowed to appear as witness on behalf of Principal in capacity of Principal. The said orders are under challenge in these civil revision petitions.

6.I heard Mr.M.Thirunavukkarasu, learned counsel for the petitioner in both the Civil Revision Petitions, Mr.S.Ramesh, learned counsel for the respondent in CRP(MD)No.1742 of 2017 and Mr.A.Kannan, learned counsel for the respondent in CRP(MD)No.1810 of 2017 and perused the entire material available on records.

7.It is the submission of the learned counsel for the Petitioner that because of the non-examination by the Plaintiff/Respondent in cross examining the DW1, the lower Court has closed the evidence of DW1. Despite several adjournments were granted by the Trial Court Plaintiff/Respondent never turned up to Cross examine the said DW1. It is further contended that since the Plaintiff/Respondent had already applied for visa and secured a job in abroad and left India, it necessitated the defendant to file an



Interlocutory Application in the respective suits to recognise her grant son Indu Neshan as her power of attorney to represent the above suits on her behalf.

8. It is settled proposition of the law that the power agent cannot depose the personal Knowledge of the Principal, but he can depose on behalf of his principle. Further there is no any express bar or constraint in appointing a specific number of Power of Attorney and hence a second Power of Attorney can be appointed, provided the former is incapable of conducting the suit.

9. It is further contended that if the Plaintiff in the respective suits have cross examined DW1, Dinakaran without getting unnecessary adjournments, the Revision Petitioner ought not to have put to a condition of filing the present application. According to the learned counsel for the Petitioner the chief examination of DW1, had already been eschewed and therefore nothing prejudice would occur in permitting the Revision Petitioner, Indu Neshan to continue the suits by filing proof affidavit on behalf of the defendants. However, the Trial Court an improper application of law has held that the power agent cannot be allowed to appear as witness on behalf of Principal in capacity of principle. Therefore the learned counsel would submit that the order of the Trial Court requires warranting interference by the Court.

10. Per contra, the learned counsel appearing for the Respondents in CRP(MD)No1742 of 2017 has argued that without cancelling the earlier power of attorney, the present application to recognize another power agent of the Defendant is not maintainable in law. He further submitted that the evidence adduced by DW1, Dinakaran is in intact and therefore if the Revision Petitioner, the power agent of the Defendant namely Indu Neshan is permitted to give evidence on behalf of the Defendant as DW1, it will complicate the issue. Hence he prays to dismiss the Civil Revision Petitions.

11. The learned counsel for the Respondent in CRP(MD)No.1810 of 2017 would strenuously contented that the dispute relating to the suit property is based on the sale deed of the year 1963 and 1985 and during that time the power agent Indu Neshan would not have born or otherwise he would be a small boy and therefore he contended that he is not the competent person to adduce evidence on behalf of the Defendant. The learned counsel would further submit that the evidence of DW-1, Dinakaran has not been exchieved and therefore he denied the submission of the learned counsel for the Petitioner that the evidence of DW-1, Dinakaran was exchieved and prays to dismiss the Civil Revision Petitions.

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12. I have carefully considered the rival submission on either side. It is not in dispute that the Defendant, Virumu Ammal



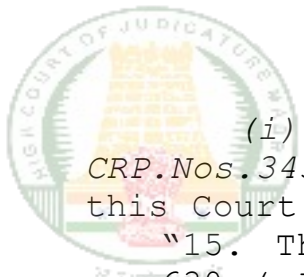
due to her old age appointed her grandson Dinakaran on 29.11.2010 as her power agent and to that effect she also taken out an application to recognise him as a power agent and the same was allowed. From the perusal of the records it reveals that the power agent Dinakaran was examined in chief as DW-1 on 02.07.2014 and for his cross examination it was posted to 07.07.2014. Thereafter despite more than 7 adjournments were given to the Plaintiff for cross examination of DW-1, Dinakaran, the Plaintiff side was not ready for cross examination of DW-1, hence evidence of DW-1 was closed on 15.10.2014 and the suit was posted for further evidence of Defendant on 05.11.2014. In the considered opinion of this Court, no significance shall be given to the chief examination of DW-1, Dinakaran.

13. Thereafter, it is seen from the records that DW-1, Dinakaran had gone abroad as for his employment. Hence, the Defendant executed another power of attorney deed on 24.11.2014 by appointing her another grandson Indu Neshan as her power agent to appear and represent the above suits. In order to recognise him as power agent an application in I.A.Nos.220 of 2014 and 223 of 2014 had filed and the same were dismissed. As against the same the present Revision Petitions are filed. In the meantime the evidence of DW-1, Dinakaran has been exchequed on 22.07.2015. Therefore it cannot be contended that without eschewing the evidence of DW-1, the Revision Petitioner cannot be permitted to enter into witness box as DW-1 to give evidence on behalf of the Defendant. Even assuming that the evidence of DW-1, Dinakaran has not been eschewed, it is always open to the Defendant to file a memo to eschew the evidence of DW-1 and in such circumstances no prejudice would be caused to the Plaintiff.

14. The other contention of the respondent that without cancelling earlier power, the present power of attorney cannot be accepted is concerned I am of the view that by virtue of execution of subsequent power by the defendant, the earlier power would automatically cancelled or in other words impliedly it was cancelled.

15. Regarding the submission made by the learned counsel for the respondent in C.R.P.(MD)No.1810 of 2017 is concerned, the present power agent of the defendant Indu Neshan is not a competent person to speak about case cannot be sustained for the reason that the merits of the case could be decided by the trial Court only after conducting full-fledged trial.

16. This Court further find that the learned Trial Judge went beyond the settled legal position by holding that power agent cannot be allowed to appear as witness on behalf of the Principal ~~of the principal~~. In this regard it would be relevant to look into the following decisions made in the matter of



(i) **Thangavel, Savithri Vs. A.K.Velusamy** made in CRP.Nos.3436 and 3437 of 2014, vide Order dated 19.09.2014 made by this Court holding as following that:

"15. The above factum was also considered by AIR 2014 SC 630 (A.C.Narayanan v. state of Maharashtra and another), in para-26(ii), it was specifically mentioned as follows:

6. (i).....

(ii) The power of attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or posses due knowledge regarding the said transactions. In the above decision it was held that the power agent can support the case of the petitioner, but the person who himself has personal knowledge about the transaction alone is a competent person to give evidence.

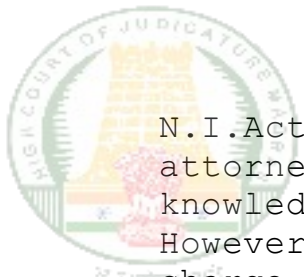
16. The above said view has been taken by the learned single Judge of this Court in 2010-2-L.W.357 (standard literature Company Pvt.Ltd. Vs. Padma and others), in para-12 it was held as follows:

2. In view of the settled legal position, it is observed that the power of attorney can depose on behalf of his principal but he cannot reveal the matters which are in the personal knowledge of the Principal. In this case oral evidence of PW1 with regard to the physical features of the demised premises and the means possessed by the landlords as borne out by record can be considered. To this extent, the authorisation of first respondent to PW1 is valid.

17. Considering the afore stated circumstances of the case along with the above decisions, i am of the view, the order passed by the Trial Court in respect of appointment of power agent /Velusamy is hereby confirmed. However, the Trial Court is directed to record the evidence only in respect of the principal alone is having personal knowledge."

(ii) **A.C.Narayanan Vs. State of Maharashtra and another** made in *Criminal Appeal No.73 of 2007*, vide Order dated 13.09.2013 made by this Court holding as following that

"23. In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under section 138 of the



N.I.Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transaction then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complaint-payee and the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power of attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

24. In view of the discussion, We are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee; (ii) the proprietary concern, describing itself is a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor."

18. In view of the above settled legal preposition that power of attorney can depose on behalf of his Principal but he cannot reveal the matters which are in the personal knowledge of the Principal, the order of the learned Trial Judge is not justified and the same is liable to be set aside and accordingly set aside.

19. In the result, both the Civil Revision Petitions are allowed and the order and decree dated 16.06.2017 made in I.A.No.220 of 2014 in O.S.No.148 of 2010 on the file of the learned District Munsif-cum-Judicial Magistrate Court, Rameshwaram and the order and decree dated 25.07.2017 made in I.A.No.223 of 2014 in O.S.No.69 of 2010 on the file of the learned District Munsif-cum-Judicial Magistrate Court, Rameshwaram are hereby set aside and the above I.A.s stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Cr1. side)

/True Copy/

Sub Assistant Registrar (CS-III)

To

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The District Munsif-cum-Judicial Magistrate,
Rameshwaram.



Copy to:

The Record Keeper,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+2cc to Mr.M.Thirunavukkarasu, Advocate SR.No.74518&74519

+1cc to Mr.V.Raghavachari, Advocate SR.No.74611

Vsv

MK/SKN RSK/SAR 3/02.08.2018/7P/7C

order made in
C.R.P. (MD) (PD) Nos.1742 and 1810 of 2017 and
CMP (MD) Nos.9435 and 9634 of 2017 and
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