



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:11.04.2018

CORAM

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The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP (MD) (PD) No.2183 of 2017

and

C.M.P.(MD). No. 10707 of 2017

Annammal

represented by her power holder

J.Edward Nixon

.. Petitioner/ Defendant

vs.

1.Justin James

rep.by power holder R.Ranganathan

2. R.Ranganathan

....Respondent/ Plaintiff

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the docket order dated 15.02.2017 passed in I.A. No. 61 of 2017 in O.S. No.139 of 2009 on the file of District Judge, Kanyakumar at Nagercoil.

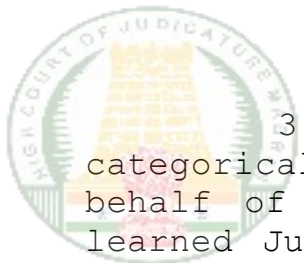
For Petitioner : Mr. M.P.Senthil

For Respondents : Mr.R.Balakrishnan

ORDER

The petitioner has filed the Civil Revision Petition before this Court challenging the order passed in I.A.No. 61 of 2017 in O.S. No. 139 of 2009 on the file of the District Judge, Kanyakumari at Nagercoil.

2. The respondents as plaintiffs has filed suit for recovery of money in O.S.No.139 of 2009 before the learned District Judge, Kanaykumari. During the pendency of the said suit, the petitioner, who is the defendant in the said suit filed I.A.No. 61 of 2017 to appoint an Advocate Commissioner to record the evidence of defendant in the said suit. The trial judge dismissed the said application stating that the Power of Attorney cannot be used to prosecute the case and he cannot enter into the witness box and the evidence had to be let in only by parties to the suit as they have more knowledge of the facts.



3. Time and again this Hon'ble Apex Court has very categorically held that Power of Attorney can enter into box on behalf of the party concerned and can give evidence but the learned Judge simply saying that the Power of Attorney is not entitled to enter into the box and give evidence.

4. I have heard both the counsels and perused the documents and the order passed by the learned Judge and considered the decision of the Hon'ble Apex Court in which it is stated that the Power of Attorney can enter into the box and give evidence on behalf of the petitioner. In this case the petitioner has sought an order under Order 20 Rule 17 to examine the Power of Attorney and later he now restricted his prayer that the Power of Attorney may be permitted to let in box and give his evidence.

5. Recording the submissions made by both the counsels, the Civil Revision Petition is allowed and the order passed by the learned Judge is set aside.

6. In the result :

a) the petitioner who is a Power of Attorney is permitted to give evidence on behalf of the defendant.

b) the Trial Judge is directed to dispose the suit is O.S. No.139 of 2009 with a period of two months from the date of receipt of a copy of this order, since the suit is of the year 2009 which is pending for more than (9) nine years and on passing the order the trial judge is directed to send a report to this Court along with judgment within a period of 10 days from the date of judgment. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

Copy to:

The District Judge,
Kanyakumari at Nagercoil.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 61003
+ 1 cc TO Mr.R.Balakrishnan , Advocate in SR No. 60962

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AE/RSK/SAR4/27.04.2018/2P/4C

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