

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(PD).No.451 of 2018

and

CMP.No.2392 of 2018

A.S.Ramasamy

..Petitioner/3rd Party-
Power of Attorney

Vs

- 1.M.Salma
Rohaiyabi (Died)
- S.J.Syed Basha (Died)
- 2.S.Santh Began
- 3.A.Ramachandran
- 4.R.Sudharsan Babu
- 5.R.Sumithra
- 6.S.P. and & Co., Represented by it's
Managing Partner S.Jagadheesan,
S/o, S.K.Sengoda Gounder,
having its office at 3/340, Rajaji Road,
Salem-7.
- 7.Madanlal.D.Chawla
- 8.K.Laksmanaperumal

..Respondents/Defendants

This Civil Revision Petition filed under Article 227 of the Constitution of India to to set aside the order dated 05.10.2017 in I.A.No.242 of 2017 in O.S.No.139 of 2014 on the file of the learned III Additional District Judge, Salem and direct the Trial Court to recognize the petitioner herein as Power Agent of the Plaintiffs to conduct the suit.

For Petitioner : Mr.V.R.Rajasekaran
For R1,R3 to R7 : No appearance
For R2 : M/s.J.Prithivi
For R8 : M/s.A.Esakkiappan

ORDER

The above Civil Revision Petition is filed challenging the order passed by the III Additional District Judge, Salem in I.A.No. 242 of 2017 in O.S.No. 139 of 2014, rejecting the application filed on behalf of the plaintiffs, to recognize the deponent of the impugned petition to act as general power of attorney Agent of plaintiffs.

2 The suit has been filed by the plaintiffs to partition the suit properties and to declare the various sale deeds and gift deeds as null and void. In the affidavit filed in support of the said application, the only reason given is that the plaintiffs are unable to appear before the Court. The same was objected by the fifth respondent. This counter was adopted by respondents 6 to 9, stating that the very filing of the petition by the power of attorney to enter into the fray is mala fide and only an attempt to derail the trial. The fourth respondent/fourth defendant had filed a counter stating that the power agent cannot be replaced in the place of the plaintiff as he does not have any personal knowledge and therefore, he cannot be permitted to step into the shoes of the plaintiff.

3 The learned III Additional District Judge, by order dated 05.10.2017, dismissed the said application on the ground that the power agent does not have a direct knowledge of the facts of the case and if he is permitted to be examined, the true facts will not come out and the affidavit is bereft of reasons as to why, the power agent seeks to represent the plaintiff. Challenging the said order, power of attorney is before this Court.

4 Heard the counsel and perused the documents.

5 A mere perusal of the petition would clearly indicate that the petition has not been filed by the plaintiffs, but has been filed by the power agent. It is not known as to why the trial Court has numbered the said application. The very framing of the interlocutory application is erroneous. Therefore, although the petition was dismissed, on other grounds, the same has to be uphold also on account of the fact that very filing of the interlocutory application has been made by a person who is not a party to the proceedings.

6 It is also a fact that the power agent can never adduce evidence on behalf of the plaintiff, especially with reference to the facts which are only within the personal knowledge of the

P.T.ASHA, J.
dua

plaintiffs and further since the allegations of fraud has been made against the defendants, the defendants should be given an opportunity to directly cross-examine the parties to the suit and the power agent cannot step into the shoes of the plaintiff for giving evidence on behalf of the plaintiffs.

7 In the result, the Civil Revision Petition is dismissed and order passed in I.A.No.242 of 2017 in O.S.No.139 of 2014 on the file of III Additional District Judge, Salem, dated 05.10.2017 is hereby confirmed and it is open to the plaintiff to move an application for being represented by a power agent as and when if such circumstances arose. No costs. Consequently, connected miscellaneous petition is also closed.

19.03.2019

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To
The III Additional District Judge,
Salem.

CRP(PD).No.451 of 2018