

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM

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

CRP.Nos.3326 & 3327 of 2018

and

CMP.No.18858 of 2018

A.Sarojinidevi

Represented by her Authorized Power Agent,

A.Raja @ Rajaram.

.. Petitioner/9th defendant in
both CRPs

Vs

R.Arumugam

...Respondent/plaintiff in
both CRPs

Common Prayer: These Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the common fair order and decreetal order dated 10.08.2018 made in I.A.Nos.418 and 419 of 2018 in counter claim suit No. 152A of 2013 in O.S.No.152 of 2013 on the file of the learned III Additional District Court, Salem.

For Petitioner : Mr.A.Rajaram
in both CRPs. (Party in person)

For Respondent : Mr.K.Shakespeare
in both CRPs.

COMMON ORDER

The above Civil Revision Petitions are filed challenging the order passed by the learned III Additional District Judge, Salem in

I.A.Nos. 418 and 419 of 2018 in counter claim suit No. 152A of 2013 in O.S.No. 152 of 2013 by the revision petitioner through her son her authorized power agent.

2. The facts in brief are as follows:

The respondent in these Civil Revision Petitions had originally filed a Suit in O.S.No. 149 of 1999 on the file of the Sub Court, Attur. Thereafter, the matter has been transferred to the learned III Additional District Judge, Salem and re-numbered as O.S.No. 152 of 2013. The suit was filed for partition and separate possession of the "A" schedule property into three equal shares and to allot one share of the property to the plaintiff and the "B" schedule property into two equal shares and to allot one separate share to the plaintiff.

3. Initially, the sisters of the plaintiff were not made parties to the partition suit and was instituted only against the first and second defendants, who are the brothers of the respondent herein. Thereafter, the revision petitioner herein, who is one of the sisters, on coming to know about said suit and who has filed the revision petition got herself impleaded in the suit and thereafter filed a counter claim. The counter claim has been numbered as O.S.No 152A of 2013. It is seen that the trial had commenced on

10.01.2018 itself. When the evidence has commenced, an application has been filed in I.A.No. 34 of 2018 by the respondent/plaintiff for seeking leave to file 8 documents under the provisions of Order 7 Rule 14 (1) and Section 151 of the Code of Civil Procedure.

4. In the affidavits filed in support of the said petition, the respondent/plaintiff had stated that all these documents had got mingled with ancestral documents and that he was unable to trace the same at the time of filing of the suit and only now the same has been traced. Therefore, he has come forward to seek permission to file the same. The suit was filed in the year 1999, whereas, the documents particularly at serial Nos. 6, 7 and 8 had come into existence much after the suit had been filed.

5. Despite this the said application was allowed, the matter was not challenged by the respondent. Thereafter, the trial continued and when the matter was posted for cross examination of the 9th defendant, the respondent/plaintiff had come forward with the two applications I.A.Nos.418 and 419 of 2018 on 10.08.2018. The said applications have been filed for reopening and recalling the evidence of PW1, stating that three documents had to be filed. In the affidavit filed in support of said petition, the only reason given is

that these documents are germane to the issue on hand and is important for the case and therefore, he must be permitted to mark the documents and that apart in the affidavit, the respondent/plaintiff would also submit that he wanted to cross examine the scribe of the Will, of his father. In the plaint, there is no mention about any Will that his father had executed. The said application was opposed by the revision petitioner/9th defendant (incidentally the son of the 9th defendant and her power of attorney had argued before the learned District Judge) stating that it is only a mode of protracting the proceedings and the intention of the respondent/plaintiff was to ensure that the revision petitioner/9th defendant does not get any share in the property. Further, these documents have come into existence much after the suit and that the counter claimant is not a party to the documents. The revision petitioner/9th defendant had pointed out that the format in which the said petition has been filed by the respondent/plaintiff, is erroneous as the short cause title would read that it is the counter claimant/9th defendant in the suit who has taken out the applications whereas the application has been filed by the respondent/plaintiff.

6. The learned Judge was however pleased to allow the said applications, dismissing the claim with reference to two documents as they are xerox copies and allowing the claim with reference to the

third document. Challenging the said orders, the revision petitioner/9th defendant as party-in-person is before this Court.

7. The party-in-person had argued the matter reiterating the counter and arguments that he had addressed before the trial Court.

8. Mr.K.Shakespeare learned counsel appearing on behalf of the respondent/plaintiff who would at the outset object to the party-in -person addressing the Court and in support of his stand would rely on the Judgement of the Full Bench of this Court reported in **AIR 1937 Mad 937 – Thayarammal Vs. Kuppuswami Naidu** and also the Judgement of the Supreme Court reported in **2019 (3) JT 208**, wherein, the learned Judge would say that, it is only an Advocate, who is enrolled in the Bar who can address the Court and since, the conduct before the Court requires certain etiquette and qualifications, party-in-person cannot be permitted to address the Court like a lawyer. He has also relied on the Judgement in **Samdukhan Vs. Madanlal and other** reported in **AIR 1959 Rajasthan 35**.

9. As regards, the merits of the case, he states that the Court below has rejected the applications with reference to the first two documents and as regards, the third document the Court has permitted it, and even that is subject to proof and relevancy and

therefore the revision petitioner is not in any manner prejudiced by the order.

10. Heard the parties and perused the papers.

11. The argument that party-in-person cannot be permitted to address the Court is being taken up for the first time before this Court and there was no objection to the power agent/son of the 9th defendant arguing as party in person in the impugned application.

Order III Rule 1 of the code of Civil Procedure would state as follows:

"Any appearance, application or act in or to any Court require or authorized by law to be made and done by a party in such Court, may except where otherwise, expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader "[appearing, applying or acting, as the case may be,] on his behalf.

Order III Rule 2 says that,

"The recognized agents of parties by whom such appearance, applications and acts may be made or done are-

(a) *persons holding powers-of-attorney, authorizing them to make and do such appearances,*

applications and acts of behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to made and do such appearances, applications and acts”.

12. A reading of Order III Rule 1 would clearly highlight the fact that there are two categories of persons who can appear on behalf of a party (a) a recognized agent; and (b) a pleader, such persons are further empowered to “appear” or “apply” or “act”. Rule 2(a) recognizes the power of attorney as a recognized agent. Therefore, the provision of the Code of Civil Procedure provides that even a power agent can appear, apply or act on behalf of a party provided, he is a recognized power agent. The rules of practice also clarified this issue. Rule 16 of the Civil Rules of Practice would read as follows:

“Party appearing by agent

(1) When a party appears by an agent other than a pleader or advocate, the agent shall before making or doing any appearance, application, or act, in or to the court, file in the court the power of attorney, or written authority, thereunto authorizing him, or properly authenticated copy therefor/or, in the case of an agent carrying on a trade business on

behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorized to make or do such appearance, application or act.

(2) The judge may thereupon record in writing that the agent, is permitted to appear and act on behalf of the party, and unless and until the said permission is granted no appearance, application, or act, of the agent shall be recognized by the court".

13. Therefore, the appearance by the power agent is recognized by the procedural code and the only requisite is the permission of the Court. The Honourable Supreme Court in the Judgement in **Harishankar Rastogi Vs. Girdhari Sharma and another** reported in **AIR 1978 SC 1019**, had an occasion to consider whether a private person who is not an advocate has the right to argue for a party. The matter pertained to proceedings emanating under the Criminal Procedure Code. The Honourable Supreme Court granted permission to the private persons to appear on behalf of the party. The Honourable supreme Court has held that it is open to the Court to grant or withhold permission to a party to appear as third persons other than an Advocate. The Honourable Supreme Court had held that this permission can withdrawn by any

time by the Court if it feels that antecedents or conduct of such persons is to the detriment to the interests of the party to the proceedings. In the instant case the person who is representing the 9th defendant is none else than her son who would definitely have the interests of his mother at heart and further he is the ultimate beneficiary if a share gets allotted to his mother. This Judgement was followed by this Honourable Hight Court in its Judgement in ***C.M.Visalakshi and others Vs. K.Kuppusamy and others*** reported in ***AIR 1989 Mad 27***. This Court has held as follows:

9. While dealing with an application like this, a Court should bear in mind that any person, who is not an Advocate, cannot as of right force himself, to appear before a Court and claim to plead for another. Permission may, however, be granted by a Court, taking into consideration the several factors for such non-professional representation. In this connection, the Supreme Court, while dealing with a criminal proceedings, had occasion to consider this aspect in Harishankar Rastogi V. Giridhari Sharma. The Supreme Court observed that:

"If the person who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the chance of receiving counter-productive service from such person cannot be ruled out. Judges may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly private representatives file arguments at the Court. Likewise the parties may suffer if their private

representatives deceives them or destroys their case by mendacious or meaningless submissions and with no responsibility or respect for the Court. The antecedents, the relationship, the reasons for questioning the services of the private person and a variety of other circumstances must be gathered before refusal of permission".

Ultimately the permission was granted to the third party to appear on behalf of the party. In the Judgement ***T.C.Mathai and another Vs. The District and Sessions Judge*** reported in **1999 (3) SCC 614**, the Honourable Supreme Court following the earlier Judgement ***Harishankar Rastogi Vs. Girdhari Sharma and another*** reported in **AIR 1978 SC 1019**, permitted a non Advocate to appear and plead on behalf of the party. The Full Bench Judgement of Madras High in the Judgement in ***M. Krishnammal vs T. Balasubramania Pillai*** reported in AIR 1937 Mad 937 (cited by the counsel for the respondent) was also considered. A reading of the above Judgements would clearly indicate that following Rule 16 of the Civil Rules of Practice, the Honourable Supreme Court as well as this Court has recognized and permitted a party appearing through a non Advocate provided permission of the Court has been sought for. The only caution that has been sounded by the Honourable Supreme Court is to verify whether the agent has any interest adverse to the party and if so not to grant the permission.

Samdukhan Vs. Madanlal and other reported in ***AIR 1959 Rajasthan 35*** had taken a diametrically opposite view where it held that the power of attorney cannot be allowed to plead and argue before the Court of law which right is exclusively vest with a person who has entered his names in the Roll of the Advocates of the High Court maintained under the Bar Councils Act, 1926. The Judgement of the Honourable Supreme Court in ***Harishankar Rastogi Vs. Girdhari Sharma and another*** reported in ***AIR 1978 SC 1019*** quoted supra has been pronounced thereafter and has been quoted as a precedent as late as in the year 1999.

14. However, considering the provisions of Order 3 Rule 1, any appearance by a party-in-person either by themselves or through the power agent has been recognized by the Code of Civil Procedure. Further the Advocates Act also recognize this deviation from the usual rule. Section 32 of the Advocates Act reads as follows:

"32. Power of Court to permit appearances in particular case-

Notwithstanding anything contained in this chapter, any Court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."

Today party's appear in person before the Consumer Court, Family Court etc and they also appear before the High Courts in Public Interest Litigation. The Courts have recognized appearance by parties or their agents subject to the permission of the court and on condition that they would not act adverse to the interest of their Principal. In the instant case the party has appeared so in the Trial Court without any objection from the respondent herein and the revision is also filed so and the provisions of Rule 16 of the Civil Rules of Practice has been complied with. Therefore the arguments of the learned counsel for the respondent that the party-in-person cannot enter appearance and address the Court, cannot be countenanced and the same is rejected.

15. Considering the merits of the case, it is seen that the suit has been filed as early as in the year 1999 and the counter claim came to be filed in the year 2013. The respondent had filed one application for receiving additional documents on 11.01.2018 and nothing prevented from him filing these documents along with other documents filed in I.A.No.34 of 2018. That apart, there is no reason, whatsoever, that is given in the affidavit filed in support of the impugned petitions, as to why the documents have to be filed and the reason why there is delay in the filing of these documents.

16. The learned Judge no doubt rejected the applications with reference to documents 1 and 2. However, the third document is purported to be an undertaking and perusal of this undertaking would show that the none of the defendants are parties except the first defendant who is the respondent in the revision petition therefore, it is not known as to why the learned Judge has permitted the document to be produced in evidence. The learned Judge has mechanically allowed the application merely on the fact that it is an original document and therefore it could be marked. The total non application of the mind on the side of the learned Judge is evident from the fact that the very format, in which application has been filed is totally erroneous and despite the party-in-person bringing it to the notice of the Court, the Court has not directed the respondent/plaintiff to correct or to amend the cause title in the said application. Incidentally, the respondent was represented by an advocate.

17. Be that as it may, this Court finds that there is no merits in the orders permitting the marking of the undertaking letter, which is described as the third document in the main petition. The impugned orders of in I.A.Nos.418 and 419 of 2018 in counter claim suit No. 152A of 2013 in O.S.No.152 of 2013 on the file of the learned III Additional District Court, Salem is dismissed.

18. With the above observations, these Civil Revision Petitions are allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

25.03.2019

dua/mbi/kan

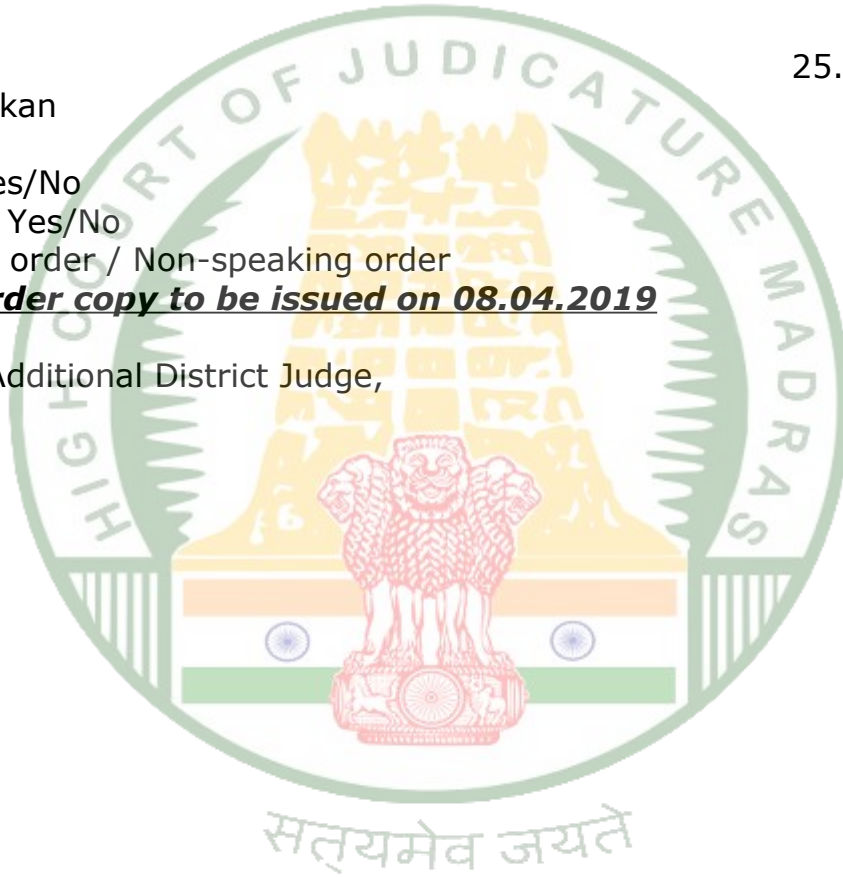
Index: Yes/No

Internet: Yes/No

Speaking order / Non-speaking order

Note: Order copy to be issued on 08.04.2019

To

The III Additional District Judge,
Salem.

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P.T.ASHA, J.

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