

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.R.P.(PD).No.3731 of 2018

and

C.M.P.No.20804 of 2018

Maxworth Home Lttd.

Represented by its

Authorised Signatory, Mr.U.Sivakumar,

No.50, Maxworth Nagar,

Sunnambu Kolathur,

Chennai-600 117.

...Petitioner/Respondent
/Plaintiff

Vs.

M.Prabhakara Reddy,

Represented by Mr.D.Ethiraj,

S/o.P.Duraibabu,

No.19, Sengalaniamman Koil Street,

Narayanapuram,

Pallikaranai,

Chennai -600 100.

...Respondent/Petitioner
1st defendant

Prayer : Petition filed under Article 227 of Constitution of India against to set aside the fair and decretal order passed by learned Principal District Munsif, Alandur dated 23.10.2018 in I.A.No.651 of 2016 in O.S.No.801 of 2013 insofar as permitting the respondent to depose evidence on

For Petitioner : Mr.P.Mathivanan
For Respondent : Mr.Ravikumar Patel,
Senior counsel for
M/s.Paul & Paul

ORDER

The above Civil Revision Petition is a classic case of an abuse of process of law. The revision petitioner as the plaintiff has filed a very novel suit.

2.For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

3.The relief that is claimed in the suit is to declare that the General Power of Attorney executed by the first defendant in favour of the second defendant is invalid in law and that it does not confer any power or right on the second defendant to deal with the suit property in any manner whatsoever and also for an injunction restraining the respondents from exercising his rights under the General Power of Attorney dated 27.08.2012 in respect of Plot Nos.3 and 4 in the Maxworth Nagar, Velachery.

4. Interestingly, in the Plaint, the plaintiff has contended that the first defendant had entered into an Agreement to Purchase the plot measuring around 2392 sq.ft for a total consideration of Rs.24,26,520/- and that the construction had put up on the schedule property. The plaintiff would contend that the defendant had not made the payment and had only paid 25% of the total value. The plaintiff would contend that as per the terms of Agreement, the first defendant was bound to reconvey the property, however, to date, no suit has been filed for reconveyance. The plaintiff has further contended that the second defendant, whose in the habit of identifying litigious properties, would enter into an Agreement and bargain to pay a pittance for a property of a higher value and make unlawful gain. This is the sum and substance of the allegations against the second defendant. It is the further case that the second defendant has approached the plaintiff Company stating that he is the power agent and he had obtained power of attorney on 27.08.2012. The Plaint

also contains recitals that the defendant has taken steps to raise the attachment over the suit property effected by the Income Tax Department for recovering the tax arrears from the plaintiff's Company. A Writ Petition has been moved by the second defendant and the payment has also been made by the second defendant. The plaintiff Company would submit that they were all along under the impression that the first defendant has come forward to settle the issue amicably and they have come to know that the first and second defendants have colluded together to overcome the application by the agreement of development and construction dated 03.09.1997 and the second defendant is going to sell the property. With these, the suit is filed for the relief as stated above.

5.The second defendant has filed a written statement in which he has denied the various averments that have been contained in the Plaint and also contended that it is the first defendant who is the owner and who can deal with the property in which he may decide.

6. Pending the above suit, the second defendant had moved the application to recognise him as a Power of attorney to conduct the case and to depose evidence. This application was proposed by the plaintiff by stating that the application is nothing but an abuse of process of Court and that the same has been filed three years after filing of the suit. The petitioner once again reiterated the various contentions made in the Plaint and would also contend that the power of attorney has been fraudulently obtained. The above application was dismissed by the learned Principal District Munsif, Alandur, on the ground that it is only a Principle can file an application for seeking permission on behalf of the Principal and an application filed by the Power of attorney cannot be entertained.

7. This was challenged by the first defendant in C.R.P.No.3879 of 2017 in which this Court by order dated 18.12.2017 after hearing both the parties had passed the following the orders:

*"Therefore, the revision petitioner
obtained affidavit, dated 06.12.2017 from*

the first defendant viz., M.Prabakar Reddy and the same has been filed before this Court. The counsel for the respondent has no serious objection for allowing the application. However, the aforesaid power of attorney shall be used only for the purpose of representing before the Court and the authority.

In the light of the affidavit filed by the first defendant and the submission made by the parties, order passed by the Court below is set aside and remanded back to the trial Court to consider the affidavit filed on behalf of the first defendant and pass appropriate orders in I.A.No.651 of 2015.

In the result, the Civil Revision petition stands allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed."

8. Thereafter, it is seen that the clarification petition has been moved and by order dated 27.02.2018, the following clarifications has also been given:

"2. Without prejudice to the rights of the parties concerned the second defendant is permitted to represent the first defendant, for appearance and contest the suit before the Courts and also to represent before any authority concerned, in respect of any litigation in respect of suit property in O.S.No. 801 of 2013 arises between the parties.

Accordingly, the clarification petition stands."

9. Therefore, the petition in the light of the earlier order dated 18.12.2017 was re-heard by the learned Principal District Munsif, Alandur. The learned Judge extracting this order of this Court in C.R.P.No.4189 of 2018 was pleased to allow this application. Challenging the same, the plaintiff is before this Court.

10.Mr.P.Mathivanan, the learned counsel for the petitioner would contend that the power of attorney cannot depose on behalf of the Principal as he does not have a direct knowledge about the various facts of the case. He would also submit that the application is two fold: one to represent the case and another to depose evidence and that the power agent cannot depose on behalf of the Principal.

11.In support of his arguments, the learned counsel has submitted a Judgment of the Hon'ble Supreme Court in the case of **Man Kaur (dead) by Lrs. versus Hartar Sign Sangha**, reported in **(2010) 10 Supreme Court cases 512**, the Supreme Court has held that the power of attorney cannot depose evidence in the place of Principal and therefore, the order of the learned Judge requires to be set aside.

12.Per contra, Mr.Ravikumar Paul, learned Senior Counsel who appeared on behalf of M/s.Paul & Paul, would

contend that in the earlier round of litigation, the first objection that was taken by the plaintiff was that the power is not in force and thereafter, the affidavit was obtained by the first defendant dated 06.12.2017, wherein the first defendant had reiterated the second defendant was the person, who has been appointed as power agent and that the power continued with him. The order was passed taking into account the said affidavit.

13. Further, in the said clarificatory order, it has been made clear that the power agent ought not to contest the suit and also represent without concerned. Therefore, this Court has granted a Carte Blanche to the power agent to act on behalf of the Principal in any legal proceedings. Therefore, he has sought for dismissal of the Civil Revision Petition.

14. Heard the learned counsel appearing on either side and perused the material available on record.

15. In the Judgment, which has been cited on the side of the revision petitioner, the Hon'ble Supreme Court while summarising the legal position insofar as the attorney holders concerned has held as follows:

"18(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders."

16. Therefore, a reading of the above Judgment would clearly indicate particularly in Para 18 (d) that where

the Principal has not handled or participated in the entire transaction and the Power of attorney had handled the same he can give evidence.

17. In the case on hand, even from a reading of the very Plaint, it is clearly evident that it is only the power of attorney who has handled the entire transaction on behalf of the principal. Therefore, there is no infirmity in the order of the Courts below. The opposition by the plaintiff clearly amounts not only to deal with the dilatory proceedings but also to abuse of process of Court.

18. Having fully participated in the earlier revision and obtained orders and the subsequent clarification the filing of the present revision is a clear case of abuse which has to be dismissed with costs. The revision petitioner is directed to pay a cost of Rs.10,000/- (Rupees ten thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

04.02.2019

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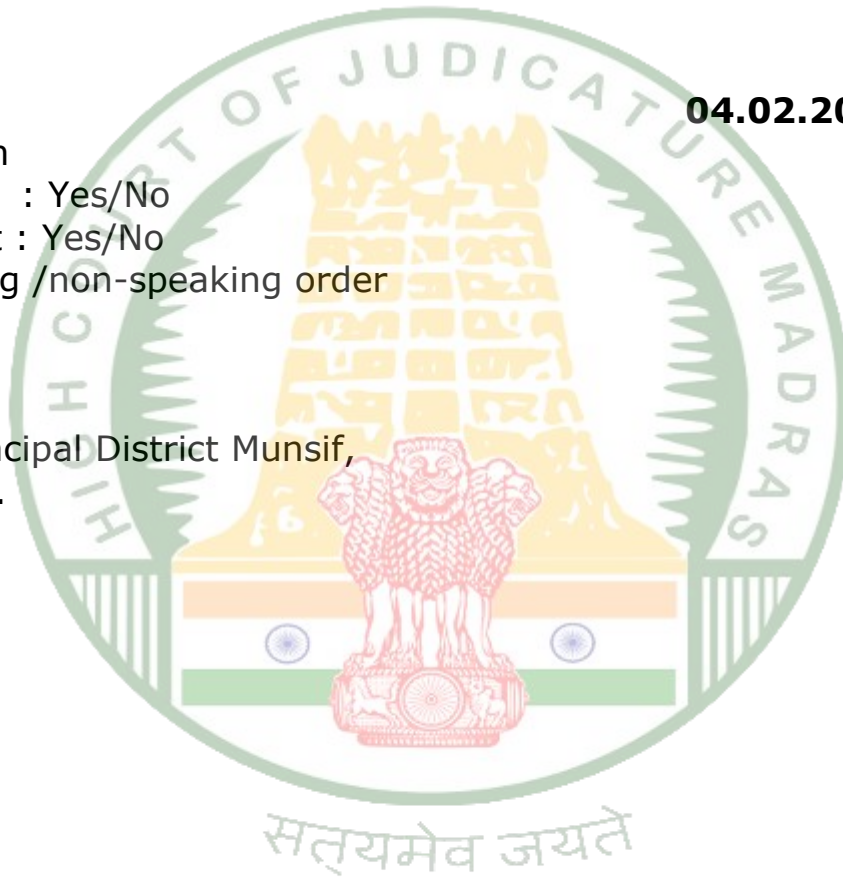
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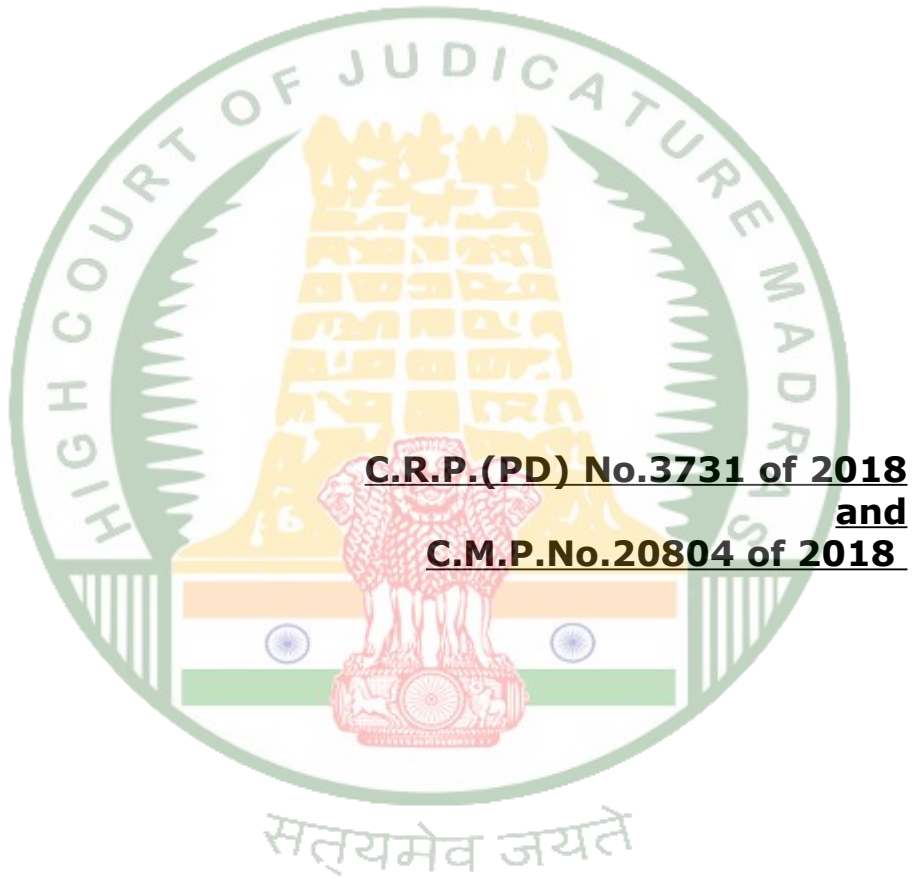
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