BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**
C.R.P(MD)No.1500 of 2019
and
CMP(MD).Nos. 7912 and 7913 of 2019

Murugan ... Petitioner / Respondent

Vs.

1.Vijayagomathi
2.Devarajan
3.Narayanasamy .. Respondents / Defendants

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records of the learned District Munsif Kovilpatti made in I.A.No.929 of 2018 in O.S.No.178 of 2018 and set aside the fair and decreetal order dated 10.08.2019.

For Petitioner : Mr. D. Srinivasa Ragavan
For respondents : Mr. S. Pon Senthil Kumaran

ORDER

This Civil Revision Petition has been filed to call for the records and set aside the order dated 10.08.2019 made in I.A.No.929 of 2018 in O.S.No.178 of 2018, on the file of the learned District Munsif Kovilpatti.

2. The said Interlocutory Application has been filed by the respondents / defendants to permit the third respondent / 3rd defendant to represent on behalf of the respondents 1 and 2 as power agent in the suit in O.S.No.178 of 2018. After hearing both parties, the Court below allowed the application, thereby, permitted the third respondent herein to represent on behalf of the respondents 1 and 2 herein, who are the defendants 1 and 2 in the suit in O.S.No. 178 of 2018, by virtue of the Power of Attorney dated 04.10.2018.

3. According to the revision petitioner / plaintiff, the power of attorney has been executed outside India, the same should be certified by the Collector, who will determine the stamp duty payable and such instrument has to be brought before the Collector for certification within three months from the date of such execution. However, the respondent has not been paid any stamp duty on the power of attorney and also not brought before the Collector of certification. Without considering the said aspect, the Court below allowed the application permitting the third respondent herein

represent on behalf respondents 1 and 2 in the suit in O.S.No. 178 of 2018.

4. Per contra, the learned counsel appearing for the respondents would submit that the Power Attorney was executed only in Indian Stamp paper and the parties have also paid the necessary stamp duties. After considering all these aspects, the Court below has passed a detailed order permitting the third respondent to represent as power agent on behalf of the respondents 1 and 2 in O.S.No.178 of 2018. Further, he referred the Judgment of ***this Court reported in 2007(1)CTC 653 (R.B.K. Rajeswari Nachhiar Vs. N.N.S.A. Mohamed Kasim).***

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The only issue to be decided in this case is as to whether the power of attorney executed by the respondents 1 and 2 in Indian Stamp Papers at USA, without certification of the District Collector is acceptable? The issue arises for consideration has already been settled in the case of R.B.K. Rajeswari Nachiar, wherein at paragraph Nos. 8 and 9, this Court has held as follows:

> *"8. The second limb of the argument of the learned counsel for the petitioner is that since the power of attorney was executed at Malaysia which has not been certified by the Collector as provided under Section 32 of the Act, it cannot be relied upon and the same has to be rejected in toto. The power of attorney executed at Malaysia, but engrossed in Indian Non-Judicial Stamp paper need not be produced before the Collector for certification since full stamp duty has been paid. The said document is admissible. The opening words in Section 32 of the Act clearly states "when an instrument brought to the Collector under Section 31 is ...". Therefore, if Section 32 of the Act has to be applied, then the instrument should have necessarily been produced under Section 31 of the Act before the Collector concerned. If the instrument is not produced before the Collector, the Collector does not get any jurisdiction at all to go into the question of whether proper stamp duty has been paid under the Act or not. The production of the document before the Collector is not at all mandatory.*
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> *9. Further, since the power of attorney itself was already written in Indian Stamp Papers, it cannot be said that the failure to produce before the Collector within three months can be a ground to hold that it will disentitle the party from acting on the basis of such*

power. Further, the admissibility of the instrument not duly stamped is dealt with under Section 35 of the Act. Improperly stamped instrument excepting the categories mentioned in the clause (a) of Section 35 shall be admitted in evidence on payment of duty with which the same is chargeable with a penalty. The power of attorney is not the one of the categories of the documents mentioned in Section 35(a) of the Act. Hence, even assuming that the power of attorney is not duly stamped the said document is admissible."

7. In view of the above settled legal position, this Court do not find any illegality in the order passed by the Court below permitting the third respondent herein to represent on behalf of the respondents 1 and 2 in the capacity of power of attorney. Accordingly, this Civil Revision Petition is dismissed No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

trp

To

The District Munsif Court, Kovilpatti.

+1 CC to Mr.S. PON SENTHIL KUMARAN, Advocate (SR-97616[F] dated 12/11/2019)

+1 CC to Mr.D. SRINIVASARAGAVAN, Advocate (SR-97617[F] dated 12/11/2019)

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