



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Date : 11.12.2019
CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1624 of 2019

and

C.M.P. (MD)No.8500 of 2019

J.Vincent .. Petitioner/Petitioner/1st Defendant
Vs.
J.Jayaseela Royan .. Respondent/Respondent /Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 06.07.2019 rendered in I.A.No.12 of 2019 in O.S.No.298 of 2008 on the file of the learned District Munsif, Lalgudi.

For Petitioner : Mr.K.S.Kathiravan
For Respondent : Mr.B.Prasanna Vinoth

ORDER

Heard the learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.12 of 2019 in O.S.No.298 of 2008 dated 06.07.2019, on the file of the learned District Munsif, Lalgudi.

3.The petitioner herein is the first defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.298 of 2008 for declaring the title of the plaintiff, for permanent injunction and to direct the defendants 2 and 3 to alter the FMB regarding the suit property. In the suit, the petitioner herein has filed an application in I.A.No.12 of 2019 to recognize himself as the power of attorney of the first defendant and the petition was dismissed by the trial Court. Against which, the petitioner herein has preferred the present petition.

4.The brief substance of the petition in I.A.No.12 of 2019 is as follows:

The petitioner is the power of attorney. The petitioner is the son of the first defendant and the first defendant is aged about 92 years and has heart ailments and hypertension and age related diseases and he nominated the petitioner to act as a power agent. It is necessary to recognize the petitioner as the power agent of the first defendant.



5.The brief substance of the counter in I.A.No.12 of 2019 is as follows:

The power agent cannot give evidence on behalf of the principal. He is not personally aware of the facts and circumstances of the case. The document cannot be marked by the power agents and the petition is to be dismissed.

6.The trial Court dismissed the petition against which, the revision petitioner has filed the present petition.

7.On the side of the revision petitioner, it is stated that the provision under Order 3 Rule 2 of CPC confers substantial right to the parties to a suit to nominate power of attorney. The first defendant is a senior citizen, who is aged above 90 years and he is suffering from various diseases. It is further stated that the petitioner herein has filed an application in I.A.No.7 of 2019 requesting the Court to permit him to give evidence on behalf of the first defendant and that the trial Court has refused to accept the evidence of the son on behalf of the father, without a power of attorney and then when the petitioner filed this petition to recognize him as the power agent, the trial Court has dismissed the petition, which caused prejudice to the petitioner.

8.On the side of the respondent, it is stated that the petitioner has filed this petition only to drag on the case and the petitioner cannot depose on behalf of his father regarding the facts, he is not personally aware of. It is further stated that a direction for the trial Court to dispose of the case within a time frame is to be given.

9.It is seen that the age of the petitioner's father is more than 90 years. Already the petition filed by the revision petitioner to depose on behalf of his father in I.A.No.7 of 2019 was dismissed by the trial Court for want of a document of power of attorney. Now when the petitioner filed a petition to recognize him as the power agent of the first defendant, again the trial Court dismissing the petition is not acceptable. The first defendant being an aged person, has to be given a right to appear through his power agent, who is non other than his son.

10.At the same time, the suit is pending for the past 11 years and a direction to the lower Court to dispose of the matter is to be given in the interest of justice. Hence, the trial Court is directed to dispose of the main suit within a period of three months from the date of receipt of copy of this order.

11.With the above direction, this Civil Revision Petition is allowed and the order passed in I.A.No.12 of 2019 in O.S.No.298 of



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2008 dated 06.07.2019, on the file of the learned District Munsif, Lalgudi is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD-I)

/ /2020

Sub Assistant Registrar(CS)

Mrn

To

The District Munsif, Lalgudi.

+1 CC to Mr.B.PRASANNAVINOOTH, Advocate (SR-104591[F] dated 12/12/2019)

+1 CC to Mr.KATHIRAVAN, Advocate (SR-104923[F] dated 13/12/2019)

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