

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(PD).No.4153 of 2019

1.Parimalam @ Parimala

2.Venkatesh

...Petitioners

Vs

Revathy

...Respondents

(Cause title accepted vide order of Civil Court dated 10.12.2019 made in C.M.P.No.8029 of 2019 in CRP.S.R.No36648 of 2019 (VBDJ))

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the Fair and decretal order dated 11.02.2019 made in I.A.No.975 of 2018 in O.S.No.2 of 2017 on the file of the Sub Court, Udumalpet by allowing this Civil Revision Petition.

For Petitioners : Mr.D.R.Arunkumar
For Respondent : Mr.B.Gopalakrishnan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 11.02.2019 made in I.A.No.975 of 2018 in O.S.No.2 of 2017 on the file of the Sub Court, Udumalpet.

2. The 1st Revision Petitioner/Parimalam @ Parimala is the plaintiff, 2nd petitioner viz., Venkatesh is her son and the respondent herein is the defendant in the said suit in O.S.No.2 of 2017. The 1st petitioner/plaintiff filed a suit against the respondent/defendant for the relief of specific performance of agreement dated 24.12.2013 with regard to plaint schedule property. Since the 1st petitioner/plaintiff is suffering from health issues, she was not able to attend the Court. So that she gave Power of Attorney to her son Venkatesh/2nd petitioner to conduct the case on behalf of her.

3.The learned counsel for the petitioner submitted that the 2nd petitioner's mother Parimalam @ Parimala/plaintiff filed this suit in O.S.No.2 of 2017 against the respondent/defendant/Revathy for the relief of

specific performance of sale agreement dated 24.12.2013. The suit was posted for trial. The revision petitioner's mother Parimalam @ Parimala/plaintiff is physically suffered so that she cannot attend the proceedings regularly. Therefore his mother Parimalam @ Parimala/plaintiff gave a Power Attorney on 30.10.2018. The petitioner/plaintiff filed a petition under Order 3 Rule 1, Section 151 CPC to permit her son to conduct the case as a Power Agent of the petitioner's mother/plaintiff. The respondent/ defendant objected to the above. After considering the submissions of the counsel for the parties, the trial court dismissed the petition on the ground that the petition was filed after the case was listed for trial and further observed that Power Agent is not competent to give evidence to trial Court as per decision of this Court reported in 2005(3) law weekly 403. The trial Court misunderstood this Court's decision. The order of the trial Court is contrary to law and reiterated the other grounds raised in the grounds of revision and thus pleaded to set aside the order of the trial Court and to allow the Revision Petition.

4.The learned counsel for the respondent supported the order of the trial Court and further he submitted that the 1st petitioner/plaintiff filed a petition after the case was listed for trial. The trial Court rightly dismissed the petition and thus pleaded to dismiss the Revision Petition.

5.Heard the learned counsel for the parties and perused the materials available on record.

6. The 1st Revision Petitioner/Parimalam @ Parimala is the plaintiff, 2nd petitioner viz., Venkatesh is her son. The 1st petitioner/plaintiff filed a suit against the defendant for the relief of specific performance of agreement dated 24.12.2013 with regard to plaint schedule property. Since, the 1st petitioner/plaintiff was suffering from health issues, she gave Power of Attorney to her son Venkatesh/2nd petitioner to conduct the case on behalf of her. So that I.A.No.975 of 2019 was filed under Order 3 Rule 1, Section 151 CPC. The trial Court dismissed the petition on the ground that the petition was filed after the suit was listed and further Power of Attorney not was competent to give evidence on behalf of his principal. The Order 3 Rule

2 CPC enables "the holder of Power of Attorney" to appear, apply and act on behalf of a party to a suit, as his recognized agent. Power of Attorney holder can appear, plead and Act on behalf of principal but he cannot be witness on behalf of principal and depose in the place of and instead of principal. The Power of Attorney is a competent witness and is entitled to appear as such. His statement in the Court cannot be ignored. His evidence is to be evaluated as per his deposition before the Court and in case the Court finds that evidence of such Power of Attorney is not clear, the Court is at liberty to evaluate the same. The Court cannot say that evidence of such person is not acceptable in total. Therefore, the Power of Attorney is entitled to appear on behalf of a party appointing him as Power Agent holder. The plaintiff has to discharge the burden of proving certain fact / issue which the law requires him to do so. Apart from this, the Power of Attorney is entitled to appear for the party and conduct the case. The order of the trial Court is legally unsustainable. So, I set aside the order of the trial Court and allow the Revision Petition.

7. With the above direction, this Civil Revision Petition stands

Allowed. No costs.

11.12.2020

Index: Yes/No
Speaking Order: Yes/No
vsn



WEB COPY