



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P.(PD) (MD)No.1373 of 2012

and

M.P.(MD)No.1 of 2012

Sivagurunathan

... Petitioner/1st Respondent
/1st Defendant

Vs.

1.Seethalakshmi

... 1st Respondent/Petitioner
/Plaintiff

2.Usha @ Usha Rani

.. 2nd Respondent/2nd Respondent
/2nd Defendant

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.02.2012 passed in I.A.No.20 of 2012 in O.S.No.287 of 2010 on the file of the Principal District Munsif, Kumbakonam, Thanjavur District.

For Petitioner : Mr.G.Gomathi Sankar

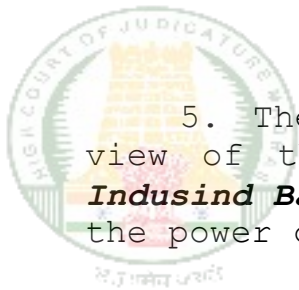
ORDER

In this case, service is not completed. Since the matter is pending from 2012 and the suit itself is pending from 2010, this Court thought it fit to appreciate the merit of the case.

2. The present revision is filed by the first defendant challenging the order dated 08.02.2012 in a petition seeking to accept the power of attorney executed by the plaintiff under Order 3 Rule 2 C.P.C and Section 151 C.P.C. This was accepted by the learned Principal District Munsif, Kumbakonam, Thanjavur District, who decided the matter. The only objection raised by the defendants before the court below was that the power of attorney should not be allowed to depose, but to this, the learned Munsif has recorded that this objection is something the court has reckoned but the matter has to go to the next stage only during trial.

3.This order is now under challenge.

4.Heard the learned counsel appearing for the petitioner.



5. The learned counsel for the petitioner submitted that in view of the judgment in **Janki Vashdeo Bhojwani and another vs. Indusind Bank Limited and others** [(2005) 2 Supreme Court Cases 217], the power of attorney is not entitled to depose.

6. In the judgment referred to above, the Hon'ble Supreme Court of India has earlier directed the party not to adduce the evidence through power of attorney, and in spite of that, the party examined the power of attorney and it is in those circumstances, the Hon'ble Supreme Court of India has declared that the power of attorney is not competent to give evidence. This apart, there may be situations, where a power of attorney may be a person who may be otherwise competent to be a witness to speak to facts constituting the cause of action or the defence in a suit, and therefore, the mere fact that he has also happened to be the power of attorney does not *ipso facto* render him incompetent to tender evidence on behalf of the principal. Thirdly, the competency to a certain witness be it a party or a power of attorney can be decided only during trial.

7. In the final analysis, this Court finds that the trial court has exercised its power in a manner consistent with the provision of law and hence, the order of the court below does not warrant interference by this Court.

8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

CM/msa

To

The Principal District Munsif,
Kumbakonam,
Thanjavur District.

C.R.P. (PD) (MD) No.1373 of 2012
and
M.P. (MD) No.1 of 2012
02.09.2020

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