



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.502 of 2020

and

C.M.P. (MD)No.3153 of 2020

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Krishna Pillai

: Petitioner/Respondent/
Defendant

.. Vs ..

I.Murugan

: Respondent/Petitioner/
Plaintiff

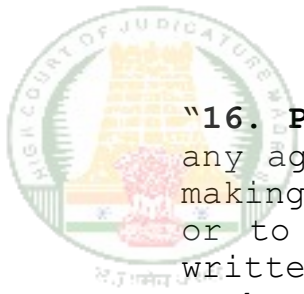
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 25.09.2019 passed in I.A.No.437 of 2018 in O.S.No.248 of 2012 on the file of the II Additional Sub Court, Nagercoil.

For Petitioner : Mr.V.Meenakshisundaram
for Mr.R.Murugan

ORDER

This Civil Revision Petition is directed against the order in I.A.No.437 of 2018 in O.S.No.248 of 2012 on the file of II Additional Sub Court, Nagercoil, allowing the petition filed by the power of attorney agent of the plaintiff, seeking permission of the Court to conduct the case on behalf of the principal.

2.It is not in dispute that the respondent in this Civil Revision Petition is the power of attorney agent of plaintiff and who is also the son of plaintiff. The the father of the respondent filed the suit in O.S.No.248 of 2012 on the file of II Additional Subordinate Court, Nagercoil, for preliminary decree for partition declaring his half share and for permanent injunction restraining the revision petitioner herein from making any alteration or any alienation in respect of any of the scheduled mentioned properties. Hence, a simple suit for partition came to be filed by one of the co-owners namely the plaintiff in the suit. A petition was filed by the respondent, namely, son of the plaintiff seeking permission to prosecute the suit on behalf of his father based on a letter. This letter was executed by the plaintiff in favour of the respondent on 12.06.2018. The said letter specifically refers to the authority that was given in favour of the power of attorney agent to conduct the case and to give evidence on behalf of the plaintiff in the suit. Based on the letter, the application was filed under Order 3, Rules 1 and 2 of C.P.C. read with Rule 16 of Civil Rules of Practice. Rule 16 of Civil Rules of Practice reads as follows:



"16. Party appearing by Agent:- a. When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.

b. The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court."

3. Rule 16 contemplates permission from the Court when a party to the suit appoints his agent to prosecute the suit or appeal on his behalf. The rule does not require an affidavit to be filed by the principal. Only a written authority from the principal and an official permission is required in terms of Rule 16 to protect the interest of both sides to the lis. Letter of authorisation is not in dispute. The revision petitioner and the plaintiff are brothers. The suit for partition is filed by the respondent. Now a permission is granted to prosecute the suit by the power of attorney agent of the plaintiff who is none else than the son of the plaintiff. The revision petitioner has no *locus standi* to challenge the order or permission as he does not dispute the valid authority in favour of son of plaintiff. One of the grounds raised by the learned Counsel appearing for the revision petitioner is that the power of attorney agent is also authorised to give evidence on behalf of the plaintiff and such authorisation is not permissible. It is true that a power of attorney agent cannot represent the principal to depose, the reason being, a secondary evidence is not admissible when primary evidence is available. Evidence of a power of attorney agent regarding what he knows from the principal is not admissible. However, the power of attorney agent is not precluded from giving evidence regarding facts from his own knowledge. He is competent to disclose/depose regarding facts he is acquainted with. In such circumstances, while it is open to the revision petitioners to raise objections as to the competency of the power of attorney agent to depose as a power of attorney agent of the plaintiff, the petitioner cannot preclude the power of attorney agent from giving evidence as a witness or as a person who is acquainted with facts.



4.As a result, this Court does not find any illegality or irregularity in the order of the II Additional Subordinate Court, Nagercoil. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The II Additional Sub Judge,
Nagercoil.

+1 CC to M/s.R. MURUGAN, Advocate (SR-13689[F] dated 05/08/2020)

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SPU(14.08.2020) 3P 3C