

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.(PD) No.1170 of 2018 and
CMP.No.6028 of 2018**

1.V.M.Kamalam

2.Dr.V.P.Shanmugasundaram

3.Nirmala

4.Poongothai

(petitioners 3 and 4 represented by their
power agent Dr.V.P.Shanmugasundaram
the 2nd petitioner herein)

... Petitioners

Vs

Dr.Indira Krishnan Dasgupta
Rep. by her power agent,
Mrs.Damayanthi Ramachandran,
No.20, ATD Street, Race Course,
Coimbatore – 641 018

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order passed by the learned Sub Judge, Udhagamandalam in IA.No.19 of 2017 in CMA.CFR.No.2984 of 2017 dated 18.12.2017

For Petitioners : Mr.G.Karthikeyan

For Respondent : Mr.R.Vivekananthan

ORDER

This Civil Revision Petition is filed against the fair and decretal order passed by the learned Sub Judge, Udhagamandalam in IA.No.19 of 2017 in CMA.CFR.No.2984 of 2017 dated 18.12.2017, thereby allowing the petition to condone the delay of 61 days in filing the appeal.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed suit for declaration declaring that the sale deed dated 29.05.1978 as null and void. The respondent is residing at USA and filed suit through her power agent. When the suit ripened for trial, the principal herself visited India and she filed her proof affidavit in chief. Thereafter, she went to USA. For want of her presence for cross examination, the suit was posted for several occasions. Thereafter, because of non availability of the plaintiff for cross examination, the suit was dismissed for default. The respondent filed petition to restore the suit and

the same was dismissed by the trial court. Aggrieved by the same, the respondent preferred appeal and the same was allowed and thereby the suit is restored. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioners would submit that once power of attorney filed suit on behalf of the principal, except power of attorney, no one is permitted to depose on behalf of the plaintiff before the trial court. Once the principal has appeared before the court below and deposed in chief, the power of attorney cannot step into the shoes of the principal only for the purpose of cross examination. Hence, the plaintiff in the suit cannot be represented by her power of attorney.

4. Per contra, the learned counsel for the respondent would submit that the power of attorney never entered into box to depose on behalf of the plaintiff. Admittedly, the plaintiff filed suit through her power of attorney and thereafter the plaintiff herself was present before the trial court and she was examined in chief. Thereafter, due to her personal inconvenience, she

went back to USA and she could not able to return to India for cross examination. Therefore, the suit was dismissed for default. Therefore, at no point of time, the power of attorney entered into box on behalf of the principal i.e. the plaintiff for cross examination.

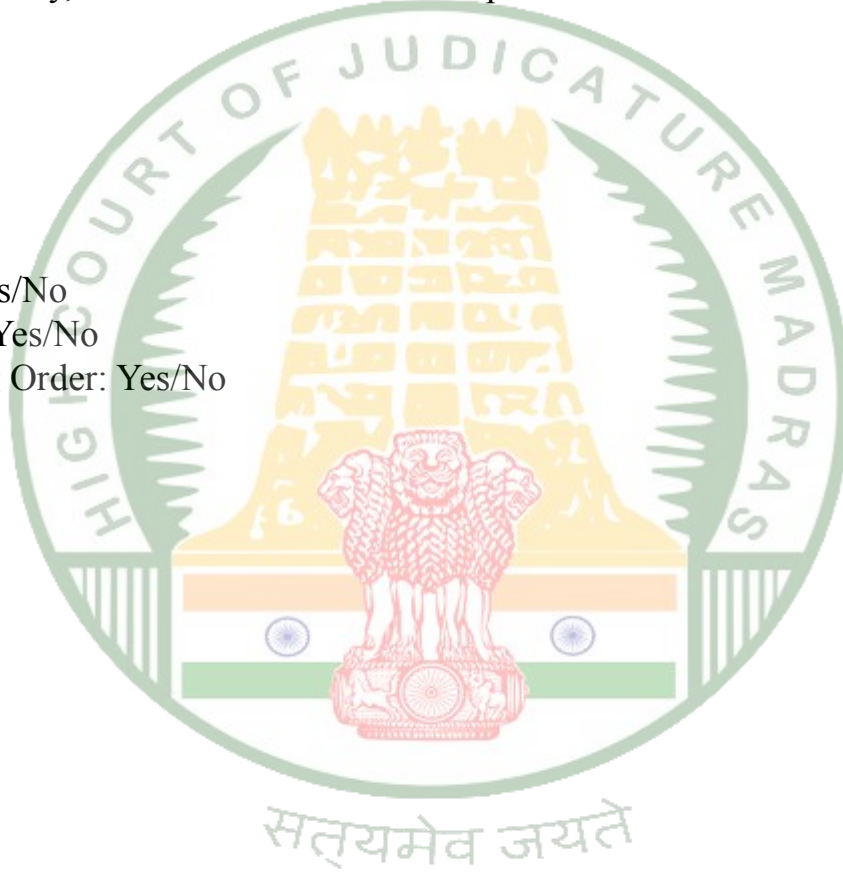
5. Heard, Mr.G.Karthikeyan, the learned counsel for the petitioners, and Mr.R.Vivekananthan, the learned counsel for the respondent.

6. The respondent filed suit through her power agent and she deposed as PW1 in chief. Thereafter, she went to USA and failed to return back to India for cross examination. Because of non availability of the plaintiff for cross examination, the court below dismissed the suit for default. Aggrieved by the same, the respondent filed appeal with delay of 61 days in filing the appeal. The first appellate court rightly allowed the same and this Court finds no infirmity or illegality in the order passed by the court below.

7. Accordingly, the civil revision petition is dismissed. The first appellate court is directed to dispose of the CMA.No.13 of 2017 within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

08.07.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No



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G.K.ILANTHIRAIYAN,J.

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To

The Subordinate Judge,
Udhagamandalam



C.R.P.(PD) No.1170 of 2018

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