



WEB COPY



C.R.P.No.807 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No.807 of 2019

and

C.M.P.No.5308 of 2019

Baskaran

... Petitioner

Versus

Mahalakshmi

Rep. By her Power of Attorney:

K.Nandagopal,

S/o.Kadirvel Chettiar,

GST Road,

Melavalampettai,

Madurantagam Taluk,

Kanchipuram District.

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC India, praying to set aside the fair and decretal order dated 12.12.2018 passed in E.A.No.125 of 2018 in E.P.No.50 of 2016 in O.S.No.215 of 1996 on the file of the District Munsif Court, Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.N.Nagu Sah



C.R.P.No.807 of 2019

ORDER

WEB COPY

This Civil Revision Petition has been filed against the fair and decretal order dated 12.12.2018 passed in E.A.No.125 of 2018 in E.P.No.50 of 2016 in O.S.No.215 of 1996 on the file of the District Munsif Court, Madurantagam.

2.Heard both sides.

3.The petitioner herein is the judgment debtor in E.P.No.50 of 2016 and the defendant in O.S.No.215 of 1996, which was filed by Mahalakshmi against the petitioner for declaration and other consequential relief. On merits, the said suit was decreed. Thereafter, according to the respondent, the petitioner herein violated the decree in respect of the “C” schedule property and thereafter, he filed E.P.No.50 of 2016. During the pendency of the said execution proceedings, as she was aged about more than 65 years and suffered with ailments, she gave Power of Attorney of her son viz., K.Nandagopal to proceed further with the execution proceedings in E.A.No.125 of 2018.



C.R.P.No.807 of 2019

WEB COPY

4. After hearing both sides, the said application was allowed by the Trial Court. Aggrieved by the same, the judgment debtor preferred this Civil Revision Petition.

5. At the time of arguments, the learned counsel for the petitioner submits that the entire events narrated in the execution petition would show the personal act committed by this petitioner viz., Mahalakshmi, who is said to be having the personal knowledge about the said incident. But during the pendency of the said execution proceedings, she gave power of attorney to her son, who has no personal knowledge about the alleged incident.

6. But without considering this aspect, the trial Court erroneously permitted G.Nandagopal as a power of attorney to proceed further with the execution proceedings in E.P.No.50 of 2016. Hence, he prayed to allow the Civil Revision Petition by setting aside the trial Court order.

7. By way of reply, learned counsel for the respondent submits that the power of attorney was given only to the son of Mahalakshmi as she



C.R.P.No.807 of 2019

was not able to attend the Court due to ailment. If the revision petitioner/judgment debtor has any objection with regard to the personal knowledge about alleged attempt made by the judgment debtor that would have been narrated at the time of the evidence but not at the stage of giving power of attorney.

8. On perusal of the records, it reveals that the suit was filed in the year 1996 for the relief of declaration and consequential relief and the same was decreed in favour of the plaintiff. Thereafter, some violation was committed by the judgment debtor with regard to “C” schedule property. Hence, the decree holder constrained to file E.P. The revision petitioner/judgment debtor appeared and contested. During the pendency of the said petition, E.A.No.125 of 2018 was filed under Order 3 Rule 2(a) of CPC by the power of attorney holder G.Nandagopal, based upon the power deed by his mother for the decree holder and the same was also allowed by the trial Court and the execution application is pending. If the petitioner is having any objection with regard to the knowledge about the alleged incident, he would have narrated the same at the time of evidence. The revision petitioner is having an ample opportunity to defend the case but not at the



C.R.P.No.807 of 2019

stage of appointment of the power of attorney by filing an application under

Order 3 Rule 2(a) of CPC.

9.At the time of arguments the learned counsel appearing for the petitioner submitted that on the earlier occasion, E.A was filed and the same was not allowed by the executing Court for the reason that the power of attorney has not been registered and the reasons for execution of power of attorney have not been mentioned.

10.Therefore, the objection raised by the revision petitioner is unsustainable one. Accordingly, this Civil Revision Petition is dismissed and the order passed by the trial Court is confirmed. The trial Court is directed to dispose the matter within a period of three months from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petition is Closed. No costs.

25.10.2021

Internet : Yes / No

Index : Yes / No

ub



WEB COPY



C.R.P.No.807 of 2019

T.V.THAMILSELVI, J.

ub

C.R.P.(PD).No.807 of 2019

25.10.2021