



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

O.S.A.No.237 of 2021
and
C.M.P.No.9752 of 2021

Shivkant Jagannathan
Son of Late (Dr) K.Jagannathan
Aged about 59 years,
No.100 & 101 D Block, 6th Street,
Anna Nagar East, Chennai 600 012
Presently residing at
No.38, The Birches, South Wootton,
King's Lynn, United Kingdom - PE 303JG.

[Represented by his Power Agent:
N.Alaganan
Son of Late Narayanan
Aged about 74 years
No.3, Raju House, Kurangani Road,
Bodinayakkanur, Theni 625 513.]

...Appellant

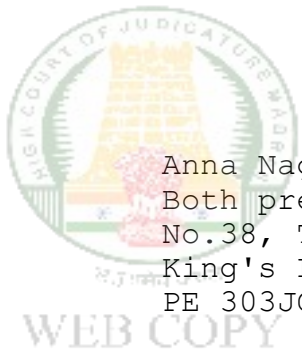
[Cause title accepted vide Court order dated 30.04.2021 made in
CMP.No.8290/2021 in OSA.SR 34607/2021]

Vs

1.Advait Shivkant Nathan
Represented by his agent:
Justice V.Ramaswami (Retd.)
No.162, Justice Ramaswami Road,
Kamaraj Avenue, Adyar,
Chennai 600 020.

2.Sureka Alaganan

3.Minor Ms.Tara
(Minor aged about 14 years)
Represented by her father and Natural Guardian,
Dr.Shivkant Jagannathan
Both Respondents 2 and 3 residing at:
New No.4, Old No.100, D Block, 6th Street,



Anna Nagar (East), Chennai 600 102.
Both presently residing at:
No.38, The Birches, South Wootton,
King's Lynn, United Kingdom -
PE 303JG.

...Respondents

PRAYER : Original Side Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules praying to set aside the order and decree passed in Application No.2760 of 2020 in C.S.No.16 of 2013 dated 18.01.2021 and modified order dated 08.03.2021.

Prayer in A.No.2760 of 2020:

Application filed praying to appoint an Advocate Commissioner to examine the deponent (Mr.Justice V.Ramaswami) (PW1) and record his deposition in CS.No.16 of 2013.

Prayer in CS.No.16 of 2013

Civil Suit filed under order IV Rule 1 and Order XXIV of OS Rules read with order VII Rule 1 CPC praying to

(a) to pass a preliminary decree declaring the $\frac{1}{2}$ share of the plaintiff in the properties mentioned under the schedule and such other properties as may come to light in future and allot $\frac{1}{2}$ share to the plaintiff

(b) to appoint an Advocate Commissioner to divide the properties by metes and bounds and allot one such share to the plaintiff by passing a final decree

(c) for costs of this suit and

(d) pass any such further orders as this Hon'ble Court deems fit and thus render Justice.

For Appellant : Mr.L.Rajasekar.

For Respondents : Mr.Karthick Seshadri for R1.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The matter has been heard through "Video Conference".

2.This Appeal has been filed against the allowing of Application filed by the Plaintiff for appointment of an



Advocate Commissioner to examine PW1 who is the Power Agent of the First Respondent / Plaintiff.

3.The Plaintiff / First Respondent herein is the son of the First Defendant / Appellant and the Second Respondent herein is the wife of the Appellant and the Third Respondent herein is the daughter of the Appellant. The First Respondent herein is the son born to the Appellant through the First marriage of the Appellant. Thereafter, it is stated that the Appellant got married to the Second Respondent and out of the wedlock, the Third Respondent was born. The marriage between the Appellant and the First Respondent's mother was dissolved as per the proceedings before the Foreign Court.

4.Contending that the First Respondent has got right over the property, he has filed a Suit in C.S.No.16 of 2013 against the Appellant as well as the Second and Third Respondents listing out number of properties. The said Suit has been filed before this Court through the Power Agent of the First Respondent. The Power Agent is none other than the grand father of the First Respondent. When the Suit is taken up for trial, an Application has been taken out by the First Respondent herein to examine his Power Agent, as he had been living in United Kingdom and the deponent, PW1 is aged 94 years. The said Application, on contest, was allowed, against which, the Present Appeal has been filed.

5.Heard Mr.L.Rajasekar, Learned Counsel for the Appellant and Mr.Karthick Seshadri, Learned Counsel for the First Respondent.

6.This Court, in an endeavor to sort out the issue between the father and son, asked both of them to appear before this Court through Video Conference as they have been living in United Kingdom. Though they appeared before this Court through Video Conference in the last hearing, in spite of persuasion by this Court, the issue could not be sorted out effectively. However, this Court was successful in making the son to speak to his father after sixteen years.

7.Mr.L.Rajasekar, Learned Counsel for the Appellant would submit that the First Respondent is aged about 34 years and he himself can appear before this Court and adduce evidence. Secondly, the Power Agent of the First Respondent is sought to be examined in his residence and the Appellant cannot get a fair chance of cross examination as there is no cordial relationship between the Appellant and the Power Agent.

8.However, this Court is not convinced with the said arguments, as the Power Agent is none other than the grand



father of the First Respondent. Further, the Learned Counsel for the Appellant would submit that the Power Agent does not have any authority. A perusal of the Power of Attorney would denote that the Power of Attorney has been appointed to institute, commence, prosecute, carry on or defend or resist all suits and other action and proceedings or be added as a party or be non suited or withdraw the same concerning my property or any part thereof, or concerning any matter or thing in which I may be a party in any court in civil, criminal, revenue or revisional jurisdiction etc., Hence, it is very crystal clear that carrying on the proceedings in any court in civil, criminal, revenue or revisional jurisdiction would also include giving evidence and there is no necessity to explain as to what are all the things which are required to be done by the Power of Attorney.

9. Secondly, the contention that the Appellant will not get a fair chance to examine the deponent in his residence is not sustainable. The Learned Counsel for the Appellant is going to cross examine the Power Agent of the First Respondent and that would be before the Advocate Commissioner appointed by this Court. Further, if the Appellant wanted himself to be present, Mr. Karthick Seshadri, Learned Counsel for the First Respondent submits that there will not be any objection or inconvenience caused to the Appellant, in case he is present at the time of examination of PW1, Power Agent in his residence. Therefore, that will take care of the apprehension expressed by the Learned Counsel for the Appellant.

10. When the grand son is in United Kingdom and he has authorized a Power Agent, PW1 viz., Grandfather, there should not be any prohibition either in initiating proceedings or giving evidence on behalf of the First Respondent. The Power Agent is aged about 94 years and therefore, it will be inconvenient for him to appear before this Court and give evidence. Therefore, rightly, the Learned Single Judge has allowed the Application for appointing an Advocate Commissioner to examine the Power Agent of the First Respondent in his residence.

11. Since the Appellant expressed his inability in coming down to Chennai to instruct his Counsel to cross examine the Power Agent of the First Respondent due to his prior commitments, this Court grants three weeks time for the Appellant from today to come down to Chennai and assist his Counsel and thereby personally be present during the cross examination of PW1. Considering the age of the Power Agent of the First Respondent, it is expected that the Appellant shall conclude his cross examination within a period of ten days.



12. Therefore, this Court is of the view that there is no illegality or infirmity in the order passed by the Learned Single Judge. Hence, the Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Sub-Assistant Registrar,
Original side,
High Court, Madras.

+1cc to Mr.H.Karthik Seshadri, Advocate, Sr.36884

O.S.A.No.237 of 2021
and
C.M.P.No.9752 of 2021

PM[co]
NSK 27/08/2021