

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

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

CRP.PD.No.2631 of 2017
and CMP.No.12571 of 2017

1.K.Rajalakshmi
2.K.Chandiral
3.R.Mahalakshmi
4.B.Shanthi
5.S.Indira
6.S.Naveen Kumar
7.S.Nithila Bargavi

..Petitioners

Vs.

1.V.Vijayalakshmi
2.The Sub-Registrar,
Kinathukadavu Sub Registrar Office,
Kinathukadavu, Coimbatore District
3.S.Geenath Ahamed
4.S.Suaip Mohammed

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 25.04.2017 passed in IA.No.51 of 2017 in OS.No.127 of 2011 on the file of 4th Additional District Court, Coimbatore.

For Petitioners : Mr.A.Sivaji

For Respondents

For R1 : Mr.N.Ishtaq Ahmed

For R2 : Mr.T.M.Pappiah,
Special Government Pleader

R3 & 4 : No Appearance

ORDER

This civil revision petition is filed against the order dated 25.04.2017 passed in IA.No.51 of 2017 in OS.No.127 of 2011 on the file of IV Additional District Court, Coimbatore thereby permitting the plaintiff to examine her husband to adduce evidence on behalf of her husband in the suit for partition.

2. The petitioners are the defendants and the first respondent herein is the plaintiff. The first respondent filed suit for partition. While pending the suit, the first respondent filed petition seeking permission to examine her husband on behalf of the first respondent to adduce evidence.

3. The learned counsel for the petitioners would submit that the power of attorney can very well depose on the side of the plaintiff, but he cannot represent on behalf of the plaintiff when he does not know about

the plaintiff's personal knowledge about the facts of the case. The plaintiff has to enter into box and to state his own case on both and if the plaintiff does not do so to depose or to get cross examined, adverse interference can be drawn against the plaintiff. In support of his contention, he also relied upon the following judgments:

- (i) Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd and others reported in (2005) 2 SCC 217
- (ii) Ram Prasad Vs. Hari Narain and others reported in AIR 1998 Rajasthan 185
- (iii) Sakunthala Vs. Anandarajan and anothers reported in (2008) 1 MLJ 354

4. Per contra, the learned counsel for the respondents would submit that Section 120 of Indian Evidence Act provides for deposition of the husband and the wife as witness. Therefore, in a suit for partition on behalf of the wife, her husband can very well depose since he is the competent witness on behalf of his own wife, provided his testimony is found believable. Therefore, the order passed by the court below does not warrant any interference by this Court.

5. Heard, Mr.A.Sivaji, the learned counsel for the petitioners, Mr.N.Ishtaq Ahmed, the learned counsel for the first respondent and Mr.T.M.Pappiah, Special Government Pleader appearing for the second respondent.

6. It is a suit for partition filed by the first respondent. While pending the suit, she executed power of attorney in favour of her husband. Further, the case of the first respondent is that claiming 1/3 share in the suit schedule property and those properties are joint family properties, in which she has 1/3 share. While pending the suit, she executed power of attorney on 08.06.2016 in favour of her husband as power agent to conduct the main suit on her behalf. In this regard, it is relevant to extract Section 120 of Indian Evidence Act as follows:

120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

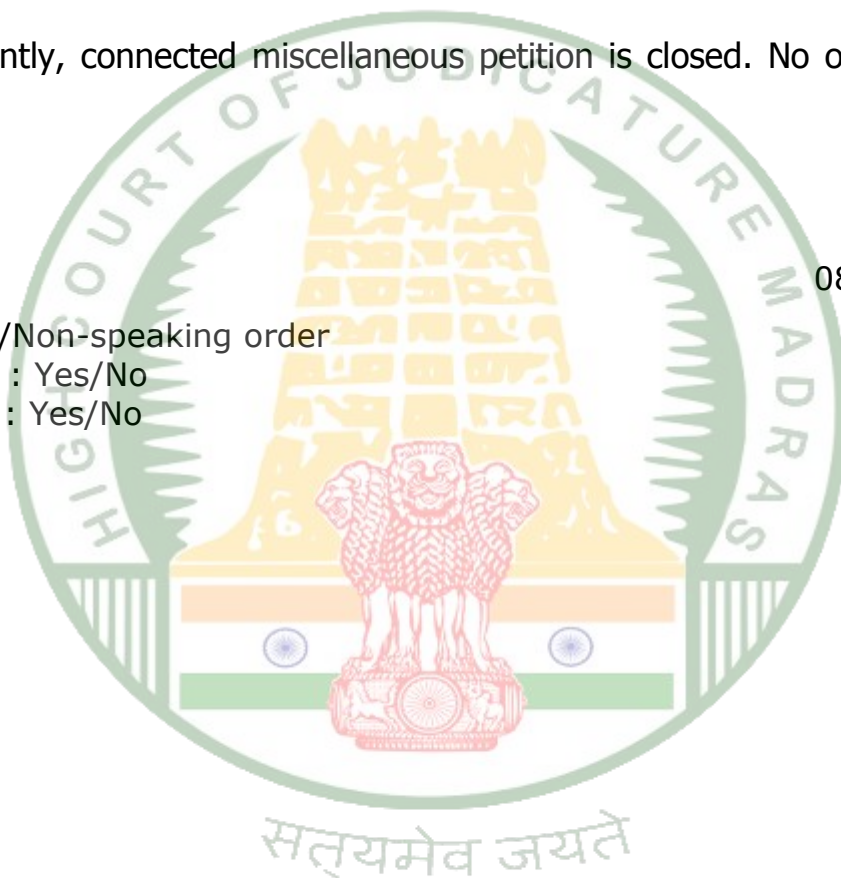
Therefore, it is settled law that the husband and the wife are believed to be one person and not separate. The husband and wife can depose for one another, as such directed the husband of the plaintiff to give oral

evidence which shall be confined to the facts within his knowledge and the court below rightly allowed the petition and this Court finds no irregularity or infirmity in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

08.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The IV Additional District Court,
Coimbatore.



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