



C.R.P.Nos.2546 and 2547 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM

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

C.R.P.Nos.2546 and 2547 of 2016
and C.M.P.Nos.13059 and 13060 of 2016

1. R.Jambu

2. R.Gurulingam

.. Petitioners **in both C.R.Ps**

Vs.

1. P.Vijayakumar

2. R.Kannappan

.. Respondents **in both C.R.Ps**

Prayer in C.R.P.No.2546 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 13.07.2016 made in I.A.No.16187 of 2015 in O.S.No.3464 of 2010 on the file of the VI Assistant Judge, City Civil Court, Chennai and thereby allow this revision petition.

Prayer in C.R.P.No.2547 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 13.07.2016 made in I.A.No.16188 of 2015 in O.S.No.3464 of 2010 on the file of the VI Assistant Judge, City Civil Court, Chennai and thereby allow this revision petition.



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C.R.P.Nos.2546 and 2547 of 2016

In both C.R.Ps

For Petitioners : Mr.V.R.Kamalanathan
For Respondents
For R1 : Mr.A.Sheik Peer
For R2 : Notice served

COMMON ORDER

These Civil Revision Petitions have been filed as against the Fair and Decreetal order dated 13.07.2016 made in I.A.Nos.16187 and 16188 of 2015 in O.S.No.3464 of 2010 on the file of the VI Assistant Judge, City Civil Court, Chennai, thereby dismissed the petitions filed to eschew the proof affidavit filed by the Power Agent as Defendant Witness-1 and to reject the document of Power of Attorney which was marked as Ex.B1.

2. The petitioners are the plaintiffs in the suit filed by them for partition. Pending suit, the first respondent herein filed a petition to condone the delay in receiving the documents of Power of Attorney which was executed by his son in his favour to depose before the Trial Court. The same was allowed and thereafter the first respondent herein marked the Power of Attorney as Ex.B1 and filed the proof affidavit of D.W.1. At that juncture, the petitioners filed applications to reject Ex.B1



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and eschew the proof affidavit filed by D.W.1, on the ground that Ex.B1 was not adjudicated in India, since it was executed in United States of America. When D.W.1 has no power to depose on behalf of the first defendant, his proof affidavit also has to be eschewed. However, the Court below dismissed both the applications for the reason that the Power of Attorney was prepared at Chennai and sent to USA for execution. The Notary Public endorsed the same and sent to India. With regard to the validity and genuineness of the documents, it has to be decided only at the time of finality of the case, since the provisions under Section 33 of the Registration Act states that every Power is to get adjudicated with local Sub Registrar Office, even the registration of the Power of Attorney itself is an optional one. Hence, non adjudication of Power of Attorney will not invalidate the deed of Power of Attorney. It was duly executed before two witnesses.

3. A perusal of Ex.B1 revealed that it was duly signed at Chennai along with two witnesses, but, their addresses were not mentioned in Ex.B1. Therefore, the place of execution of the Power of Attorney itself is in question. The said Power of Attorney is also not properly attested by



C.R.P.Nos.2546 and 2547 of 2016

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two witnesses. It was attested by a Notary Public of United States of America. Further, it was prepared in the month of March 2008 and it was notarized by the Notary Public of United States of America. Admittedly, it was not adjudicated in India. When the Power of Attorney was executed in abroad, it should be adjudicated in India.

4. The learned counsel for the first respondent relied upon the Judgment of this Court reported in ***CDJ 1999 MHC 1021*** in the case of ***S.K.Subramaniam Vs. N.S.Ziyauddin Ahmed***, wherein it was held that it is sufficient to prove a document which was executed by the father in favour of his son by looking at the signatures. If the signature found in the document is admitted, then the Court can proceed with the document as genuine and it does not require any attestation. Therefore, this Court dealt with regard to the attestation of the document.

5. He also relied upon the Judgment reported in ***CDJ 2015 Raj HC 009*** in the case of ***Jaikumar Vs. Hanuman and Others***, wherein it was held that the Power of Attorney is not compulsorily registrable one



C.R.P.Nos.2546 and 2547 of 2016

WEB COPY

when the Power of Attorney is an irrevocable one. Whereas, in the case on hand, it is with regard to the adjudication of the Power of Attorney which was endorsed in United States of America by the Notary Public of United States of America.

6. It is also revealed that it was executed by the first defendant in favour of his father, to purchase or sell movable and immovable properties and it is a General Power of Attorney. It is only to represent on his behalf in the partition suit. Therefore, it should be adjudicated in India to validate the same. That apart, it was prepared in India in the month of March 2008 and endorsed by the Notary Public of United States of America, on 20.11.2008. Further, two witnesses attested the Power of Attorney and nowhere the name and address of them were mentioned including their fathers' name. Therefore, it is seen cumulatively that the said document is not valid one and without any adjudication, it is liable to be rejected. Therefore, the Judgments cited by the learned counsel for the first respondent are not applicable to the case on hand.



C.R.P.Nos.2546 and 2547 of 2016

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7. Therefore, on the strength of Ex.B1, the proof affidavit filed by D.W.1 has to be eschewed. Accordingly, the Fair and Decreetal order dated 13.07.2016 made in I.A.Nos.16187 and 16188 of 2015 in O.S.No.3464 of 2010 on the file of the VI Assistant Judge, City Civil Court, Chennai, is hereby set aside. However, the first defendant is at liberty to execute a fresh Power of Attorney, in accordance with law. The Power Holder is at liberty to let in his evidence before the Trial Court.

8. In view of the above, these Civil Revision Petitions are allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

14.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The VI Assistant Judge, City Civil Court, Chennai.



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C.R.P.Nos.2546 and 2547 of 2016

G.K.ILANTHIRAIYAN,J.

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C.R.P.Nos.2546 and 2547 of 2016
and C.M.P.Nos.13059 and 13060 of 2016

14.12.2022