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CRP.No.1607 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1607 of 2019
and CMP.No.10600 of 2019

1.N.Ramesh Babu
2.N.Mohan
3.N.Sreeni

... Petitioners

Vs.

1.Gandhi
2.Arun Alagappan
3.Dr. Vanitha Manjunath
4.Nitin Manjunath

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 12.03.2019 passed in IA.No.439 of 2017 in OS.No.186 of 2006 pending on the file of the learned District Munsif at Udhamandalam.

For Petitioners : Mr.G.Rajkumar

For Respondents
For R1 & 2 : Mr.N.Damodaran

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 12.03.2019 passed in IA.No.439 of 2017 in OS.No.186 of



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2006 pending on the file of the learned District Munsif at Udhagamandalam, thereby allowed the petition filed under Order 3 Rule 2 r/w Section 151 of CPC to permit the power holder to represent on behalf of the plaintiff and let in evidence on behalf of the plaintiff.

2. The second respondent filed suit for permanent injunction and also seeking for mandatory injunction. The suit was filed in the year 2006. In the year 2017, the plaintiff executed power of attorney in favour of the first respondent herein to represent the plaintiff and let in evidence on behalf of the plaintiff in the suit. The first respondent and the plaintiff filed petition under Order 3 Rule 2 read with Section 151 of CPC on the ground that the plaintiff is a businessman and he is engaged in various business in Chennai and other places. Due to his business commitment, the plaintiff is not able to be present in court to let in evidence in the suit. He is also residing out of the jurisdiction of the trial court. Therefore the plaintiff appointed the first respondent as power of attorney to file civil suit and appear and give evidence on his behalf vide power of attorney dated 17.08.2015 and the same was allowed. Aggrieved by the same, the present civil revision petition has been filed.



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3. The learned counsel for the petitioners would submit that the power

of attorney was executed on 17.08.2015 in favour of the first respondent herein to represent and to let in evidence on behalf of the second respondent herein. The power of attorney agent of the plaintiff cannot give evidence in the suit. He can give evidence in support of the case of the plaintiff and the power of attorney has no knowledge about the matter and the suit was filed by the plaintiff. As such, he can neither depose on his personal knowledge nor be cross examined on those aspects which are to be personal knowledge of his principal. The Order 3 Rules 1 and 2 of CPC empowers the holder of power of attorney to act on behalf of the principal, which is confined only in respect of the acts done by the power of attorney agent in exercise of the powers granted by the instrument. Order 3 Rules 1 and 2 of CPC does not empowers the power agent to depose in place and instead of the principal.

4. Per contra, the learned counsel for the respondents 1 & 2 would submit that due to business trips, the plaintiff could not able to be present before the trial court to depose on his behalf. Therefore, he executed power of attorney in favour of the first respondent to depose on his behalf. He further submitted that the present suit is not for declaration or any other prayer. It is only for permanent injunction and mandatory injunction in respect of the suit property. Therefore, the



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court below rightly allowed the petition to depose on behalf of the principal. That apart, already the first respondent filed his proof affidavit and marked Ex.A1 to A11 before the trial court and the case has been posted for cross examination of PW1.

5. Heard, the learned counsel for the petitioners and the learned counsel for respondents 1 & 2.

6. Order 3 Rules 1 and 2 of CPC empowers the holder of power of attorney to act on behalf of the principal. The word 'acts' employed in Order 3 Rules 1 and 2 of CPC confined only to in respect of 'acts' done by the power of attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross examined. Therefore, the first respondent cannot depose on behalf of the second respondent for the acts done by the second



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respondent. The first respondent can depose only on the acts done by him in pursuance of the power of attorney executed in his favour. Therefore, the impugned order cannot be sustained and it is liable to be set aside.

7. Accordingly, the fair and decretal order dated 12.03.2019 passed in IA.No.439 of 2017 in OS.No.186 of 2006 pending on the file of the learned District Munsif at Udhagamandalam are set aside and this civil revision petition is allowed. It is also made clear that the proof affidavit filed by the first respondent and the documents Ex.A1 to Ex.A11 are hereby eschewed. Further, the trial court is directed to dispose of the suit within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.12.2022

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

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To
The learned District Munsif at Udhagamandalam

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