



C.R.P.(PD).No.1594 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2021

Pronounced on : 02.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.1594 of 2017

and

C.M.P.No.7533 of 2017

Govindaraju Gounder

.. Petitioner

Vs

Viruthambal

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.1499 of 2014 in O.S.No.352 of 2007 dated 13.03.2015 on the file of Additional District Munsif Court, Tindivanam.

For Petitioner : Mr.G.Baskar

For Respondent : Mr.S.Rajaraman



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ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A.No.1499 of 2014 in O.S.No.352 of 2007 dated 13.03.2015 on the file of Additional District Munsif Court, Tindivanam.

2.The petitioner is the plaintiff in O.S.No.352 of 2007 which is a suit filed for partition. In the said suit, the respondent/defendant has moved an application in I.A.No.1499 of 2014, seeking permission to appoint Special Power of Attorney agent one Haridoss S/o.Kalraya Gounder, to conduct the case and to give evidence on her behalf. According to the respondent, she is aged about 82 years and she finds it very difficult to conduct the case by herself due to her old age and ill-health. By order dated 13.03.2015, the trial Court allowed the said application. Questioning the same, the petitioner/plaintiff has come forward with the present revision petition.

3.Questioning the order passed by the Court below, the learned counsel for the petitioner would submit that the Power of Attorney appointed by the respondent cannot give evidence on behalf of the Principal



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since he does not know the facts of the case. He would further submit that the Court below has simply allowed the application even though the respondent/defendant is capable of conducting the case on her own and no documents were filed to prove that she is suffering from ill-health. Therefore, the learned counsel seeks to set aside the order of the Court below.

4. In reply, the learned counsel appearing for the respondent would submit that the Court below has rightly considered the position of the respondent who is aged about 82 years and suffering from ill-health and is incapable of conducting the case by herself and allowed the application. He would further submit that the power agent of the respondent is none other than the sister's son who is taking care of the respondent by providing food, cloths and medical help and he is cultivating the suit properties on behalf of the respondent and he knows all the details of the case regarding the suit property and hence, he can very well conduct the case on behalf of the respondent. Therefore, the learned counsel prays this Court to dismiss the revision petition.



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WEB COPY 5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

6. Now the point for consideration is whether the special power of Attorney agent Mr. Haridoss appointed by the respondent can be permitted to conduct the case and to give evidence on behalf of the respondent/defendant herein. According to the petitioner, the power of Attorney agent appointed by the respondent cannot give evidence on behalf of the Principal since he does not know the facts of the case on his own. The learned counsel for the petitioner relied upon the Judgment of the Apex Court in Janki Vashdeo Bhojwani & Anr Vrs. Indusind Bank Ltd & ors.

“Rule 1 Order III of Code of Civil Procedure 1908 “Appearances, etc., may be in person, by recognized agent or by pleader:

“Any appearance, application or at in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where



otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf: Provided that any such appearance shall, if the Court so directs, be made by the party in person.”

Rule 2 Order III of Code of Civil Procedure 1908 “Recognized agents”

The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or



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done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.”

7. It is seen from the affidavit filed by the respondent before the trial Court that Haridoss is none other than her own sister's son. It is also not in dispute that the respondent has no children. The old age of the respondent is also not disputed.

8. The main suit in O.S.No.352 of 2007 is one for partition of plaintiff's half share and power of attorney is the very close relative of the respondent. Whether the power of attorney has any personal knowledge about the suit or not, will be known only if he is allowed to depose. It is for the respondent to prove her case. No prejudice would be caused to the petitioner. Apart from that the petitioner has opportunities to cross examine the power agent of the respondent.

9. Considering the facts that the suit is one for partition and the power



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of attorney is a very close relative of the respondent, this Court does not find anything wrong in the findings of the learned Additional District Munsif Court, Tindivanam.

10. For the above said reasons, this Civil Revision Petition deserves dismissal and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2022

gbi

Index: Yes/No
Internet: Yes/No

To

The Additional District Munsif Judge,
Tindivanam.



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S.KANNAMMAL.J.,

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Pre-delivery Judgment in
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