



C.R.P. No. 2434 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.2434 of 2017
and
C.M.P. No. 11512 of 2017

Mr.Ajith Kumar,
S/o. Mr. Indra Kumar

... Petitioner

Vs.

1. Mrs.Sakeena
W/o. N.Ahmed Jaleel

Mrs. Mahmooda (died)
both rep. by their Power Agent
Mr.N.Ahmed Jaleel

3. Shaifudeen
4. Abdul Malik
5. Majeeda

(R3 to R5 are brought on record as LRs
of deceased R2 Mrs.Mahamooda,
vide court order dated 11.10.2022 made
in C.M.P.No. 11582 of 2021 in C.R.P.
No. 2434 of 2017)

... Respondents

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PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the impugned order dated 23.06.2017 passed in I.A.No.16177 of 2016 in O.S.No.1631 of 2014 on the file of Hon'ble First Assistant City Civil Court at Chennai.

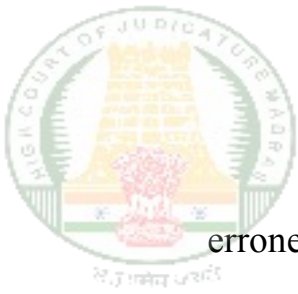
For Petitioner : Mr. N.Varadharajan

For Respondents : Mr.Krishna Prasad for
M/s. Sarvabhauman Asso.
for R1, R4 & R5

R2 & R3 – died

ORDER

Challenging the order passed in I.A.No.16177 of 2016, the defendant preferred this Civil Revision Petition stating that the trial court has not appreciated the fact that the evidence of P.W.1, the power agent of plaintiffs is unsustainable for the reason that as per the Power of Attorney deed, he was not delegated any powers to give evidence, however, inspite of that, he was examined as P.W.1. Accordingly, he filed an application under Order 13 Rule 13 r/w Sec.151 of C.P.C. praying to eschew the evidence of P.W.1 and to call for Principal to depose evidence. But, the same was



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erroneously dismissed by the trial court, which needs interference. Hence, he prayed to set aside the findings of the trial court.

2. The learned counsel for Revision Petitioner would submit that when the plaintiff was very much available in the proceedings of the court, he can depose the evidence, inspite of the fact that he gave power to her power agent Mr.N.Abdul Jaleel, and he was examined as P.W.1 and documents were marked on their side. But, the power of attorney holder cannot act as a power agent to depose evidence only with his personal capacity and not in the capacity of his principals, but this fact was not appreciated by the trial court and erroneously dismissed the application. Hence, he prayed to set aside the findings of the trial court.

3. The learned counsel for respondents/plaintiffs submitted that based upon the Power of Attorney, the power holder was examined as P.W.1 and he was cross-examined by this defendant. Thereafter, he has no right to eschew the evidence and file an application to call for Principal to depose evidence. Hence, they prayed to dismiss this Civil Revision Petition.



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4. Heard and considered rival submissions made by learned counsel for Revision Petitioner as well as respondents and perused the records.

5. Considering submissions of both sides and on perusal of records, it seems that the 1st respondent Sakeena authorised Abdul Jaleel as her power agent through the power of attorney deed dated 15.04.1972 and based upon that document, he gave evidence before the trial court as P.W.1 and he was cross-examined by the defendant also. Thereafter, the defendant filed this application to eschew evidence of P.W.1 stating that he can depose for the Principal in respect of such acts, but he cannot depose for the Principal for the act done by the Principal. So, with regard to lease and tenancy, according to the defendant, the plaintiff Sakeena alone having personal knowledge and not her power agent. In such circumstances, to examine the original Principal Sakeena would not cause hardship to the plaintiff. But, the learned counsel for respondents/plaintiffs would submit that the said Sakeena is wife of P.W.1. As husband of P.W.1, he knew all facts personally. Hence, he is a right person to depose on behalf of Principal/his wife. But, considering the facts and circumstances, when the defendant was



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very much disputing the evidence of P.W.1, no hardship would cause to the plaintiffs to examine Principal Sakeena as evidence on their side. So, this Court is inclined to dismiss this Civil Revision Petition, however, giving direction to the plaintiffs to examine Principal as plaintiff side evidence. Liberty is given to the plaintiffs to examine Principal as one of the witness on their side. Since the suit is pending from the year of 2014, the trial court is directed to dispose the suit within a period of eight months from the date of receipt of this order. Moreover, during the pendency of proceedings, the 3rd respondent died and the memo filed to that effect is recorded. The Plaintiffs are given liberty to take steps before the trial court. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To
I Asst. Judge,
City Civil Court, Chennai.

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T.V.THAMILSELVI, J.

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