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CRP.No.4113 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

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

C.R.P.No.4113 of 2017

and

C.M.P. No. 19292 of 2017

K.Karunakaran
Petitioner

..

Versus

1.C. Shankar,
2.S. Selvi,
3.The Sub-Registrar,
Walajabad,
Kancheepuram Taluk and District.
4. The District Registrar,
Kancheepuram,
Kancheepuram District.
5. The Inspector General of Registration,
Santhome, Chennai - 600 004.
Respondents

..

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.04.2017 made in I.A. No.7 of 2017 in O.S. No.429 of 2010 on the file



of the Principal District Munsif Court, Kancheepuram.
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For Petitioner : Mr.T. Sathiyamoorthy

For Respondents : Mr.S.L. Sudarsanam For R1 & R2
: Mr. B. Tamil Nidhi for R3 to R5
(Additional Government Pleader)

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 24.04.2017 made in I.A. No.7 of 2017 in O.S. No.429 of 2010 on the file of the Principal District Munsif Court, Kancheepuram.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant in the original suit.

3. The case of the petitioner is that the plaintiff/petitioner herein has filed the original suit in O.S. No.429 of 2010 before the Trial Court against the defendants/respondents herein seeking for granting permanent injunction and also mandatory injunction against defendants in respect of the plaint schedule mentioned property. Pending the suit, the plaintiff has



filed an application in I.A. No.7 of 2017 before the Trial Court under Order 3 Rule 2 of CPC, to recognize one Chandanbala W/o. Dhilip Kumar as his power agent in the original suit. The Trial Court after hearing both sides, dismissed by order dated 24.04.2017 holding that the Power of Attorney does not have right to depose evidence on behalf of the plaintiff. Being aggrieved by the aforesaid dismissal order, the plaintiff has filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioner would submit that the plaintiff/petitioner herein is unwell due to sever hyper tension and he is not able to step into the stair case to attend the Court and to give evidence. Hence, it is required to appoint a power agent representing him to give evidence and no prejudice will be caused to the defendants/respondents herein. Without considering the health condition of the plaintiff, the Trial Court erroneously dismissed the said application relying upon the Judgment in the case of "*Janki Vashdeo Bhojwani & another Vs. Indusind Bank Ltd, & Others reported in 2005(3) Law weekly,*" passed by the Apex Court in stead of recognizing the Power Attorney engaged by the plaintiff/petitioner herein. The Trial Court ought to have seen that the



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Apex Court has held that the Power of Attorney cannot depose those things which are not within his knowledge and he can speak about those things that are within his personal knowledge. Hence, the finding of the Trial Court is contrary and liable to be set aside. In support of his arguments, the learned counsel for the petitioner relied on the Judgment in the case of *"Man Kaur (Dead) by Lrs Vs. Hartar Singh Sangha reported in (2010) 10 Supreme Court Cases 512"* passed by the Apex Court stating the position of the Power of Attorney as to who should give evidence in regard to matters involving personal knowledge.

5. The learned counsel for the respondents 1 and 2 would submit that while the plaintiff is deposing his evidence in another case, he wantonly evades to depose his evidence in this case with the intention to procrastinate the suit proceedings. As far as the power of attorney is concerned, it has to be registered properly in the manner known to law and which cannot be executed only for the purpose of deposing evidence. The Apex Court has clearly held that under Order 3 Rule 1 & 2 of CPC, the Power of Attorney holder does not have right to act on behalf of principle for deposing the evidence. Hence, the Trial Court has rightly dismissed the



application relying upon the aforesaid Judgment passed by the Apex Court.

Hence, there is no need to interfere with the order dated 24.04.2017 passed by the Trial Court.

6. Heard the learned counsel appearing for both parties and perused the material available on record.

7. Having considered the facts and circumstances of the case and submissions of the learned counsel on either side, it is understood that as the plaintiff is suffering from hyper tension, he is not able to step into the stair case to attend the court and to give evidence in the witness box and seeks to appoint a Power of Attorney to give evidence on his side. On contrary, the learned counsel for the respondents 1 and 2 would state that even though the plaintiff is hale and healthy involving other activities such as giving evidence in another suit and executing power attorney and reaching to counsel office for filing petition, he willfully evades to give evidence in this case with the intention to drag on the suit proceedings.

8. Under such circumstances, it is suggested the learned counsel for



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the defendant to examine the plaintiff/petitioner herein through an Advocate Commissioner appointed on behalf of the plaintiff to record the evidence of the plaintiff. At the same time, the Power of Attorney holder appointed by the plaintiff/petitioner herein would be examined as P.W.2 in the suit proceedings. The same was accepted by the learned counsel for both parties.

8. With the aforesaid directions, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed if any. No costs.

27.10.2022

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Index : Yes/No

Speaking Order : Yes/No



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