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C.R.P (MD) Nos.1561 and 1562 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) Nos.1561 and 1562 of 2022
and

C.M.P (MD) Nos.6473 and 6719 of 2022

G.G.Sujitha
represented by her power agent,
R.Govindaajan

... Petitioner

Vs

S.Mohankumar

... Respondent

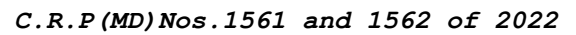
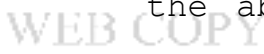
PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order dated 02.06.2021 passed by the Family Court, Dindigul in I.A.Nos.204 and 205 of 2022 in HMOP No.278 of 2021 and proceed the same on merits for adjudication.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.R.R.Kannan

ORDER

These civil revision petitions are filed as against orders of the learned Judge, Family Court, Dindigul in I.A.Nos.204 and 205 of 2022 in HMOP No.278 of 2021.



3. When these civil revision petitions were taken up for hearing, Mr. R. R. Kannan, learned Counsel with the permission of this Court entered appearance for respondent and submitted that the power of attorney has not been executed as per the specifications provided under Section 85 of the Indian Evidence Act. Therefore the trial Court has rightly dismissed the applications. Further, the petitioner has entered appearance before the trial Court today and also filed counter affidavit. Therefore, these petitions have become infructuous.



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4.The learned Counsel for the petitioner submits that the application filed in I.A.No.205 of 2022 for recognising one R.Govindarajan as the petitioner's power agent to defend her in the above HMOP was dismissed by the trial Court on the ground that the power of attorney was not executed as per the requirements under Section 85 of the Indian Evidence Act. Now the petitioner has rectified the defects and has now executed a fresh power of attorney in the presence of notary public. Therefore the learned Counsel prayed for allowing these civil revision petitions.

5.Heard the learned Counsel on either side and perused the materials placed on record.

6.These civil revision petitions are filed as against the orders of the trial Court. The trial Court dismissed the applications filed by the petitioner seeking appointment of Advocate and power of attorney on her behalf to defend the HMOP proceedings instituted by the respondent. However the trial Court dismissed those applications citing that the power of attorney does not fulfill the requirements as required under Section 85 of



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the Indian Evidence Act, which reads as follows:

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*"85. Presumption as to powers-of-attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, 1[Indian] Consul or Vice-Consul, or representative 2[***] of the 3[Central Government], was so executed and authenticated."*

7.It is claimed by the petitioner that the petitioner has returned to India and she has executed the fresh power of attorney attested by the notary public. Therefore now the petitioner has corrected the defects and complied with the requirements as per Section 85 of the Indian Evidence Act. Therefore CRP(MD)No.1562 of 2022 filed, challenging the order dated 02.06.20212 passed in I.A.No.205 of 2022 is allowed and the impugned order is set aside.

8.Insofar as the order dated 02.06.2022 passed in I.A.No.204 of 2022 is concerned, the trial Court has dismissed it, in view of I.A.No.205 of 2022 for appointment



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of power of attorney having been dismissed. Since this Court has set aside the order passed in I.A.No.205 of 2022, CRP(MD)No.1561 of 2022 is also allowed and the impugned order is set aside.

9.In the result, both these civil revision petitions are allowed and the impugned orders are set aside. No costs. Consequently connected miscellaneous petitions stand closed.

01.08.2022

dsk

To

The Judge,
Family Court,
Dindigul.



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B.PUGALENDHI, J.

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