



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR, J

C.R.P. (MD) .No.199 of 2018

and CMP(MD) .No.862 of 2018

WEB COPY

1.M.Mariyammal
2.Chinnappan
3.Antony

....Petitioners/Petitioners/
Defendants

Vs.

1.A.Antony Stellamary

2.A.Antony Yesu

3.A.Antony Gurus

....Respondents/Respondents/
Plaintiffs

(Respondents 1 to 3 represented through their power agent
C.Kulanthai Samy)

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 20.11.2017 made in I.A.No.612 of 2017 in O.S.No.100 of 2010 on the file of the Additional District Munsif, Srivilliputhur and allow the above Civil Revision.

For Petitioners : Mr.R.Ragavendran

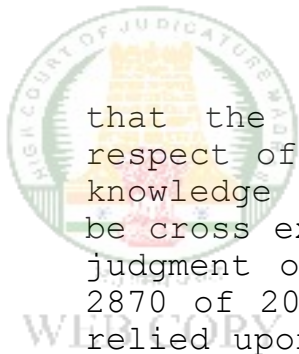
For Respondents : No appearance

O R D E R

The defendants in the suit are the revision petitioners herein.

2. The plaintiffs have filed O.S.No.100 of 2010 before the Additional District Munsif Court, Srivilliputhur for declaration of title, recovery of possession and for permanent injunction. The suit was originally filed by the plaintiffs through their power agent Kulanthai Samy. Pending suit, the said power agent was examined in chief. Before he could be cross-examined, the defendants filed I.A.No.612 of 2017 with a prayer to direct the plaintiffs to appear in person for cross examination. The said application was rejected by the trial Court. As against the same, the defendants have filed the present Civil Revision Petition.

3.According to the learned counsel for the petitioners, in Janaki Vashdeo Bhojwani's case, the Hon'ble Supreme Court has held
<https://hcservices.ecourts.gov.in/hcservices/>



that the power of attorney cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and and in respect of which the principal is entitled to be cross examined. The learned counsel has also relied upon another judgment of the Hon'ble Supreme Court in Civil Appeal Nos.2869 to 2870 of 2010 (Mohinder Kaur Vs.Sant Paul Singh), in which, he has relied upon paragraph No.17 to the effect that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. Hence, according to the learned counsel for the petitioners, unless the plaintiffs appear before the Court for cross examination, it cannot be considered to be legal evidence and an adverse inference has to be drawn.

4. I have heard the submission made on behalf of the petitioners.

5.In Paragraph No.12 of the order of the trial Court has held that the power agent is a close relative of the plaintiffs and he is having personal knowledge about the suit and hence, he is entitled to depose on behalf of the plaintiffs.

6.It is settled position of law that the power agent could depose only with respect to the facts which are within his personal knowledge and he is not entitled to depose with regard to the facts which are within the personal knowledge of the principal. In the present case, if the power agent deposes anything which is not within his personal knowledge and the same can be objected to by the defendants and pray the Court to eschew the same.

7.With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Additional District Munsif, Srivilliputhur



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

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