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C.R.PD.No.1432 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1432 of 2023

a n d

C.M.P.No.9631 of 2023

1. D. Gowri
2. K. Duraiswamy
3. D. Nirmal ... Petitioners

Vs

N.Valli ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 9/3/2023 made in I.A.No.4 of 2023 in O.S.No.2980 of 2021 by the learned VI Additional District Judge, Chennai.

For Petitioner ... Mr.R.Munuswamy

For respondent ... Mr.N.Nagu Sah

ORDER

This Civil Revision Petition is directed, aggrieved by the orders passed by the learned VI Additional District Judge, Chennai, dated



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9/3/2023, in I.A.No.4 of 2023 in O.S.No.2980 of 2021, under Order III

Rule 2 r/w. 151 of the Code of Civil Procedure.

2. The facts which led the petitioners to file the revision are as under:-

The respondent/plaintiff has filed O.S.No.2980 of 2021, seeking recovery of money from the petitioners/defendants, basing on the pronote. The petitioner has filed I.A.No.4 of 2023 under Order III Rule 2 r/w. 151 of the Code of Civil Procedure, seeking to permit the respondent's son as Power of Attorney holder of plaintiff and the same was allowed by the trial Court. Aggrieved by the same, the said revision is filed.

3. Heard Mr.R.Munuswamy, learned counsel for the petitioners and Mr.N.Nagu Sah, learned counsel for the respondent.

4. It is the submission of the learned counsel for the petitioners that the son of the respondent/plaintiff cannot substitute the respondent/plaintiff and give evidence on her behalf and though the respondent/plaintiff in her affidavit has stated that on account of her old



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age ailments and health issues, she is not able to give evidence and prosecute the case, she has not filed any material to substantiate the same. Therefore, sought for revising the orders passed by the learned District Judge.

5. Learned counsel appearing for the respondent, on the other hand submitted that the Power Agent is none other than the son of the respondent/plaintiff and he is aware of entire transaction personally and was actively involved in the transaction with the petitioners/defendants in advancing the money. Therefore, his evidence can be recorded as Power Agent.

6. Perused the materials available on record.

7. It is the settled legal position that Power of Attorney holder cannot step into the shoes of the plaintiff and give evidence on behalf of the plaintiff. However, the Power of Attorney holder can be permitted to give evidence, so far as the facts relevant to the case which are within his knowledge. In the case on hand, the respondent/plaintiff has specifically mentioned that the Power of Attorney holder, who is the son of the



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respondent/plaintiff has also been involved in the transaction of advancing of money to the petitioners/defendants. Therefore, whether he is the Power of Attorney or not, still in the capacity of a person, who has got knowledge about the suit transaction, the son of the respondent/plaintiff is a potential witness for the respondent/plaintiff. Therefore, his capacity to give evidence in respect of the transaction cannot be questioned. In such event, the petitioners/defendants will have a right to cross-examine him as to whether he was really present during the course of alleged transaction or not. In case, if the son of the respondent/plaintiff does not have any knowledge about the suit transaction, he cannot speak about the suit transaction as plaintiff. Even if he deposes anything wrong or does not have personal knowledge, same cannot be appreciated. In fact, it is for the Power of Attorney holder to prove that he was physically present at the time when transaction was taken place.

8. One of the grounds on which the respondent/plaintiff sought for permission to permit the Power Agent to depose on her behalf is that she has not been keeping good health. Therefore, considering the same, the Power of Attorney holder can certainly be considered to be examined on



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her behalf, in respect of the facts that are exclusively within his knowledge.

9. In view of the discussion made above, this Court is of the view that the trial Court has not committed any error in deciding the I.A which is challenged before this Court.

10. In the result, Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

9/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

VI Additional District Judge, Chennai

Dr.D.NAGARJUN,J

mvs.



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