



CRP.Nos.1964 & 1965 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P. Nos. 1964 & 1965 of 2023

and

C.M.P.Nos.12391 & 12394 of 2023

A. Alagappan

... Petitioner in both CRPs

Versus

R.Gunaseelan

... Respondent in CRP.1964/23

N.Sivanandhan

... Respondent in CRP.1965/23

COMMON PRAYER: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 27.02.2023 made in I.A.No.156 & 157 of 2017, respectively in O.S.No.102 of 2012 on the file of the Subordinate Court, Pollachi.

For Petitioner in both CRPs : Mr.R.Nandha Kumar

For Respondent in both CRPs : No Appearance



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ORDER

The petitioner has filed these revision petitions to set aside the order dated 27.02.2023 made in I.A. Nos. 156 & 157 of 2017, respectively in O.S.No.102 of 2012 on the file of the Subordinate Court, Pollachi.

2. The revision petitioner is the plaintiff in O.S. No. 102 of 2023. Pending suit, he has filed an application under Order VII Rule 1 of the Code of Civil Procedure, before the Subordinate Judge, Pollachi to amend the plaint to include the relief of declaration to declare that he is the title holder of the suit property by adverse possession and also for interim injunction and other consequential reliefs. In the suit, an ex-parte order was passed against the 1st defendant on 22.08.2012. Against which, the 1st defendant filed an I.A. No.156 of 2017 under Order 9 Rule 7 of CPC to set aside the ex-parte order dated 22.08.2012 passed against him.

3. On considering both sides submissions, the learned trial Judge allowed the I.A.Nos.156 & 157 of 2017 on 27.02.2023, holding that the suit



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was based upon the adverse possession and considering the nature of the suit, opportunity has to be given to the respondent to contest the case and allowed the petition with payment of cost of Rs.3,000/- to the plaintiff's counsel.

4. Subsequently, during trial, before the trial Court the Power of Attorney of 1st defendant filed an I.A. No. 157 of 2017 praying to set aside the ex-parte order on 22.08.2012. The reason assigned by him is that due to pre-occupation he was residing at Germany so he was not able to appear and he remained ex-parte on 22.08.2012. To set aside ex-parte order now, through the power of Attorney, he filed an application.

5. The said application was strongly resisted by the plaintiff, stating that proper intimation was given through paper publication and in spite of that he has not appeared before the Court. Now, the suit is at the stage of trial and now he has come forward with this application through his Power of Attorney, as such it is not acceptable.



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6. The learned counsel for the 2nd defendant submitted that the 1st defendant has executed a Special Power of Attorney deed dated 28.06.2011 thereby appointing him as his Power of Attorney of the 1st defendant regarding the Suit property. As per recital No.16 to the said Power of Attorney deed he has been granted with powers to defend all suits and cases and to file affidavits on behalf of the 1st defendant before any competent Court. The said Special Power of Attorney deed dated 28.06.2011 was produced.

7. The 1st defendant filed application through his Power of Attorney Gunaseelan/ 2nd defendant in the suit by relying upon the Power of attorney said to be executed on 22.06.2011, which was executed nearly about 10 years ago. Based on that he wants to set aside the ex-parte order and it is not permissible. The learned trial Judge held that in order to give opportunity to the 1st defendant to contest the case through Power of Attorney the said application has to be allowed and accordingly allowed it with costs of Rs.3,000/- Thereafter, the 2nd defendant filed I.A. No. 156 of



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2017 in O.S. No. 102 of 2012, under Order III Rule 2 of CPC to grant permission to defend the case for the 1st defendant Sivananthan, before the learned Subordinate Judge, Pollachi.

8. The learned counsel for the respondents submitted that by relying the Power of Attorney executed during the year 2011, the 2nd respondent filed application to set aside the ex-parte decree as such is not acceptable one. But the learned trial Judge appreciating the same allowed the application and set aside the ex-parte order as such it is totally erroneous.

9. A perusal of the records reveal that notice has been served in the year 2012. The plaintiff has filed the suit for declaration and injunction against the plaintiff. Now the 2nd defendant filed application to set aside ex-parte order against the 1st defendant by filing an application through Power of Attorney, which deed was admittedly executed in the year 2011.

10. As per the contention of the 2nd defendant the 1st defendant is residing at Germany, due to his pre-occupation he had settled there and to



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contest the suit he was appointed as his power of attorney agent. Since the 1st defendant is at abroad the Power of Attorney must be genuine and reasonable.

11. Now the 2nd defendant relied the Power of Attorney in the year 2011. After 10 years the said Power of Attorney is relied on and without the knowledge of the 1st defendant he might have proceed with the trial. Therefore, this Court direct the 2nd defendant to get a fresh Power of Attorney with necessary attestation as required under law. Thereafter he shall file a fresh application to represent the first respondent and to proceed with the matter.

12. This Court finds that the Power of Attorney relied on by the 2nd defendant is not permissible and a fresh Power of Attorney needs to be obtained. Accordingly, the order passed by the learned Subordinate Judge, Pollachi in I.A. No. 156 & 157 of 2017, respectively in O.S. No. 102 of 2012 is set aside. It is open to the second defendant to receive a fresh power of attorney deed from the first defendant and on obtaining the Power of



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Attorney, he can file necessary application seeking to permit him to defend the suit on behalf of the first defendant and to proceed further in a manner known to law.

13. Accordingly, the Civil Revision Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

20.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

- 1.The Subordinate Judge, Pollachi.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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