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CRP(PD)Nos.2729 & 2733



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)Nos.2729 & 2733 of 2021
and C.M.P.Nos.14612 of 2023, 19968 & 19973 of 2021**

1.Dr.T.Suresh

2.Dr.T.Arunkumar

... Petitioners in both
CRPs.

Vs.

1.D.Daniel

2.Dr.Mekala Daniel

3.A.S.Nandagopal

4.Edwin Sundar Singh @ Chinnu

... Respondents in both
CRPs.

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 01.09.2021 made in I.A.No.1 of 2020 in O.S.Nos.322 & 36 of 2008 on the file of the Additional District Munsif Court, Tirupattur, Vellore District.

In both the CRPs.

For Petitioners : Mr.R.Vivekanandan
for Mr.S.S.Raghavan

For Respondents : Ms.S.Jessy Momca



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for Mr.Praveen Alexander

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents. I have carefully gone through the records.

2. Both the revisions are taken up together as the issues involved are common.

3. There are two suits namely, O.S.Nos.36 and 322 of 2008 on the file of the Additional District Munsif Court at Tiruppattur. Civil revision petitioners are the plaintiffs in O.S.No.322 of 2008. The respondents 1 & 2 are the plaintiffs in O.S.No.36 of 2008. O.S.No.36 of 2008 is for declaration and injunction. A similar relief was sought for in O.S.No.322 of 2008. Both the suits were tried together and are in the stage of arguments.

4. Originally, the civil revision petitioners were represented by one Dr.T.Veeraraghavan. He passed away on 23.07.2020 at Chennai. He was the power agent for the plaintiffs in O.S.No.322 of 2008, who are the defendants 1 & 2 in O.S.No.36 of 2008.



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5. There is no dispute that the principals/civil revision petitioners are residing in United States of America. There is also no dispute that the power of attorney is dead. The serious objection, on the basis of which the trial Court dismissed the application in I.A.No.1 of 2020, is that the counsel for the plaintiff had filed an affidavit bringing to the notice of the Court, the death of the power of attorney and the wish of the principals/plaintiffs in O.S.No.322 of 2008 and the defendants in O.S.No.36 of 2008 to continue the suits themselves. This was resisted by the respondents stating that an Advocate cannot file an affidavit bringing to the notice of the Court, the death of the power of attorney. The learned trial Judge found the arguments persuasive and dismissed the application, against which the present revisions are filed.

6. Here is the case, where the power agent is dead. The principals want to conduct the matter on their own. The death of the agent as well as the wish of the principals to conduct the matter themselves is not in dispute. The only objection seems to be that an Advocate should not have filed an affidavit. Neither the Code of Civil Procedure nor the Civil Rules of Practice bar an Advocate from filing an affidavit.

7. The practice of an Advocate filing an affidavit had been frowned upon by the Hon'ble Justice Mr. M.Srinivasan (as he then was) in ***V.P.Nagarajan vs. Prabhavathi*** 1989(1) MLJ 475. However, dealing with this issue directly, this Court in ***R.M.Bedi vs. M/s.Vijayeswari Textiles Limited (2007) 3 CTC 231***, had held that there is no bar



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either under C.P.C. or under the Advocates Act or under the Bar Council Rules preventing an Advocate from filing an affidavit. In fact, the Court had held that, if the facts are controverted, the Court can call upon the deponent to be cross-examined. It specifically held that dismissal of an application on the ground that an Advocate had filed an affidavit is incorrect. I respectfully follow the view taken by the Hon'ble Justice Mr.S.Manikumar and hold that there is no bar on the Advocate to file an affidavit. If the facts are controverted, the Court can call upon the Advocate to enter the witness box. At that stage, the counsel could recuse himself or explain the situation.

8. Fortunately for me, that circumstance does not arise in the present case. The facts being admitted and the suits being in the stage of trial, no prejudice would be caused to the defendants in O.S.No.322 of 2008 and the plaintiffs in O.S.No.36 of 2008 from placing their arguments, the stage at which the agent had died.

9. In fine,

(i) The order dated 01.09.2021, in I.A.No.1 of 2020 in O.S.Nos.322 & 36 of 2008 on the file of the Additional District Munsif Court, Tirupattur, is set aside.

(ii) Consequently, the Civil Revision Petitions are allowed.

(iii) The trial Court is requested to dispose of the suits, which are pending for the past 15 years and now pending in the stage of arguments, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently,



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connected Miscellaneous Petitions are closed.

25.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Additional District Munsif
Tirupattur, Vellore District.

V.LAKSHMINARAYANAN,J.



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