



C.R.P(MD)No.574 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **08.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.574 of 2023

and

C.M.P(MD)No.2688 of 2023

C.Thirumurugesan

...Revision Petitioner/
Respondent/Plaintiff

Vs.

1.The trust of

Shree Laxmi Narayan Dev Temple,

Represented through its Secretary,

Sanjay Kumar Shanthilal Patel,

No.38, Kasak Road,

Paruj Aswamek Nagar,

Gujarat State-392 001.

Represented through the Power Agent Shankar,

S/o.Sevugaperuman,

No.15/8, Sallimalai,

Rameswaram Nagar,

Ramanathapuram District.

...1st Respondents/
Petitioner/1st Defendant

2.T.S.M.Sathak Jalal

...2nd Respondent/
2nd Respondent/
2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 07.02.2023 made in I.A.No.49 of 2023 in O.S.No.14 of 2021 on the file of the Additional District Judge, Ramanathapuram.



C.R.P(MD)No.574 of 2023

For Petitioner : Mr.D.Balamurugapandi

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ORDER

This present civil revision petition has been filed against the fair and decreetal order, dated 07.02.2023 in I.A.No.49 of 2023 in O.S.No.14 of 2021.

2. The petitioner appears to have purchased an extent of 54 cents of land in S.No.379/6 in Aathikadu, Rameswaram Taluk from the second defendant. The balance extent of land measuring approximately 1-35-00 hectares was purchased by the first respondent/defendant. There is a boundary dispute between the petitioner and first respondent herein. The suit has been instituted by the petitioner against the first respondent represented by its Secretary, Sanjay kumar Shanthilal patel, through the power agent, namely, Shankar, who is a witness to the sale deed executed by the second respondent. In the said proceedings, the first respondent filed an application under Order 3 Rule 2 of C.P.C.

3. The contention of the petitioner is that the trial Court erred in allowing I.A.No.49 of 2023 vide impugned judgment and decree dated 07.02.2023 as the first respondent is a trust and the trust can be



C.R.P(MD)No.574 of 2023

represented in all proceedings only by its trustee unless there is a delegation power to delegate under the trustee.

4. The learned counsel for the petitioner submits that one Mr.Shankar is the witness to the sale deed and therefore, the said person cannot be represent the interest of the first respondent in O.S.No.14 of 2021 contrary to section 47 of the Indian Trust Act read with Order 3 Rule 2 of C.P.C.

5. I have heard the arguments advanced by the learned counsel for the petitioner and I perused the impugned fair and decretal order, dated 07.02.2022.

6. Section 47 of the Indian Trust Act,1882 reads as under:

"47. Trustee cannot delegate.—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless

(a) the instrument of trust so provides, or

(b) the delegation is in the regular course of business, or

(c) the delegation is necessary, or

(d) the beneficiary, being competent to contract,



C.R.P(MD)No.574 of 2023

consents to the delegation.

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Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section."

7. *Prima facie*, the challenge to the impugned order appears to be without any merits. In any event, the issue relating to the power of the power agent to represent the interest of the trust can be decided as a preliminary issue after the trial is complete in O.S.No.14 of 2021.

8. The present Civil Revision Petition is liable to be dismissed. Accordingly, civil revision petition is dismissed. However, the rights of the petitioner to raise all legal plea relating to the power of first respondent trust to delegate the power to power agent namely, Mr.Sankar to represent the interest of the first respondent stands preserved. No costs. consequently, Connected miscellaneous petition is closed.

08.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.R.P(MD)No.574 of 2023

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- To
- 1.The Additional District Judge,
Ramanathapuram.
 - 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.574 of 2023

C.SARAVANAN,J.

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C.R.P(MD)No.574 of 2023

08.03.2023