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C.R.P(MD).No.1833 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.1833 of 2019

and

C.M.P(MD)No.9451 of 2019

S.Jeyalakshmi

... Revision Petitioner/Plaintiff

Vs.

1.K.Subramanian

2.T.Narayanan

3.No.1 Joint Sub Registrar

Office of the No.1 Joint Sub Registrar,
Cutchery Road,
Kumbakonam,
Thanjavur District.

4.The District Registrar,

Office of the District Registrar,
Cutchery Road,
Kumbakonam,
Thanjavur District.

5.State of Tamilnadu represented by

The District Collector,
Thanjavur.

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to allow the Civil Revision Petition by setting aside the order passed in I.A.No.3 of 2018 in O.S.No.588 of 2012 on the file of the I Additional District Munsif, Kumbakonam, dated 06.10.2018.



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For Petitioner : Mr.V.Chandrasekar
For R1 : Mr.H.Lakshmi Shankar
For R3 – R5 : Mrs.K.Christy Theboral
Additional Government Pleader

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.3 of 2018 in O.S.No.588 of 2012, on the file of the learned I Additional District Munsif, Kumbakonam, dated 06.10.2018.

2.Brief facts of the case:-

The petitioner is the plaintiff in O.S.No.588 of 2012 on the file of the Principal District Munsif Court, Kumbakonam. The petitioner filed a suit against the defendants 1 to 5 for the relief of permanent injunction. The second defendant has appeared through his power agent namely, Sankar by executing special power deed, dated 04.12.2009. The said power agent Sankar has conducted the suit on behalf of the second defendant. Pending suit, the said power agent Sankar died on 22.05.2017. Therefore, the petitioner wanted to implead the legal heirs of the above said power agent in the main suit. Due to his old age, he could not file petition for impleadment in time which cause 79 days delay. Hence, the petitioner has filed the petition in I.A.No.3 of 2018 in O.S.No.588 of 2012 to condone the delay in filing the impleading petition. After hearing



both sides, the trial Court has dismissed the petition in I.A.No.3 of 2018 in O.S.No.588 of 2012 on 06.10.2018. Aggrieved by the order of the trial Court, the petitioner moved this Court by way of this Civil Revision Petition.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The learned counsel appearing for the petitioner has argued that the petitioner has filed the suit for permanent injunction against the defendants 1 to 5. The second defendant appeared through his power agent Sankar stating that the second defendant executed the special power of attorney dated 04.12.2009, during pendency of suit, the power agent of second defendant died and hence, in order to make adjudication, the petitioner wants to implead the legal heirs of power agent and there happened some delay in filing the petition by the petitioner due to his old age. The legal heirs of the power agent are necessary parties to the suit for proper adjudication and hence, the delay may be condoned to implead the legal heirs of the deceased power agent Sankar in the main suit for proper adjudication.



5.The learned counsel appearing for the contesting respondents 1 and 3 to 5 has submitted that the second defendant is still alive and the second defendant can execute another power of attorney in favour of his supporting person else the petitioner can send notice for his personal appearance in the suit, since the suit is filed only for permanent injunction. It is their vehement contention that the legal heirs of the power agent cannot be impleaded in a suit, when the principal is alive. Hence, this Civil Revision Petition may be dismissed.

6.On hearing both sides and on perusal of records, it is clear that the petitioner as plaintiff has filed the main suit in O.S.No.588 of 2012 on the file of the Principal District Munsif Court, Kumbakonam for the relief of permanent injunction. Admittedly, on behalf of the second defendant, his power agent one Sankar had conducted the suit proceedings by virtue of special power of attorney dated 04.12.2009 executed by the second defendant in favour of the said Sankar. During pendency of the suit, the power agent Sankar died on 22.05.2017. On his death, the petitioner has sought for impleading the legal heirs of the power agent Sankar in the main suit. On perusal of records and on hearing both sides, the petitioner has not listed any reason or any fact that the legal heir of the power of attorney would continue the suit



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proceedings on the death of power agent. It is pertinent to note that the second defendant is alive and he can very well execute any other power of attorney to proceed with the suit on his behalf or he can very well agitate the suit. It is for the second defendant to choose to contest the suit when the petitioner has wanted to continue the suit against the second defendant. It is settled principle that once power of attorney dies, the right to suit does not survive to the legal heirs of power of attorney.

7.In the above facts and circumstances of the case, the petitioner has no merits in this case and the trial Court has rightly dismissed the petition in I.A.No.3 of 2018 in O.S.No.588 of 2012, which needs no interference by way of this Civil Revision Petition and thus the Civil Revision Petition fails and the same is liable to be dismissed.

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

11.04.2023

NCC : Yes/No
Index : Yes/No
vsd



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P.VADAMALAI, J.

vsd

To

- 1.The I Additional District Munsif,
Kumbakonam.
- 2.The Principal District Munsif Court,
Kumbakonam.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P(MD).No.1833 of 2019
and
C.M.P(MD)No.9451 of 2019

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