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C.R.P(MD).Nos.1920 and 1921 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.06.2023

Pronounced on : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).Nos.1920 and 1921 of 2017

and

C.M.P(MD)Nos.9894 and 9895 of 2017

1.K.Adaikkalam

2.R.Kumar

... Petitioners in both CRPs

Vs.

1.Sholapuram Chettiar Uravin Murai Trust by its President
Ananda Padmanaban,
Chennai.

2.V.Subramanian

3.Rajammal

4.Puhazhenth

5.Vijayarajan

6.The District Registrar,
Moorthy Road,
Kumbakonam Town,
Thanjavur District.

7.The Joint Sub Registrar No.1,
Moorthy Road,
Kumbakonam Town,
Thanjavur District.

8.The State of Tamil Nadu
represented by the Collector of Thanjavur,
Thanjavur. ... Respondents in both CRPs



C.R.P(MD).Nos.1920 and 1921 of 2017

PRAYER in C.R.P(MD)No.1920 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree passed dated 22.09.2017 made in I.A.No.199 of 2017 in O.S.No. 166 of 2013 on the file of the Additional Sub Court, Kumbakonam and allow this Civil Revision Petition.

PRAYER in C.R.P(MD)No.1921 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree passed dated 22.09.2017 made in I.A.No.198 of 2017 in O.S.No. 166 of 2023 on the file of the Additional Sub Court, Kumbakonam.

In Both CRPs.

For Petitioners	: Mr.G.Gomathi Shankar
For R1	: Mr.M.R.S.Prabhu
For R6 to R8	: Mrs.K.Christy Theboral Additional Government Pleader
For R2 to R5	: No Appearance

COMMON ORDER

These Civil Revision Petitions are filed against the order and decree dated 22.09.2017 passed in I.A.Nos.199 of 2017 and 198 of 2017 in O.S.No.166 of 2013 on the file of the Additional Subordinate Court, Kumbakonam.



2. The defendants 3 and 4 in O.S.No.166 of 2013 on the file of the Additional Subordinate Court, Kumbakonam are the Revision Petitioners in these two Civil Revision Petitions.

3. The brief facts of the case:

The 1st respondent/plaintiff Trust through its President filed the suit in O.S.No.166 of 2013 on the file of the Additional Subordinate Court, Kumbakonam against the defendants 1 to 9 for declaration and recovery of possession of the suit property mentioned therein. Pending suit, the President of the Trust is not able to conduct the case due to his age and he has given special power of attorney to the secretary of the Trust, to continue suit proceedings. Hence, the power agent filed the petition in I.A.No.199 of 2017 to recognize power of attorney and filed the petition in I.A.No.198 of 2017 to receive additional documents. The defendants objected both petitions by filing a counter. After hearing both, the Trial Court has allowed both petitions. Aggrieved by the orders of the Trial Court, the defendants 3 and 4 approached this Court by way of these respective Civil Revision Petitions.

4. Heard both side and perused the records in these Civil Revision Petitions.



5. The learned counsel appearing for the revision petitioners has submitted his arguments that in the plaint averments itself, it is stated that the President of the Trust alone is having powers to file a suit. As per the provision of Section 47 of the Trust Act, the power cannot be delegated to other person and so, the order of recognizing the power of attorney is against the law. So also the document to be received is issued after the suit. But, the Trial Court without considering the facts and circumstances of the case allowed both petitions. Therefore, these Civil Revision petitions may be allowed.

6. The learned counsel for the first respondent vehemently contended that of course, the President of the Trust has to file the suit as per plaint averments. But, due to his old age, he cannot attend court proceedings. He has given only limited purpose to conduct the suit proceedings on his behalf and has not given delegation of power of the administration of the Trust. The defendant cannot oppose such power. Moreover, whether the additional document is relevant or not can be decided at the time of trial and mere permission to receive it, will not cause any prejudice to the other parties. In support of his argument he placed reliance on the judgements reported in **2010-1 Law Weekly 289 (M.Nelson Babu Vs. K.Kamalesh Babu & K.Vijayakumar)** and



(2001) 3 SCC 1 (Bipin Shantilal Panchal Vs. State of Gujarat and Anr.)

7. On hearing both and on perusal of records, it is clear that the first respondent/plaintiff Trust through its President filed the main suit. It is the case of the plaintiff that since the President is now aged, he finds difficulties in attending Court proceedings and so he has given a special power of attorney to the Secretary of the Trust with the limited purpose to conduct suit proceedings. It is not meant that the entire function has been delegated by the president. The provision of the Section 47 of the Trust Act prohibits the delegation of the office of the Trust. Here the delegation of power is only for limited purposes appointing the secretary as a proxy of the President to conduct the suit proceedings before the Court. When such being the case, the application for recognition is necessary. Further, mere permitting a document to receive will not cause prejudice to the opposite party, who is admittedly to raise an objection at the time of marking, and after completion of evidence, the same can be decided only at the time passing order or judgment in case proceedings. In the above circumstances, this court is of the view that the impugned orders of the Trial Court do not warrant interference and therefore, these Civil Revision Petitions are liable to be dismissed.



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8. In the result, these Civil Revision Petitions are dismissed.

Consequently, connected Miscellaneous Petitions are also dismissed.

No costs.

27.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

vsd

To

1.The Additional Sub Court,
Kumbakonam.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(MD).Nos.1920 and 1921 of 2017
and
C.M.P(MD)Nos.9894 and 9895 of 2017

27.06.2023