



C.R.P.(MD)No.2606 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2023

Pronounced on : 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2606 of 2023

and

C.M.P.(MD)No.13602 of 2023

1. P.Nithyanandham

2. P.Jabaraj

... Petitioners/
Respondents/
Defendants

Vs.

G.Jayaram

... Respondent/
Petitioner/
Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside fair and decreetal order dated 24.08.2023 made in I.A.No.2 of 2022 in O.S.No.109 of 2021 on the file of District Munsif Court, Bodinayakanur.

For Petitioners : Mr.A.Arumugam

For Respondent : Mr.S.Raja Sekar



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.2 of 2022 in O.S.No.109 of 2021 dated 24.08.2023, on the file of the District Munsif Court, Bodinayakkanur, allowing the application filed under Order 3 Rule 2 of the Code of Civil Procedure.

2. The respondent/plaintiff has filed the suit in O.S.No.109 of 2021 against the revision petitioners/defendants, claiming permanent injunction restraining the revision petitioners/defendants and their men from interfering with the respondent/plaintiff's possession, agricultural operations and from trespassing or causing damages to the suit property.

3. The respondent/plaintiff, in the body of the plaint, has specifically observed that his son Suresh has executed a general power of attorney in his favour and on that basis, he has been in possession and enjoyment of the suit property and only on the basis of the said power of attorney, he has filed the above suit.



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4. Generally, the person, who files the suit and claims the reliefs, will be shown as the plaintiff and if he is represented by his power of attorney agent, then the cause title would be

(name of the plaintiff)

represented by his power of attorney agent

(name of the power agent)”

5. In the case on hand, a perusal of the contents of the plaint would reveal that Suresh, S/o.G.Jayaram is the plaintiff and he has filed the suit through his power agent Jayaram, who is none other than his own father, but in the short and long cause title, the power agent has been shown as the plaintiff and as such, the way in which the plaintiff was described is not proper.

6. Pending suit, the said power agent has filed an application under Order 3 Rule 2 C.P.C. seeking permission of the Court to prosecute the suit as power agent of his son Suresh, the principal. The revision petitioners/defendants have filed a counter statement raising serious objections stating that the power agent has deliberately failed to file an application for permission to sue in the capacity of power agent of the



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owner and the said failure is fatal and goes to the root of the matter and that the same cannot be remedied by filing an application subsequently to recognize the power.

7. It is their further defence that filing an application under Order 3 Rule 1 and 2 C.P.C. for recognizing the power is the condition precedent for numbering the plaint, that since the same was not done, the Court ought to have returned the plaint, that the very numbering of the plaint is against law and that the very filing of the above application is an abuse of process of Court.

8. The learned counsel appearing for the revision petitioners by quoting a proverb that no one can put a cart before the horse and start a journey has argued that the permission application now filed ought to have been filed along with the plaint and the trial Court ought to have taken the plaint on file only after granting permission in the application filed under Order 3 Rule 2 C.P.C. and that the respondent/plaintiff cannot be allowed to file the application at this point of time.



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9. The learned trial Judge, after considering the objection raised by the revision petitioners/defendants, by holding that no legal provision mandates for such a permission, allowed the application and thereby permitting the power agent to prosecute the suit. Aggrieved by the impugned order, the defendants have preferred the present revision.

10. Before proceeding further, it is necessary to refer Order 3 Rule 2 C.P.C.,

“2. Recognized agents.- The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.”



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11. The above provision contemplates that recognized agents of parties by whom such appearances, applications and acts may be made or done are, amongst others, persons holding power of attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

12. Order 3 Rule 1 C.P.C. states that any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf.

13. Order 3 Rule 6 deals with the power of agent to accept service. Sub Rule (1) of Rule 6 of Order 3 states that besides recognized agents shown in Order 3 Rule 2 C.P.C., any person residing within the jurisdiction of the Court may be appointed as an agent to accept service of process. Sub Rule (2) of Rule 6 states that such appointment may be special or general and shall be made by an instrument in writing signed by



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the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

14. Order 6 Rule 14 C.P.C. states that every pleading shall be signed by the party and his pleader, if any. The proviso to the above Rule 14 contemplates that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. Order 6 Rule 15 C.P.C. deals with verification of pleadings and Sub Rule (1) therein provides that every pleading shall be verified at the foot by the party or by any of the parties pleading or by some other person, proved to the satisfaction of the Court, to be acquainted with the facts of the case. Sub Rule (4) of Rule 15 states that the person verifying the pleading shall also furnish an affidavit in support of his pleadings.

16. At this juncture, it is also relevant to refer the following Rules of the Civil Rules of Practice,



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“16. Party appearing by agent.- (1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court.

17. Signing of verification by agent.- If any proceedings, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court ,



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together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceedings and standing the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same.”

17. Rule 16 of the Civil Rules of Practice deals with an agent other than an advocate appearing for a party and whereas, Rule 17 of the Civil Rules of Practice deals with signing or verification of the pleadings by an agent. Sub Rule (1) of Rule 16 is applicable to a situation where a party appears by an agent other than an advocate. The above Rule 16 contemplates that when the party appears through an agent other than an advocate, the agent is required, before he appears or acts in the Court or makes an application thereto, to file the power of attorney or written authority or a properly authenticated copy thereof along with an affidavit that the said authority, whereby he is empowered to do so, is still subsisting. Sub Rule (2) of Rule 16 states that the Court may record in writing that the agent is permitted to appear and act on behalf of the party, and unless and until the said permission is granted, no appearance, application or act, of the agent shall be recognized by the Court.



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18. Rule 17 deals with an agent signing and verifying on behalf of his principal and states that if any proceeding, which, under any provision of law or the Civil Rules of Practice, is required to be signed or verified by a party, is signed or verified by the agent, a written authority in this behalf signed by the party shall be filed in Court, together with an affidavit verifying the signature of the party and stating the reason of his inability to sign or verify the proceedings and proving the means of knowledge of the facts set out in the proceeding of the person signing or verifying the same.

19. In the case of ***K.Santhanam Vs. S.Kavitha*** reported in **2011 (1) CTC 286**, this Court, while dealing with Rules 16 and 17 of the Civil Rules of Practice, considered the issue of non-compliance with these rules and the consequences thereof and held that even in the absence of a power of attorney, a party to a suit is entitled to have the pleading signed on his behalf by any person duly authorized by him to do so and the relevant passage is extracted hereunder:

“16. Thus, it is seen that while Order 3, enables "the holder of a power of attorney" to appear, apply and act on behalf of a party to a suit, as his "recognised agent", Order 6, Rule 14, enables "any person duly authorised by



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a party to sign the pleading" if the party pleading is, by reason of absence or for other good cause, unable to sign the pleading. Thus, it appears from Order 6, Rule 14, that even in the absence of a power of attorney, a party to a suit is entitled to have the pleading signed on his behalf, by any person duly authorised by him to sign. This inference is inevitable on account of the difference in the expressions used in Order 3, Rule 2, vis-a-vis Order 6, Rule 14. While Order 3, Rule 2, uses the expressions "recognised agents" and "persons holding powers of attorney ", Order 6, Rule 14, uses the phrase "any person duly authorised by him". Rule 15(1) of the Order 6, goes one step further and empowers "some other person" to verify the pleadings, if it is proved to the satisfaction of the Court that he is acquainted with the facts of the case."

20. In the above decision, this Court has reiterated the legal position that defective presentation of a plaint cannot result in the rejection as the defect which is curable in nature does not fall within the ambit of Order 7 Rule 11 C.P.C.

21. The Kerala High Court, in the case of **Narayanan Nair Vs. John Kurien** reported in (1988) 1 K.L.T. 673, has held that the proviso to



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Order 6 Rule 14 C.P.C. did not even require production or even creation of a power of attorney or written authorisation and there was nothing to suggest that a written authorisation is indispensable for proper compliance therewith.

22. A learned Judge of this Court, in *Mrs.Sujatha Jayakumar Vs. Karnataka Soaps and Detergents Ltd.*, reported in *2008 (2) CTC 576*, while dealing with a case where the suit had been filed by the power of attorney agent of the plaintiff, who had verified the plaint and signed the vakalat on his behalf and had also filed an application for leave of the Court to sign and verify the pleadings, but the same had not been ordered by the trial Court and that the defendant had raised an objection that the plaintiff could not maintain the suit as the power of attorney holder was not permitted to sign the plaint, by holding that the procedure adopted by the Court in not ordering the leave application before proceeding further was irregular, but the same would not go to the root of the case, rejected their contention.

23. In *M.Parthasarathi Vs. The State of Andhra Pradesh* reported in *AIR 1971 AP 49*, a learned Judge has concluded that it is not only a rule of



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convenience and prudence but also a logical consequence of the relevant rules that a party, who is unable to sign the writ petition himself, should either file a power of attorney or an affidavit stating the reason for his inability to personally sign and verify the petition and authorizing some other person to sign and verify on his behalf. The learned Judge referred to the commentary on the Code of Civil Procedure, 1908, by the learned author Mulla, 13th Edition, and observed as under:

“The signing of plaints is merely a matter of procedure. If a plaint is not signed by the plaintiff or by a person duly authorised by him in that behalf, and the defect is discovered at any time before judgment, the Court may allow the plaintiff to amend the plaint by signing the same. If the defect is not discovered until the case comes on for hearing before an appellate Court, the appellate Court may order the amendment to be made in that Court. The appellate Court ought not to dismiss the suit or interfere with the decree of the lower Court merely because the plaint has not been signed. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the Court.”



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The learned Judge further observed that signing and verifying of a plaint is only a matter of procedure but nevertheless, it is the requirement of law. If the failure of the plaintiff to sign and verify the plaint is discovered at any stage, it should be permitted to be corrected.

24. It is necessary to refer the following passage of the judgment of the Division Bench of Andhra Pradesh High Court in ***Natubhai Chotabhai Patel Vs. Patnam Shakuntala (C.R.P.No.3228 of 2003 dated 28.07.2006)***,

“15. But in cases of authorizing an agent to sign the pleadings while authorizing a legal practitioner to appear on his behalf, it is sufficient if the court is satisfied that he was authorized to sign and in such a case, the filing of an affidavit is not mandatory, therefore, the defect can be cured at a later stage also by convincing the court that the agent was duly authorized by the respective party in that matter. But for mere signing of the pleadings on behalf of the party duly represented by an Advocate, permission from the court is not necessary by way of filing an affidavit to that effect. It is sufficient if the court is satisfied that the agent or power of attorney holder is duly authorized to sign the pleadings, after



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perusal of such authorization, which was filed along with the pleadings.”

25. The Hon'ble Supreme Court, in ***Uday Shanker Triyar Vs. Ram Kalewar Prasad Singh*** reported in ***2006 1 SCC 75***, has held that filing an appeal without a vakalatnama or authority was curable defect and the relevant passages are extracted hereunder:

“16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable



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should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

- i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.*
- ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*
- iii) where the non-compliance or violation is proved to be deliberate or mischievous;*
- iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.*
- v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;*

26. Considering the legal position above referred, the contention of the revision petitioners/defendants that the failure to obtain permission to sue in the capacity of the power agent at the time of filing the plaint is fatal and the trial Court ought to have returned the plaint, is absolutely devoid of substance and is liable for rejection. As per the settled legal position, it is only a procedural irregularity and is a curable defect and that



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therefore, the impugned order permitting the power agent to prosecute the suit on behalf of his principal cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

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

12.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif Court,
Bodinayakkanur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2606 of 2023
and
C.M.P.(MD)No.13602 of 2023

Dated : 12.12.2023