



C.R.P.(MD)No.3048 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3048 of 2023

1.Jothin Franklin

2.Mira Suresh Babu : Petitioners/Petitioners/Plaintiffs

Vs.

N.Anand : Respondent/Respondent/Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to take the unregistered I.A.No. . . of 2023 under reference number 10561/2023 in O.S.No.55 of 2023 filed before the learned Principal District Judge, Thanjavur on 05.09.2023.

For Petitioner : Mr.V.Chandrasekar

ORDER

The Civil Revision Petition is directed against the order of return made by the learned Principal District Judge, while returning the petition filed under Order VI Rule 17 of C.P.C.



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2. The revision petitioners as plaintiffs have filed the above suit claiming partition and mandatory injunction and the same was taken on file in O.S.No.55 of 2023 against the respondent herein.

3. The learned counsel for the petitioners would submit that the respondent is now residing in a foreign country and as such, summons sent to the respondent was not yet served and that the petitioners came to know that the respondent has filed a suit in O.S.No.67 of 2023 before the District Munsif Court, Thanjavur through his power of attorney. He would further submit that when the revision petitioners made a request to the District Court to send summons to the power agent of the respondent, who has filed the suit in O.S.No.55 of 2023, the Office of the District Court has directed to file an application in that regard and accordingly, the application under Order VI Rule 17 C.P.C., came to be filed to amend the cause title, as the “respondent represented by his power of attorney”, but that petition was returned earlier vide order dated 12.09.2023, directing the revision petitioner to produce the document in support of the affidavit (power deed) and the revision petitioners have obtained a copy of the power deed and the same was produced, but, subsequently, the learned Principal District Judge has again returned the petition raising another



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query that the document to show that the power deed is still in force as on date, has to be filed.

4.Order III Rule 3 C.P.C., contemplates that process served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

5. In the case on hand, since the respondent is residing in a foreign country and he filed another suit through his power of attorney, there is no legal bar or prohibition for sending summons to the power of attorney and in case, if the power agent refuses to receive summons, then the revision petitioners are at liberty to take further steps, but without ascertaining the same, refusing to send summons to the power agent as required by the revision petitioners and the directions for filing the amendment petition and the returns made therein are not proper and not in accordance with law. Hence, the learned Principal District Judge is hereby directed to send summons to the power agent of the respondent, who has filed the suit in O.S.No.67 of 2023 on payment of necessary batta and to proceed in accordance with law.



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6. With the above direction, the Civil Revision Petition is disposed of . No costs. Consequently, connected Miscellaneous Petition is closed.

05.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

Note : Registry is directed to return the original petition filed along with the civil revision petition, after getting necessary acknowledgement.

To

- 1.The Principal District Judge, Thanjavur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
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