



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 27.03.2023

Delivered On : 08.03.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.Nos.501 and 1352 of 2020
and
C.M.P.Nos.2685 and 7276 of 2020

C.R.P.No.501 of 2020

Pattammal
Power Agent of
Suresh,
No.1/244, North Agraharam Street,
Alivalam Village,
Thiruvarur Taluk and District ... Petitioner/Petitioner/2nd Defendant

Vs.

Krishnamoorthy ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the decretal order dated 29.11.2019 in I.A.No.161 of 2015 in O.S.No.21 of 2015 on the file of the learned Principal District Judge, Thiruvarur District.



C.R.P.No.1352 of 2020

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Pattammal
Power Agent of
Suresh,
No.1/244, North Agraharam Street,
Alivalam Village,
Thiruvarur Taluk and District ... Petitioner/Petitioner/2nd Defendant's
Power Agent

Suresh ... 2nd Defendant in O.S.No.21 of 2015

Vs.

Krishnamoorthy ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the decretal order dated 29.11.2019 in I.A.No.160 of 2015 in O.S.No.21 of 2015 on the file of the learned Principal District Judge, Thiruvarur District.

For Petitioner : Mr.S.Arivazhagan
in both CRPs
For Respondent : M/s.Kanimozhi Mathi
in both CRPs

COMMON ORDER

C.R.P.No.501 of 2020 had been filed against the order of dismissal passed in I.A.No.161 of 2015 in O.S.No.21 of 2015 on the learned Principal



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District Judge, Thiruvarur, dismissing the petition filed by the Revision Petitioner/Petitioner under Order IX, Rule 7 of C.P.C. seeking to set aside the order passed against the second Defendant on 01.10.2015 in O.S.No.21 of 2015.

2. C.R.P.No.1352 of 2020 had been filed against the order of dismissal passed in I.A.No.160 of 2015 in O.S.No.21 of 2015 on the learned Principal District Judge, Thiruvarur, dismissing the petition filed by the Revision Petitioner/Petitioner under Order III, Rules 1 and 2 of C.P.C. seeking to permit the Petitioner Pattammal, as Power of Attorney, to prosecute the case on behalf of her husband/second Defendant.

3.The learned counsel for the Revision Petitioner submits that the Respondent herein as Plaintiff had filed the suit in O.S.No.21 of 2015 on the file of the learned Principal District Judge, Thiruvarur District, for specific performance of contract for sale. The second Defendant in the suit is the husband of the Revision Petitioner. The second Defendant is in Abroad because of his avocation. Therefore, he executed a power of attorney in favour of the first Defendant. The first Defendant has executed a sale



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agreement deed in favour of the Plaintiff in O.S.No.21 of 2015 on the file of the learned Principal District Judge, Tiruvarur. Subsequently, the Defendants in the suit were set *ex parte*. Therefore, the wife of the second Defendant had filed I.A.No.160 of 2015 in O.S.No.21 of 2015 seeking to permit her to prosecute the case on behalf of the second Defendant and also filed I.A.No.161 of 2015 in O.S.No.21 of 2015 seeking to set aside the *ex parte* order passed in O.S.No.21 of 2015. The learned Principal District Judge, Tiruvarur by order dated 29.11.2019 dismissed the petitions stating that the Petitioner cannot file the petition without revoking the power of attorney deed already executed by her husband in favour of the first Defendant. Aggrieved by the same, the Petitioner had approached this Court.

4.The learned Counsel for the Petitioner relied on the provision of Order III, Rule 2 of C.P.C. and also Section 120 of the Indian Evidence Act. The power of attorney petition had been filed only to prosecute the case and not for the maintenance of the property. While so, the curable defect can be set off by the Court. The Court had dismissed the petition. Therefore, he seeks to set aside the order of dismissal passed by the learned Principal



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District Judge, Tiruvarur, dismissing I.A.Nos.160 and 161 of 2015 in O.S.No.21 of 2015 and allow the petitions.

5. The learned counsel for the Respondent by way of reply submits that the first Defendant in the suit is none other than the brother of the second Defendant. He had executed the sale agreement deed in favour of the Plaintiff. Based on which, the Plaintiff had filed the suit for specific performance of contract for sale of property. Without cancelling the power of attorney deed in favour of the first Defendant, the wife of the Second Defendan/Revision Petitioner herein had filed petition under Order IX, Rule 3 of CPC seeking permission of the Court to prosecute the case on behalf of the second Defendant. The learned Principal District Judge, Tiruvarur had dismissed the petitions. The reasons stated by the learned Principal District Judge, Tiruvarur dismissing the petitions do not warrant any interference of this Court. If the Principal had revoked the deed of power of attorney in favour of the first Defendant and then granted power of attorney in favour of the wife, then under such circumstances, the petitions can be allowed. Here is the case, without filing any documents the Petitioner/wife of the second Defendant had sought permission of the Court to implead her as



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power of attorney of the second Defendant and proceed with the case.

Therefore, the well reasoned orders of the learned District Munsif, Tiruvarur do not warrant any interference. The Revision Petitioner had furnish the documents only before this Court in these Civil Revision Petitions, not before the trial Court.

Point for consideration:

Whether the order of the learned Principal District Judge, Thiruvarur dismissing the I.A.Nos.160 and 161 of 2015 in O.S.No.21 of 2015 dated 29.11.2019 are to be set aside?

6.On consideration of the rival submissions and on perusal of the order passed by the learned Principal District Judge, Thiruvarur, in I.A.No.160 of 2015 in O.S.No.21 of 2015 it is found that that the Petition under Order III, Rules 1 and 2 of CPC filed by the Revision Petitioner/wife of the second Defendant in the suit seeking to permit her to prosecute the case on behalf of her husband/second Defendant was rejected on the ground that as per Section 208 of the Contract Act, without notice to the Power Agent, the termination of authority of his agent would not take effect and this could be seen from the position of law as outlined in Section 208 of the



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Contract Act, 1872. It is further stated that the termination of the Agency would take effect only when such termination is brought to the Agent's knowledge and accordingly, sans any notice of the same, the termination or cancellation would not take effect. Under those circumstances, when the wife of the second Defendant had sought permission to prosecute the case on behalf of her husband/second Defendant, the learned Principal District Judge, Thiruvarur in the order citing Section 208 of the Contract Act, 1872 that the earlier Power Agent Deed executed by the second Defendant in favour of the first Defendant has not been cancelled and the suit having been instituted by the Plaintiff for specific performance of contract for sale of the property against the Defendants 1 and 2, the wife of the second Defendant cannot be permitted to prosecute the case on behalf of the second Defendant and therefore, the Petition under Order III, Rules 1 and 2 of CPC was rejected by the learned Principal District Judge, Thiruvarur and therefore, the Petition was dismissed.

7. Further, the learned Principal District Judge, Thiruvarur, had also dismissed I.A.No.161 of 2015 in O.S.No.21 of 2015 filed by the Revision Petitioner/wife of the second Defendant filed under Order IX, Rule 7 CPC



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seeking to set aside the order of *ex parte* passed against the second Defendant on 01.10.2015 stating that the wife was not permitted to prosecute the case on behalf of the second Defendant in O.S.No.21 of 2015 vide order passed in I.A.No.169 of 2015. Therefore, she cannot file Petition in I.A.No.161 of 2015 seeking to set aside the *ex parte* order passed against the second Defendant under Order IX, Rule 7 of CPC.

8. Only during enquiry in these Civil Revision Petitions, the Revision Petitioner/Petitioner in I.A.No.160 of 2015 as well as I.A.No.161 of 2015 in O.S.No.21 of 2015 had filed copy of the cancellation of the Power of Attorney Deed by the Principal/second Defendant executed in favour of the first Defendant as per cancellation deed dated 09.04.2014 and the execution of the Power of Attorney deed in favour of the wife.

9. As on the date of enquiry in I.A.Nos.160 and 161 of 2015 in O.S.No.21 of 2015 before the learned Principal District Judge, Thiruvarur, the Power of Attorney Deed in favour of the brother of the second Defendant, first Defendant was cancelled by the second Defendant. Under those circumstances, it was not brought to the notice of the Court by the



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Party or the Counsel. Therefore, the learned Principal District Judge, Thiruvarur, placing reliance on Section 208 of the Contract Act, 1872 had rejected the claim of the Petitioner before the trial Court.

10. Since the cancellation deed executed by the husband of the Revision Petitioner/second Defendant before the trial Court had been brought to the notice of this Court, this Court exercising discretion under Article 227 of the Constitution of India, accepts the documents filed before this Court. Therefore, the contention of the learned Counsel for the Respondent that the orders passed by the learned Principal District Judge, Thiruvarur in I.A.Nos.160 and 161 of 2015 in O.S.No.21 of 2015 do not warrant interference by this Court, is rejected.

11. In the light of the above discussion, the Point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The order passed by the learned Principal District Judge, Thiruvarur, in I.A.Nos.160 rejecting the claim of the Revision Petitioner/wife of second Defendant to permit her to prosecute the case on behalf of her husband/second Defendant is to be set aside. The Revision Petitioner/wife



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of the second Defendant is permitted to prosecute the case on behalf of the second Defendant in the light of the Power of Attorney deed executed in her favour by her husband/second Defendant after revoking Power of Attorney Deed along with the Petition in I.A.No.160 of 2015 is to be allowed.

12. In the light of the order passed in I.A.No.160 of 2015 in O.S.No.21 of 2015 having been set aside, naturally, the wife is permitted to file Petition under Order IX, Rule 7 of CPC to set aside the order passed against the husband only then she can defend the suit effectively. Therefore, the order passed in I.A.No.161 of 2015 in O.S.No.21 of 2015 is also to be set aside.

In the result, **both the Civil Revision Petitions are allowed.** The orders passed by the learned Principal District Judge, Thiruvarur, dismissing the Petitions in I.A.Nos.160 and 161 of 2015 in O.S.No.21 of 2015, dated 29.11.2019 are set aside. Consequently, I.A.No.160 of 2015 in O.S.No.21 of 2015 is allowed permitting the Revision Petitioner/wife of the second Defendant to prosecute the case on behalf of the second Defendant in the light of the Power of Attorney deed executed in her favour by her



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husband/second Defendant. The Petition in I.A.No.161 of 2015 in O.S.No.21 of 2015 filed under Order IX, Rule 7 of C.P.C. is also allowed.

The learned Principal District Judge, Thiruvarur, is directed to restore the suit in O.S.No.21 of 2015 on file and proceed with the trial. Connected miscellaneous petitions are closed.

08.03.2024

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1.The Principal District Judge,
Thiruvarur.

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai – 600 104.



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
CRP.Nos.501 and 1352 of 2020

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