



C.R.P.Nos.3206, 3210 and 3211 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.3206, 3210 and 3211 of 2023
and C.M.P.Nos.19759, 19782 & 19785 of 2023

Raja ... Petitioner in all CRPs

-Vs-

R.Brindha ... Respondent in all CRPs

Prayer in CRP 3206/2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 01.04.2023 made in I.A.No.3 of 2023 in GWOP No.22 of 2017 on the file of Additional Principal Family Judge, Coimbatore by allowing this Civil Revision Petition.

Prayer in CRP 3210/2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 01.04.2023 made in I.A.No.3 of 2023 in HMOP No.16 of 2017 on the file of Additional Principal Family Judge, Coimbatore by allowing this Civil Revision Petition.

Prayer in CRP 3211/2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 01.04.2023 made in E.P.No.7 of 2022 in HMOP No.16 of 2017 on the file of Additional Principal Family Judge, Coimbatore by allowing this Civil Revision Petition.

In all C.R.Ps

For Petitioner	:	Mr.V.Anandhamoorthy
For Respondent	:	Mr.M.Muruganantham for Mr.T.Elumalai

COMMON ORDER

The relationship between the parties is not in dispute. The petitioner Raja is the husband. The respondent Brindha is the wife. They entered into matrimony on 25.02.2008 at Punjaipuliyampatti. From the wedlock, a child by name Saran was



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born on 27.02.2009. Due to disputes and differences that arose between the parties, the husband presented HMOP No.11 of 2012 before the Subordinate Court at Sathyamangalam seeking for divorce.

2. The wife initiated M.C.No.7 of 2012 before the learned Judicial Magistrate at Mettupalayam seeking for maintenance. The husband initiated GWOP No.23 of 2015 before the Principal District Judge at Erode seeking for custody of the minor child. There are two more proceedings which are relevant to be taken note of. The wife initiated D.V.C.No.2 of 2015 before the learned Judicial Magistrate at Mettupalayam. Pending the proceedings for divorce, she took out an application for return of jewels of 37 sovereigns in I.A.No.229 of 2018 in HMOP No.16 of 2017. The said application came to be allowed on 27.10.2021 and in order to execute the same, E.P.No.7 of 2022 had been initiated by the wife. On an order passed by this Court, HMOP No.11 of 2012, M.C.No.7 of 2012 and G.W.O.P.No.23 of 2015 have been transferred to the file of the Additional Principal Family Court at Coimbatore. They have been renumbered as HMOP No.16 of 2017, M.C.No.6 of 2019 and GWOP No.22 of 2017. The execution petition in E.P.No.7 of 2022 is also pending before the very same learned Judge.

3. The respondent wife fell sick with Venous Haemorrhagia Infarct, for which she had been admitted to the K.G.Hospital in Coimbatore and is undergoing treatment. As she has been advised surgery, she found it very difficult to appear



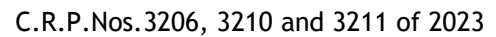
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before the Family Court for continuation of the proceedings. Therefore, on 17.10.2022, the respondent wife appointed her father one M.Ramasamy as her power of attorney. In the said power of attorney which has been produced in the typed set of papers, it is clear by virtue of clause Nos.(i) to (iv) that the respondent's father Ramasamy has been empowered to conduct the litigation on behalf of the respondent Brindha. However, finding it necessary to get appropriate direction of the Court, the power of attorney filed an application under Order III Rule 2 of CPC. The said application came to be allowed by the learned Family Judge, against which C.R.P.No.3210 of 2023 has been filed.

4. Heard Mr.V.Anandhamoorthy for the civil revision petitioner and Mr.Muruganantham for Mr.T.Elumalai, learned counsel for the respondent.

5. Mr.Anandhamoorthy would submit that the respondent wife has not produced any medical records to show that she is suffering from illness. He would also point out that matters, which are specific between the spouses, cannot be deposed by the power of attorney and therefore the said petition ought not to have been entertained.

6. Per contra, Mr.Muruganantham appearing for the wife submits that the respondent wife is suffering from serious illness and is unable to present herself in Court and has also been advised to undergo a surgery. He would state that from



7. I have heard the submissions of both sides and have gone through the records.

8. The relationship not being in dispute and the fact that the proceedings have been pending for the past 12 years between the parties, it is clear from the records that the respondent wife had been prosecuting the case diligently. In fact, she had also filed an application in HMOP No.16 of 2017 for return of jewels and that application had been allowed by the Family Court and in order to execute the same, she has also filed E.P.No.7 of 2022.

9. The affidavit by the respondent's father Ramasamy reveals that the respondent does have some serious medical issues. Obviously, the priority of the respondent would be to take care of her health as she has a child who is school going, to attend to. The learned trial Judge has balanced the practicalities between the requirement of the wife as against the objection of the husband and has permitted the father of the respondent wife to represent her in the course of the litigation.



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10. It is not open to an adversarial party to dictate as to how and why his/her opponent is appointing a power of attorney. Power of attorney is a contract between two persons, where one undertakes to prosecute the case on behalf of the other. The facts of this case reveals that the father who has been taking care of the first respondent and her son, though he himself is a senior citizen aged about 75 years and above, has taken on himself the responsibility to conduct the litigation. The respondent wife has decided that it is her father who can effectively represent her in the proceedings as she is sick and is not in a position to come before the Court. While dealing with an application for grant of power of attorney, the reasons for such appointment might not have been germane in every case. The power of attorney itself reveals that the respondent wife is sick and to expect her to produce medical records in order to proceed further in the litigation, I feel, is a bit too harsh on her.

11. Therefore, I do not find any reason to interfere with the orders passed by the Additional Principal Family Court at Coimbatore, which has been challenged in these revisions. Therefore, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Neutral Citation : Yes/No
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V. LAKSHMINARAYANAN, J.

KST

To

The Additional Principal Family Judge,
Coimbatore.

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