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C.R.P.No.3128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3128 of 2023
and C.M.P.No.19370 of 2023

1.S.Gayathri

2.M.Ravichandran

... Petitioners

-Vs-

Karpagam Balakrishnan
Rep.by her Power Agent
Mr.G.Vigneshwaran

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 03.08.2023 made in IA No.243 of 2019 in OS No.424 of 2017 passed by the learned Additional District Munsif, Alandur.

For Petitioners : Mr.S.Sathish Rajan
For Respondent : Served, No appearance

ORDER

This Civil Revision Petition arises against the order passed by the learned Additional District Munsif at Alandur in I.A.No.243 of 2019 in O.S.No.424 of 2017 dated 03.08.2023.

For the sake of convenience, the parties will be referred as per their ranking in the suit.



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2. O.S.No.424 of 2017 is a suit filed by one G.Vigneshwaran representing himself to be the power agent of one Tmt.Karpagam Balakrishnan. According to the plaintiff, the power agent paid the entire value of the property to Tmt.Karpagam Balakrishnan and secured a power of attorney from her . The power also included the power of alienation. In the meantime, as Tmt.Karpagam Balakrishnan through her power agent R.Saravanan executed a sale deed in favour of the defendants on 18.09.2008, the said Vigneshwaran came forward with a suit for declaration that the sale deed executed by Saravanan in favour of the defendants as the power of attorney agent of Tmt.Karpagam Balakrishnan is null and void and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff.

3. On service of summons, the defendants entered appearance and filed a detailed written statement. According to them, the power on the basis of which the plaintiff Vigneshwaran had presented the suit, was not executed by Tmt.Karpagam Balakrishnan, but by one Vijaya W/o Bhoopathy. Therefore, their plea is that the said Vigneshwaran has no interest in the property of Tmt.Karpagam Balakrishnan.

4. On the basis of these pleadings, the defendants took out an application seeking for a direction to the principal Tmt.Karpagam Balakrishnan to appear before the Court and to prove her identity. This application was received as I.A.No.243 of 2019. After receipt of a counter, it came to be dismissed, against which the present revision.



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5. Notice was ordered in this revision and the respondent though served, has not entered appearance through a counsel, nor is she present in Court to oppose the revision.

6. Mr.Sathish Rajan appearing for the petitioners would submit that the power on the basis of which the suit has been presented is itself a forged and fabricated one. He would state that finding out this fraud that has been committed by Vigneshwaran, the plaintiffs had lodged a police complaint, in which Vijaya, the imposter was arrested and that charge sheet has been filed before the Jurisdictional Magistrate Court. He would state that the power that had been registered in favour of Vigneshwaran has nothing to do with Tmt.Karpagam Balakrishnan, the original owner of the property. He would draw my attention to the finding of the learned Additional District Munsif, Alandur that as it is a registered power, it is deemed to be genuine. He would state that this militates against the fundamentals of civil law that a person who claims under a document is bound to prove the same and by virtue of the fact that it is registered, it is not given higher status regarding the validity of the said document. He would therefore plead that by virtue of Order III Rule 1 proviso, the principal has to be summoned to the Court.

7. I have carefully considered the arguments. The case of the plaintiff is that he obtained the property by way of power of attorney from one Tmt.Karpagam Balakrishnan. The defendant also plead that they have obtained the property from



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Tmt.Karpagam Balakrishnan, but through her duly authorised power agent R.Saravanan. It is the case of the defendants that Tmt.Karpagam Balakrishnan never executed a power deed in favour of Vigneshwaran, but it was one Vijaya who impersonated Tmt.Karpagam Balakrishnan and had executed the document in favour of the plaintiff. The facts set forth above necessarily requires examination of Tmt.Karpagam Balakrishnan to substantiate whether she had executed a power of attorney in favour of the said Vigneshwaran or whether she stands by the power of attorney executed in favour of Saravanan.

8. The finding of the Court below that since the power of attorney is registered, the burden is on the defendants to prove it is a forged one is certainly not correct. I have to concur with Mr.Sathish Rajan in that regard. It is the plaintiff who claims that the power of attorney executed in his favour was executed by Tmt.Karpagam Balakrishnan. Therefore, the burden necessarily falls on him to prove the same. There is no presumption under Section 60 of the Registration Act that the person who executed the document is the person whose name is found therein. Therefore the finding of the Court below that as the power of attorney is registered it is deemed to be genuine, is contrary to the position of law.

9. Now turning to the impugned order, since the defendants rely upon the power of attorney said to have been executed by Tmt.Karpagam Balakrishnan in favour of Saravanan, it necessarily falls on them to examine both Tmt.Karpagam Balakrishnan as well as the said Saravanan to substantiate their case. This process



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cannot be short circuited by calling upon the plaintiff to produce his principal. I find from the order of the Court below that the Court has granted the defendants opportunity to summon Tmt.Karpagam Balakrishnan in terms of Order XVI Rule 1. It is for the defendants to take out appropriate application to summon Tmt.Karpagam Balakrishnan invoking the said provision.

10. Suffice it to say, this revision challenging the impugned order has to be dismissed not for the reasons granted by the learned Additional District Munsif, Alandur, but for the fact that it is not open to one party to summon the witness of the other party. While disagreeing with the reasons granted by the learned Additional District Munsif, Alandur, as regards the validity and genuineness of the power of attorney, the conclusion I arrive at is the same. Leaving it open to the defendants to summon Saravanan as well as Tmt.Karpagam Balakrishnan in terms of Order XVI Rule 1, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Additional District Munsif, Alandur.



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V. LAKSHMINARAYANAN, J.

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