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CRP.(PD).No.3949 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.(PD).No.3949 of 2022
and CMP.No.20574 of 2022

Sakadevan

...Petitioner/plaintiff

Vs

1.Raman @ Tamilprabakaran
2.Panjali
3.Gomathi
4.Tamilselvan

...Respondents/Defendants

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order of the District Munsif Court at Dharmapuri dated 20.09.2022 in I.A.No.1165 of 2021 in O.S.No.164 of 2016.

For Petitioner	:	Mr.P.Valliappan Senior Counsel for PV Law Associates
For R1 to R3	:	Mrs.P.Rajathi for M/s.D.Raghu
For R4	:	No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner as against the order passed in I.A.No.1165 of 2021 in O.S.No.164 of 2016 on the file of



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District Munsif Court, Dharmapuri dated 20.09.2022, wherein the petitioner herein has filed a petition under Order 3 Rule 2 to recognise the power agent and permit the petitioner to conduct the case through power agent, which petition was dismissed by the trial Court. As against the said dismissal order, the present civil revision petition has been filed by the Revision petitioner.

2. The Revision petitioner herein has filed a petition before the trial Court stating that he is the plaintiff in the main suit and the main suit has been filed for the relief of declaration and injunction and that he is aged about 68 years and he was affected by polio and permanently disabled. Thereafter, he was affected by diabetic and blood pressure and taking treatment. While so, he already filed proof affidavit before the trial Court and marked the documents. Thereafter his right leg was amputated, he is unable to move without assistance of others in a wheel chair. Due to his illness, very often he feel giddiness and thereby he is unable to sit for a long time. Therefore, he appointed power agent viz., one Arul Gandhi who is son of the petitioner and filed petition to recognise him as Power Agent but the trial Court has dismissed the said petition. Challenging the same, the present Revision.

3. According to the respondent, the suit was filed in the year 2016 and



the plaintiff also filed proof affidavit in the suit, therefore, the IA seeking to recognise the Power Agent was filed in order to delay the proceedings; further the plaintiff/revision petitioner has not produced any medical records to support his illness. He would further submit that even if the Plaintiff/Revision petitioner is not able to move, Advocate Commissioner can be appointed to examine the Plaintiff/petitioner as witness. Therefore, the trial court has rightly dismissed the IA and this revision petition challenging the same need not be entertained by this court.

4. A perusal of the entire typed set of papers and records placed before this court would go to show that the trial Court after hearing both sides, dismissed the I.A. on the ground that already the Plaintiff/petitioner has filed proof affidavit and in the course of trial, P.W.1 was examined and Exs.A1 to A6 have been marked. When the matter is posted for cross examination, the plaintiff/petitioner filed the I.A. Therefore, cross examination of PW1 is necessary. Further, the plaintiff/petitioner also not filed any documents to show that he is unable to attend the Court. Therefore, the I. A.seeking to recognise the Power Agent was dismissed.

5. The learned counsel appearing for the petitioner would contend that



the petitioner is a senior citizen and aged more than 70 years and he filed petition to permit the power agent to conduct the suit under Order 3 Rule 2 of CPC. Originally, the case was posted for cross examination of the Plaintiff/Petitioner. Since the plaintiff already filed proof affidavit and marked the documents and when the matter was posted for cross examination of PW1, it is stated that he was unable to move due to his leg amputation and also very often he feel giddiness and therefore, he filed I.A. to conduct the case through power agent. But the trial Court without considering the real fact, dismissed the I.A., for want of medical evidence to prove the ailment of the petitioner. But at the same time, the trial Court allowed the petition in connected suit. Therefore, the order passed by the trial Court is liable to be set aside and the petition in IA.No.1165 of 2021 is to be allowed.

6. The learned counsel for the respondent would contend that the petitioner has filed the suit for relief of declaration and injunction in the year 2016 and thereafter when the case was posted for trial, he filed proof affidavit and the documents also marked. At this stage, only to delay the proceedings and to avoid the cross examination, he filed the petition by appointing his son as power agent. Once the plaintiff filed proof affidavit as P.W.1 and marked some documents, he has to be cross examined by the opposite side, but in



order to avoid that opportunity, the present petition has been filed. Further, the petitioner has not filed any documents to show his ailment and thereby, the trial Court correctly dismissed the petition by holding that the petitioner has not produced any document and without cross examination of PW1, the power agent cannot be conduct this case. Therefore, the present CRP is liable to be dismissed.

7. This Court heard both sides and perused the records.

8. In this case before the trial Court, the petitioner has filed petition under Order 3 Rule 2 of CPC to recognise the power agent to contest the suit on behalf of the petitioner. According to the petitioner/plaintiff, he is aged about 68 years and he was affected by polio and thereafter due to diabetic, his leg was amputated and now due to his ailment and old age, he very often feels giddiness and thereby, he appointed his son as power agent to conduct the suit.

9. According to the respondent, he already filed the proof affidavit and marked the documents, only to avoid the cross examination, he filed this petition. Therefore, the petitioner filed the I.A. As far as Order 3 Rule 2 of CPC is concerned, normally the trial courts when satisfying reasons are stated



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can take liberal approach. In this case, it is admitted fact that the plaintiff/petitioner is aged about 68 years and he was affected by polio and that was not disputed by the respondent. The only contention of the respondent is that already he was examined as witnesses and marked the documents, therefore, he has to be cross examined. In this context, it is for the petitioner to take risk of his non cross examination. Once, the petitioner/plaintiff filed proof affidavit and examined as PW1 and marked documents, it is for him to subject him for cross examination, otherwise the evidence could not be completed. However, he himself filed petition by knowing the consequences and he has to face the consequences of non cross examination and the trial Court has to decide the case based on the available evidence. Further the question whether the evidence of PW1 already recorded is in accordance with law or not can be decided only at the time of pronouncing orders and not now. The trial Court also in the order stated that once the petitioner filed the proof affidavit and marked the documents, the opposite party has to be given opportunity for cross examination; if the petitioner failed to subject for cross examination, he has to face the consequences and the appointment of power agent will in no way affect the rights of the parties.



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10. It is well settled law that the power agent only can depose about the personal knowledge of the facts of the case and he cannot step into the shoes of his Principal in respect of personal knowledge of the Principal and the Principal only competent person to speak about his personal knowledge of the properties. Therefore, only for that reason, the Court cannot reject the claim of the petitioner/plaintiff. Therefore, the order passed by the trial Court by declining to allow the petition for appointment of power agent is unsustainable and it is liable to be set aside.

11. In the result, this civil revision petition is allowed by setting aside the order of the trial Court passed in I.A.No.1165 of 2021 in O.S.No.164 of 2016. Consequently, I.A.No.1165 of 2021 on the file of District Munsif Court at Dharmapuri, is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mpa

To
The District Munsif Court at Dharmapuri.



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P.DHANABAL, J.,

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