



C.R.P.No.4903 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM :

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4903 of 2024

and

C.M.P.No.27510 of 2024

Prakash

... Petitioner

Vs.

1.Subramanian

2.Subbulakshmi

3.Selvaraj

4.Ragupal

5.Thirumalaisamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.08.2024 made in CFR.No.414 of 2024 in O.S.No.98 of 2017 on the file of the learned III Additional District and Sessions Judge, Dharapuram by allowing the Civil Revision Petition.



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For Petitioner : Ms.R.Vigneshwari

For Respondents : Mr.K.Sudhakar

ORDER

This Civil Revision Petition arises against the order passed by the learned III Additional District and Sessions Judge, Dharapuram in CFR.No.414 of 2024 in O.S.No.98 of 2017 dated 22.08.2024.

2. The Civil Revision Petitioner is the 9th defendant in the suit and the power agent of the 2nd defendant. O. S.No.98 of 2017 is a suit for partition and separate possession. This suit was resisted by the 9th defendant, filing the written statement. The 2nd defendant remained ex parte. He is said to be working in a pharmaceutical company in the Republic of Estonia. On coming to know about the suit and the ex parte order had been passed against him, the 2nd defendant appointed the 9th defendant as the power agent. He filed applications in I A.Nos.6 and 7 of 2023 seeking permission of the Court to be represented by a power agent, as well as, to set aside the ex parte order.



3. Both the applications were taken up together for hearing by the learned District Judge. By an order dated 27.07.2023, the Court permitted the 2nd defendant to be represented by the 9th defendant and also set aside the ex parte order dated 21.03.2018 on payment of costs. As the conditional order was complied, the written statement filed by the 2nd defendant on 22.06.2023, was received by the Court. Thereafter, the matter was taken up for the defendants' evidence. I should point out here that the plaintiff's evidence was closed, as early as, on 05.10.2021.

4. The 9th defendant entered the witness box and deposed as D.W.1. Thereafter, he filed a memo stating as the power agent of the 2nd defendant and he wants to depose as D.W.2. This memo was opposed by the plaintiff's pleading that as the 9th defendant had already examined himself as D.W.1, hence, it is not necessary for him to be examined as D.W.2. This submission of the plaintiff came to be accepted by the Court which rejected the memo. Hence, the Revision.

5. I have heard Ms.Vigneshwari for the civil revision petitioner and Mr.K.Sudhakar for the respondents.



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6. Ms.Vigneshwari submitted that D.W.1 had deposed for himself, that is as 9th defendant, and not in the capacity as the power agent of the 2nd defendant. She points out that the written statement of the 2nd defendant itself came to be received by the Court, only on 27.09.2023, pursuant to the order passed by the learned Trial Judge. She states that as the oral evidence of the 2nd defendant's remains to be recorded, the said memo came to be filed.

7. Per contra, K.Sudhakar submits on the basis of the proof affidavit that had been filed by D.W.1, that he had not only deposed for himself but also on behalf of his principal. Hence, the question of D.W.2 examining himself as the power agent of the 2nd defendant does not arise.

8. I have carefully considered the submission of both sides.

9. For the mere fact that the 2nd defendant had appointed a party to the suit as his agent, does not debar the right of the 2nd defendant to record evidence in the suit. I am certain that the objection that has been taken by the plaintiffs today could not have been raised, had the 2nd defendant appointed a



third party to the suit as his agent. This is because an agent is entitled to depose before the Court on matters which are within his knowledge. Therefore, if a third party had been appointed as the agent, certainly he could have entered the witness box and given evidence in line to the written statement that had been filed by the 2nd defendant. The present confusion had arisen due to the fact the 2nd defendant had appointed the 9th defendant as his power agent. 9th defendant plays a dual capacity in the suit. One, deposing on behalf of himself and yet again, deposing as the agent of the 2nd defendant.

10. While the facts of the case may suggest that evidence may be duplicated, that by itself, does not debar D.W.1 from deposing as the power agent of the 2nd defendant. Reliance placed by Mr.Sudhakar that the proof affidavit had been filed on behalf of the 2nd defendant also, does not hold water because he has been examined as D.W.1 only for himself. The plea of Ms.Vigneshwari that the 2nd defendant has taken need not be the same as taken by the 9th defendant deserves consideration.



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11. In the light of the above discussion, the order passed by the III Additional District and Sessions Judge, Dharapuramin in CFR.No.414 of 2024 in O.S.No.98 of 2017 dated 22.08.2024 is set aside. The memo will stand allowed. The 9th defendant will be entitled to file his proof affidavit and depose as the power agent of the 2nd defendant alone. The evidence, obviously will be on the basis of the pleas that have been taken by the 2nd defendant, in his written statement dated 22.06.2023.

12. At this stage, Mr.Sudhakar points out that the plaintiffs have been suffering on account of the pendency of the litigation from 2017 onwards. He states that though his client's evidence was closed as early as in 2021, the defendants have been dragging on the proceedings. This plea seems to be reasonable. Therefore, I am inclined to fix time for the disposal of the suit itself.

13. The 9th defendant, as the power agent of the 2nd defendant, shall commence his deposition on 10.12.2024. The plaintiffs will be entitled to cross examine him till 13.12.2024. As Ms.Vigneshwari, states that she has no further evidence after the examination of D.W.2, the evidence of the defendants will be closed on the completion of cross examination by the plaintiffs. The learned



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Judge is requested to hear the arguments between 16.12.2024 till 20.12.2024.

The judgement in the suit shall be pronounced on or before 24.01.2025. A report of compliance shall be submitted to this Court by 30.01.2025. At the time of submission of the compliance report, a copy of the judgement shall be enclosed along with it.

14. The learned Trial Judge is requested to act on the web copy of this order and not wait for a certified copy in order to proceed with the trial.

15. In view of the above, this Civil Revision Petition stands allowed.
No Costs. Consequently, connected miscellaneous petition is closed.

03.12.2024

Index : Yes / No
NCC : Yes / No
Anu

Note: Issue order copy on 06. 12.2024.

V.LAKSHMINARAYANAN,J.



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Anu

To
The III Additional District and Sessions Judge, Dharapuram

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