



C.R.P. (MD) No. 1000 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 1000 of 2024

and

C.M.P.(MD) No. 5405 of 2024

L. Sekar

... Petitioner / Second Respondent /
Second Respondent

-VS-

1. R.Thiyagamohan

... First Respondent / Petitioner /
Petitioner

2. L.Rajammal

... Second Respondent / First Respondent
/ First Respondent

3. L.Rani

4. L.Radha

5. L.Vasanthi

... Respondent Nos. 3 to 5 /
Respondent Nos. 3 to 5 / Respondent Nos. 3 to 5

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order of the Additional District and Sessions Judge, Srivilliputhur in I.A. No. 1 of 2023 in Probate O.P. No. 227 of 2022, dated 05.01.2024.

For Petitioner

: Ms. Lakshmi Gopinathan



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For R-1

: Mr. S.Muniyandi

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ORDER

This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed challenging the order dated 05.01.2024 in Probate O.P. No. 227 of 2022 (hereinafter referred to as the 'Impugned Order' for short) on the file of the Additional District and Sessions Court, Srivilliputhur (hereinafter referred to as the 'Trial Court' for short).

2. The parties are hereinafter referred to as by the description in the petition in Probate O.P. No. 227 of 2022 before the Trial Court for the sake of clarity and convenience.

3. Heard Ms. Lakshmi Gopinathan, Learned Counsel for the Second Respondent and Mr. S.Muniyandi, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

4. The Petitioner had filed Probate O.P. No. 227 of 2022 to probate the Will dated 31.12.2019 which is said to have been executed by his father viz., P.Ramasami, who died on 05.02.2022. The application in I.A. No. 1 of 2023 was filed by the Petitioner under Rule 2 of Order III of Civil Procedure Code,



1908, to permit him to be represented through his power agent, which was allowed by the Impugned Order, the relevant portions of which is extracted as below:-

“.... This petition is only to recognize the power agent and to permit him to conduct the main petition in the stead of the petitioner. As rightly pointed out by the learned counsel for the 2nd respondent the power agent cannot repose regarding the facts within the personal knowledge of the petitioner. For such matters the petitioner only can appear and adduce evidence. However the scope of the present petition is only regarding whether the power agent has to be recognized or not. Considering that the petitioner has stated is old age as a reason to not frequently appear before court and follow the proceedings and also considering that the petitioner has granted power to the power agent to conduct the case on his behalf, this court does not find any reason to refuse permission to the petitioner to permit him to conduct the case through the power agent. However the power agent will not be entitle to adduce evidence regarding the matters within the personal knowledge of the petitioner.”

5. On perusal of the Impugned Order, it is noticed that it is in consonance



with the law governing the subject as elucidated by the Hon'ble Supreme Court of India in *Manisha Mahendra Gala -vs- Shalini Bhagwan Avatramani* (Order dated 10.04.2024 in Civil Appeal No. 9642 of 2010), which reads as follows:-

“28. The law as understood earlier was that a General Power of Attorney holder though can appear, plead and act on behalf of a party he represents but he cannot become a witness on behalf of the party represented by him as no one can delegate his power to appear in the witness box to another party. However, subsequently in **Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.**, [(2005) 2 SCC 217] this Court held that the Power of Attorney holder can maintain a plaint on behalf of the person he represents provided he has personal knowledge of the transaction in question. It was opined that the Power of Attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the General Power of Attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions



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the aspect including that of **Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.**, [(2005) 2 SCC 217] in **A.C Narayan -vs- State of Maharashtra** [(2014) 11 SCC 790] concluded by upholding the principle of law laid down in **Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.**, [(2005) 2 SCC 217] and clarified that Power of Attorney holder can depose and verify on oath before the court but he must have witnessed the transaction as an agent and must have due knowledge about it. The Power of Attorney holder who has no knowledge regarding the transaction cannot be examined as a witness. The functions of the General Power of Attorney holder cannot be delegated to any other person without there being a specific clause permitting such delegation in the Power of Attorney; meaning thereby ordinarily there cannot be any sub-delegation.

29. It is, therefore, settled in law that Power of Attorney holder can only depose about the facts within his personal knowledge and not about those facts which are not within his knowledge or are within the personal knowledge of the person who he represents or about the facts that may have transpired much before he entered the scene.”



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In view of this incontrovertible legal position coupled with the facts of the case, this Court does not find any infirmity in the Impugned Order warranting interference in the exercise of its superintending jurisdiction under Article 227 of the Constitution of India which is limited only to keep the courts subordinate to it, within the bounds of their authority or when there has been a patent perversity, or where there has been a manifest failure of justice, or the basic principles of natural justice have been flouted.

In the result, the Civil Revision Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.04.2024

Index : Yes/No
Internet : Yes/No

TSG

To

1. The Additional District and Sessions Judge,
Srivilliputhur.
2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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P.D. AUDIKESAVALU, J.

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