



C.R.P.(MD)No.1890 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1890 of 2024

and

C.M.P.(MD)No.10717 of 2024

B.S.Sundaravadivel Sons,
Represented by Partner B.S.Narayanan,
Represented by Power Agent N.Venkatasubramanian,
No.4/67, Anandapuram New Street,
Palakarai, Trichy – 08.

... Petitioner

Vs.

1.B.A.Balavadivel Murugan
2.B.S.Anandan
3.B.S.Velayutham
4.B.S.Gurusamy
5.B.S.Arunagiri

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the Fair and Decretal order dated 10.04.2024, passed in I.A.No.5 of 2023 in O.S.No.1672 of 2012 on the file of II Additional District Munsif, Tiruchirappalli.

For Petitioner	: M/s.Rajeswari
For R1 & R2	: Mr.D.Mathew
For R4 & R5	: Appeared in person



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ORDER

The present Civil Revision Petition is filed by the Petitioner/Plaintiff against the Fair and Decreetal order passed in I.A.No.5 of 2023 in O.S.No.1672 of 2012.

2. The Petitioner/Plaintiff is the Revision Petitioner herein and the Respondents/Defendants are the Respondents herein. The suit in O.S.No.1672 of 2012 was filed to declare the General Power of Attorney Deed dated 03.07.2012 executed by 2nd defendant in favour of 1st defendant as null and void, further the said power deed will not bind the Plaintiff's firm and consequential permanent injunction against the 1st defendant from interfering the management and administration of the plaintiff's partnership firm.

3. The suit was taken for trial and after examination of PW1, the plaintiff had filed I.A.No.2, 4 and 5 of 2023. The I.A.No.2 of 2023 was filed under Order 7 Rule 14 of CPC inter alia praying to receive the additional documents on the part of petitioner/plaintiff. The I.A.No.4 of 2023 was filed under Order 14 Rule 18 of



CPC inter alia to recall the PW1 to adduce the additional chief examination of PW1 to mark the proposed receiving of additional documents. Both the I.A.'s were dismissed vide order dated 28.08.2023 with a liberty to file separate application by stating the relevancy and proper reason why it was produced on a later point of time. Thereafter the petitioner had filed I.A.No.5 of 2023 under Order 7 Rule 14 inter alia praying to receive addition documents consisting of 17 documents. The Court below had considered the said list of documents and disallowed the Document Nos. 1 to 17 except Document No.5 and 7. Aggrieved over the same, the present Revision Petition is filed.

4. The Learned Counsel appearing for the Petitioner/Revision Petitioner contented that if the said documents are allowed to be marked, then the petitioner could prove the execution the power of attorney was executed without the consent of the other partners. Further the 2nd defendant had issued certain letters against the 1st defendant/Power Agent and the petitioner is intended to rely upon those documents and the same is necessary to prove that the said power of attorney is affecting the smooth running of the partnership firm and the 2nd defendant is not empowered to issue such power of attorney.



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5. However, the respondents 1 and 2 vehemently objected to the contentions of the Petitioner/Plaintiff and submitted that it is the 2nd respondent's individual right to execute power of attorney. Further the suit is filed in the year 2012 and the Petitioner/Revision Petitioner had not taken any steps to submit those documents all these years. When the suit is ready for trial, when the PW1 deposition was over, it is only thereafter the petitioner had filed the application to produce additional documents. Moreover the petitioner had filed I.A.No.2 and 4 of 2023 for the same prayer and had suffered a dismissal order, against the said order the petitioner had not filed any revision, therefore the present revision is not maintainable. Further the petitioner had not stated any reason for producing the documents belatedly which the petitioner was in possession all these years.

6. In order to consider the rival claims this Court perused the said documents. The Document Nos.No.1,2,3 and 4 are written statement filed by the 2nd defendant in O.S.No.116 of 2013, affidavit filed in I.A.169 of 2013 and I.A. 288 of 2016 in O.S.No.116 of 2013 and vakalath of the 2nd defendant filed in O.S.No.258 of 2018. The contention of the petitioner is that the signature of 2nd defendant is forged in written statement and two affidavits which would be



evident if compared with the signature in vakalath. If the contention of the petitioner is true, then the same ought to have been raised in the other suits i.e. O.S.No.116 of 2013 or O.S.No.258 of 2018 and not in the present suit O.S.No. 1672 of 2012. Further, the present suit is filed to declare the power deed executed by the 2nd defendant in favour of the 1st defendant as null and void and the alleged forged signature is nothing to do with the present suit. If the petitioner is disputing the signature affixed in the present power deed, then the petitioner has every right to compare the same with admitted signature in the present suit. But that question arises if the 2nd defendant denies the signature in the power deed, but the 2nd defendant admits that the power deed was executed in favour of the 1st defendant and the 1st defendant is the son of the 2nd defendant. Therefore this Court is of the considered opinion that the said Documents Nos.1, 2, 3, and 4 are not relevant to the present case, hence the same is declined.

7. The Document No.5 is allowed by the Trial Court itself. The next Document No.6 is the police complaint in C.C.No.1174 of 2013 on the file of JM No.5. The contention of the petitioner is that the said document is a complaint preferred by the petitioner against the 3rd and 4th defendant. While cross



examination the plaintiff said the 'understanding' marked in the said C.C. case was not known to the 1st defendant. The petitioner is not clear whether the petitioner is seeking to mark the complaint copy or the C.C. or the alleged understanding recorded in the said C.C. case. Therefore this Court is of the considered opinion that the said Documents No.6 the claim of the petitioner is not clear, hence the same is declined.

8. The Document No.7 was filed before the Court, but the same was not available. In fact, the said allegation was submitted before the Court below and the Court has already granted permission to reconstitute the said document. The said document had instructed stop payment of cheque in the name of the 1st defendant. Since the allegation is against the 1st defendant by the 2nd defendant, the same ought to be scrutinized at the time of Trial. Hence the petitioner ought to be granted leave to produce the document. Therefore this Court is of the considered opinion that the said Documents No.7 is relevant to the present case, hence the same is allowed.



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9. As far as Document Nos.8,9,10 and 11 are concerned, according to the plaintiff, the same is relevant to prove the power of attorney ought not to have been executing in favour of the 1st defendant, when his reliability is questionable. The Document No.8 is concerned, it is a letter written by the 2nd defendant to the plaintiff and the subject matter is relating to the Partnership Firm, partition of family properties and selling of Pondicherry property. Document No.9 is request to cancel the sale of Pondicherry property, Document No.10 is the reply from the subsequent purchaser and Document No.11 is the letters written by the 1st defendant to one of the partner.

10. However, the Respondent/Defendant vehemently object for considering the said Documents Nos.8, 9, 10 and 11 and has relied on Sections 52 and 55 of Indian Evidence Act. The said provision states that a character of a person generally cannot be a relevant. And also submitted the Court below has considered the said provision and has held character or conduct cannot be an issue in the present case. The relevant provision is extracted hereunder:

52. In civil cases character to prove conduct imputed, irrelevant In civil cases, the fact that the character of any person concerned is such as



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to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

55. Character as affecting damages. *In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.*

Explanation. *In sections 52, 53, 54 and 55, the word character includes both reputation and disposition; but, ⁴[except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.*

11. The provisions states “except in so far as such character appears from facts otherwise relevant”. Whether the said exception is applicable to the present case ought to be determined in the Trial. The plaintiff is a partnership firm and any person entering the firm ought to have appropriate conduct for smooth running for the partnership firm. Further any person may retire from the firm and in his place a person may be inducted. But in the present case the 2nd defendant is in the firm and 1st defendant would act on behalf of the 2nd defendant. In effect both would be in the firm and that seems to be the objection of the plaintiff.



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Hence the conduct of the said persons was raised as a question and the same needs elaborate trial. On perusal of the aforesaid Documents Nos.8 to 11, the conduct of the 1st defendant was commented in the said letters. The contents of the said letters would indicate there are problems within the partners, mistakes committed by partners etc. Especially a regret letter by the 1st defendant. Therefore, the same may be relevant to prove the Power of Attorney executed in favour of the 1st defendant is prejudice to the partnership firm. Unless an opportunity is granted to the plaintiff the same would be prejudice to the firm and the other partners, therefore this Court is of the considered opinion that the said Document Nos. 8,9,10 and 11 are relevant to the present case. Hence, the leave is granted to produce the said Document Nos.8,9,10, and 11.

12. The Document No.12 is the minutes of peace talks and the same is already allowed by the Court below. As far as Document Nos.13 it is the letter submitted to Bank wherein it refers to the peace talks and informed the Bank that one B.S.Gurusamy was granted cheque signing authority in the said peace talks. Since it only refers to peace talks and the said peace talks is in Document No.12, hence Document No.13 is not necessary. The Document No.14 indicates the



breach of peace talks and the same can be challenging in the appropriate court and the same is not necessary for the present case. The Document Nos.15 and 16 are lawyer notice issued to the 1st and 2nd defendants and the Document No.17 is marriage certificate of 1st defendant and the said documents are not necessary to determine whether the power of attorney can be sustained or not. Therefore the same is declined.

13. The contention of the respondent that the petitioner had not stated any reason for producing the documents belatedly, but this Court is of the considered opinion that the respondent had not preferred any revision against the said finding, therefore the said plea is not available to the respondent.

14. The contention of the respondent that the petitioner had filed I.A.No.2 and 4 of 2023 for the same prayer and had suffered a dismissal order, against the said order the petitioner had not filed any revision, therefore the present revision is not maintainable. This Court is of the considered opinion while dismissing the said petition in I.A.No.2 and 4 of 2023, the Court below had already granted liberty to file fresh application and based on the said liberty the I.A.No.5 of 2023



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was filed. Further the respondent had not preferred any revision against the said order passed on I.A.No.5 of 2023, therefore the said plea of the respondent cannot be entertained.

15. Therefore the Document Nos.5 and 12, which was allowed by the Lower Court along with that document Nos.7, 8, 9, 10 and 11 are allowed by this Court. As far as the other Document Nos. 1, 2, 3, 4, 6, 13, 14, 15, 16 and 17 are concerned, the leave to file additional document is declined.

16. For the reasons stated supra, the Civil Revision Petition is partly allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To:

1. The II Additional District Munsif,
Tiruchirappalli.
3. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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