



C.R.P.(MD)No.2291 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2291 of 2023

and

CMP (MD) No.11813 of 2023

Kasi Pandi : Petitioner/Respondent/
Plaintiff

Vs.

1.Samuvel Asirvatham
2.Kemalin Santha Malarvizhi : Respondents 1 and 2/
(Respondents represented Petitioners/Proposed
through Power Agent Defendants
D.Dhanaraj)

3.The Commissioner,
Melapalayam Ward Office,
Melapalayam,
Tirunelveli Corporation,
Tirunelveli. : 3rd Respondent/
2nd Respondent/
Defendant No.1

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 07/07/2023 passed in IA No.3 of 2022 in OS No.512 of 2021 on the file of the 1st Additional District Munsif Court, Tirunelveli and also pass appropriate order.

For Petitioner : Mr.K.Suresh Subramanian

For R1 and R2 : Mr.T.Selvan

For 3rd Respondent : No appearance



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O R D E R

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This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 07/07/2023 passed in IA No.3 of 2022 in OS No.512 of 2021 by the 1st Additional District Munsif Court, Tirunelveli.

2.The facts in brief:-

A suit in OS No.512 of 2021 was filed by the petitioner herein as plaintiff namely Kasi Pandi seeking the relief of permanent injunction and for costs. Later, a petition was taken out by the third parties through their Power Agent to implead themselves as necessary parties. Along with that, they filed IA No.3 of 2022 to recognize one Mr.D.Dhanaraj as their Power Agent. That petition was filed by the Power Agent under Order III Rule 2 CPC with the following averments:-

"That affidavit was filed by the Power Agent directly. Wherein, he has stated that since because of the proposed parties are living in the outstation, they are not able to come to the Court frequently. For that purpose, they executed a Power of Attorney, on 26/01/2022. On that account, he seeks him to be recognized as the Power Agent of the parties."



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3.That was resisted by the 1st respondent by filing counter. After hearing the parties, the trial court allowed the petition.

4.Against which, this civil revision petition is preferred.

5.Heard both sides.

6.The learned counsel appearing for the petitioner would submit that filing of the affidavit by the Power Agent directly without any affidavit by the proposed parties is *per se* illegal. He would further submit that the Power Agent cannot be permitted to file an affidavit on behalf of the proposed parties. He would also rely upon the judgment of the Hon'ble Supreme Court in the case of ***Jimmy Jahangir Madan Vs. Bolly Xcariyappa Hindley (D) Lrs. [2004(5) CTC 420]***. But that judgment was passed with reference to the criminal law.

7.Here, there is no necessity that the principal must file an affidavit. Filing affidavit on behalf of the principal by the Agent is not prohibited. But on the basis of the objection made by the petitioner, the trial court itself has taken up enquiry by calling the



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principal in the open court and they were also enquired about the power deed, dated 26/01/2022. They also appeared and confirmed the execution of the power deed in favour of the Power Agent. So when the trial Court itself made an enquiry with the principal, no exception can be taken by the petitioner.

8.On the above said technical line, the order passed by the trial court does not suffer from any illegality or irregularity.

9.In the result, this civil revision petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

08/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The 1st Additional District Munsif,
Tirunelveli.
- 2.The Section Officer,
ER/VR section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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C.R.P (MD) No.2915 of 2023

08/03/2024