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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2592 of 2025
& CMP.No.14723 of 2025

Kaliyammal

... Petitioner

Vs.

1.Malathy

2.The State Rep. by its
District Collector,
Chennai District,
Chennai – 600 001.

... Respondents

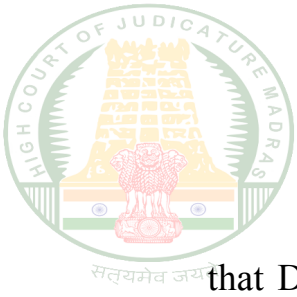
For Petitioner : Mr.Venkatasamy Babu

For Respondents : Mr.E.V.Chandru for R1

Mr.P.Gurunathan
Additional Government Pleader for R2

ORDER

The matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.



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2.Mr.Venkataswamy Babu, learned counsel for the petitioner states that D.W.1 is not in a position to attend the Court as her health condition has now worsened. He would therefore state that other witnesses may be examined and the defendant does not choose to examine D.W.1.

3.However, Mr.E.V.Chandru, the learned counsel for the respondents strongly objects to the request for modification of the order on the ground that under the guise of examining other witnesses, the daughter who was sought to be examined as Power Agent, would be examined as witness and virtually the order passed by the Trial Court and confirmed by this Court would be got over.

4.In the light of the above, I am inclined to modify the order. Recording the submissions of the learned counsel for the petitioner that if the defendant does not intend to examine herself and in the event of other witnesses, including the daughter of the defendant being examined, the daughter cannot speak about the averments in the written statement which attempt was made by her by way of an application to examine the daughter as the Power Agent and negatived by the Trial Court and came to be



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confirmed by this Court in the above CRP. Therefore, it is open to the defendant to examine independent witnesses and in the event of the daughter who was appointed as Power Agent being examined, the said daughter shall not depose as Power Agent but shall give independent evidence only dehors the allegations and averments in the written statement and speak about only facts to which she is privy.

5.The order passed today i.e 09.07.2025 shall form part of the order passed on 30.06.2025.

09.07.2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2592 of 2025
& CMP.No.14723 of 2025

Kaliyammal

... Petitioner

Vs.

1.Malathy

2.The State Rep. by its
District Collector,
Chennai District,
Chennai – 600 001.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order made in I.A.No.7 of 2025 in O.S.No.6658 of 2023 dated 16.04.2025 on the file of the XIX Assistant City Civil Court, Chennai.

For Petitioner : Mr.Venkatasamy Babu

For Respondents : Mr.E.V.Chandru for R1
Mr.P.Gurunathan
Additional Government Pleader for R2



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ORDER

The Civil Revision Petition has been preferred, challenging the order made in I.A.No.7 of 2025 in O.S.No.6658 of 2023 dated 16.04.2025 on the file of the XIX Assistant City Civil Court, Chennai.

2.Heard Mr.Vankatasamy Babu, learned counsel for the revision petitioner, Mr.E.V.Chandru, learned counsel for the 1st respondent and Mr.P.Gurunathan, learned Additional Government Pleader for the 2nd respondent.

3.The revision is against the order rejecting the application seeking permission under Order III Rule 2 of CPC to permit the daughter of the 1st defendant to adduce evidence on behalf of the 1st defendant.

4.The learned counsel for the revision petitioner would submit that the Trial Court has given a finding that the application does not even disclose that the Power Agent is well acquainted with the facts of the case. He would also point out to the affidavit at paragraph No.6 and contend that

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very specific averments in this regard has been made that the Power Agent is the daughter of the 1st defendant and she is well acquainted with the facts of the case. He would further contend that the suit is for recovery of possession and the daughter who has been appointed as the Power Agent has been residing with the 1st defendant/mother in the very same property right from her birth. He would therefore state that the Trial Court has erroneously dismissed the application and ought to have permitted the Power Agent to represent the 1st defendant to give evidence on her behalf.

5.Per contra, Mr.E.V.Chandru, learned counsel for the 1st respondent would submit that neither the written statement nor the Power of Attorney go to show that the daughter is acquainted with the facts of the case and only in the affidavit, a statement has been made that the daughter is acquainted with the facts of the case. He would further bring to my notice the findings of the Trial Court during the cross-examination of P.W.1 that the 1st defendant was very much present in person in the Court premises and therefore, the reasons arising ill-health and necessitating the Power Agent to represent the 1st defendant are all fabricated and not true. He would therefore pray for dismissal of the revision.



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6.I have carefully considered the submissions advanced by the learned counsel on either side.

7.Though the affidavit mentions that the 1st defendant is aged and also suffering from health complications and under such circumstances, the daughter, who has been brought up in the very same property, is appointed as the Power Agent to conduct the suit on behalf of the 1st defendant, the Power of Attorney does not disclose the reason as to why the Power Agent is necessary to represent the 1st defendant. Further, as pointed out by the learned counsel for the 1st respondent, the Trial Court has rightly found that the 1st defendant was very much present during cross-examination of P.W.1. The said objection taken in the counter has not even been controverted and the same has also been taken note of by the Trial Court, while proceeding to dismiss the application.

8.In the light of the above and considering the fact that the suit is posted for evidence of D.W.1, I am not inclined to set aside the order of the Trial Court. However, at the same time, taking into consideration the



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inconvenience of the 1st defendant and the averments regarding her advanced age and ill-health being brought to the notice of this Court, the Trial Court is directed to complete the evidence of D.W.1, both chief and cross examination between 15.07.2025 and 17.07.2025 (3 days) and dispose of the suit on merits and in accordance with law, on or before the end of September 2025.

9. With these above observation and direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

30.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

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To

The XIX Assistant City Civil Court, Chennai.



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P.B. BALAJI,J.

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