

(2012) 03 MAD CK 0058

In the Madras High Court

Case No : C.R.P. (NPD) No. 2721 of 2010 and M.P. No. 1 of 2010

Meerasa Sahib

APPELLANT

Vs

Shahjahan and Mohamed Hussain

RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Citation : (2012) 2 LW 458

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : G. Sankaran, for the Appellant; R. Sarbathi Ali, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The 1st respondent herein filed the suit in O.S. No. 53 of 1989 on the file of the Principal District Munsif Court,

Kallakurichi for specific performance of an agreement of sale against the 2nd respondent herein. The suit was decreed exparte on 19.7.1989. The

1st respondent/ Decree Holder filed Execution Petition to execute the decree passed in his favour and in that application the revision petitioner who

claims to be the Power Agent of the 2nd respondent/ defendant in the suit filed E.P. No. 91 of 2002 to permit him to prosecute the case on behalf

of the 2nd respondent and that application was dismissed and as against the same, this revision is filed.

2. It is submitted by the learned counsel for the revision petitioner that the 2nd respondent is admittedly residing abroad and he has executed the

power in favour of the revision petitioner to prosecute the case and to deal with the suit property and that power was misplaced and the 2nd

respondent has also admitted having executed the power in favour of the

revision petitioner and despite the production of the letter by the 2nd respondent, the Court below rejected the application and therefore the order of the Court below is liable to be set aside.

3. On the other hand, the learned counsel for the respondents submitted that the 1st respondent/ Decree Holder filed E.P. No. 289 of 2001 to

execute the decree passed in O.S. No. 53 of 1989 and that Execution Petition was allowed and the sale deed was executed by the Court in his

favour on 13.8.2003 and the same was also registered on 14.8.2003 and thereafter he also filed E.P. No. 185 of 2003 for delivery of possession

and that petition was later withdrawn as he was in possession of the property pursuant to the agreement of sale he therefore submitted that nothing

survives in the application filed by the revision petitioner and the revision petitioner has no locus standi to file the application and that was rightly

considered by the Court below and dismissed the application filed by the revision petitioner.

4. Heard both sides.

5. It is seen from the order of the Court below that the revision petitioner did not file the alleged power executed by the 2nd respondent herein in

his favour. It is the specific case of the revision petitioner that the power was executed when the 2nd respondent was in Foreign country and that

power was misplaced and Police complaint was also given to trace the power and that is evidenced by Ex.P1 and the 2nd respondent/ Principal

also admitted the execution of the power in favour of the revision petitioner as seen in Ex.P2 and therefore the revision petitioner has to be

permitted to represent the interest of the Principal.

6. According to me, the Court below has rightly dismissed the application. The power was not produced and in the absence of power the revision

petitioner cannot act as the Power Agent of the 2nd respondent. The letter Ex.P2 alleged to have been written by the 2nd respondent cannot be

taken to prove the power and in the absence of power being produced before the Court, the revision petitioner cannot expect the Court to

recognize the power. Further, admittedly, the 2nd respondent was residing in Foreign country and the power was executed while he was in

Foreign country. Therefore, unless the power is authenticated in India before the competent authority as soon as it was received the power cannot

be put to use and in the absence of original power, authentication cannot be done and hence the revision petitioner cannot claim any relief under the power. Therefore, the Court below has rightly dismissed the application filed by the revision petitioner. Hence ,I do not find any infirmity in the order of the Court below and the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.