

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

Present : **Tmt.N.Renuga**, B.A.,B.L.,

District Munsif, Sulur

Monday the 27<sup>th</sup> day of January 2025

**I.A.No.8/2024**

**in**

**O.S.No.227/2021**

M/s.Venkateswara Aranilaya Trust

Rep by its Managing Trustee

Sulochana Rep by her Power Agent

Venkatramachandran @ Ramachandran

... Petitioner/Plaintiff

/VS/

1. N.Jayakumar

2. N.Vijayakumar

3. N.Ramkumar

4. The Sub Registrar, Sulur,

Coimbatore – 641402.

...Respondents/defendants

This petition coming on 04.12.2024 for final hearing before me in the presence of Mr.R.Sivakumar, Advocate for the Petitioner and Mr.P.R.Ramakrishnan, Advocate for 1<sup>st</sup> to 3<sup>rd</sup> Respondents and the 4<sup>th</sup> Respondent is exparte in main suit and upon perusing the records, and this court made the following:

**ORDER**

Petition filed by petitioner under Order 3 rule 2 of CPC to permit the petitioner to conduct the above suit on behalf of the petitioner/plaintiff M/s.Vendateswara Aranilaya Trust Rep by its Managing Trustee Sulochana as her power of Attorney Agent.

**1. Gist of averment in petition affidavit:-**

1.1. The petitioner is the deponent and the power agent of the plaintiff in the above suit. The deponent's Principal filed the main suit for mandatory injunction against the respondents to cancel the partition deed dated 30.03.1998, registered as doc.No.1736/1998 in the office of the 4<sup>th</sup> defendant and permanent injunction against them not to alienate or encumber the property covered under the said partition deed and permanent injunction against the 4<sup>th</sup> defendant from registering any document covering the said property and other reliefs.

1.2. The deponent mother Sulochana, the plaintiff herein executed a general power of attorney in his favour on 21.10.2024. As per the above power of attorney, the deponent have been permitted to conduct the main suit on her behalf as her power agent. Hence, the petition.

**2. Gist of averment in counter statement filed by the 1<sup>st</sup> respondent and adopted by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as follows:-**

2.1. The petition is false and unsustainable both in law and on the facts of the case. The suit filed by the petitioner in the capacity of Trustee on behalf of the petitioner Trust, M/s. Venkatesa Aranilaya Trust and not in the individual capacity. Law is well settled that a Trustee cannot delegate his office or any of his duties either to a co – Trustee or to a stranger, unless (a) the instrument of Trust so provides, or (b) the delegation is in the regular course of business or (c) the delegation is necessary or (d) the beneficiary being competent to contract, consents to the delegation.

2.2. The petitioner claims herself to be the Managing Trustee. However, no Trust Instruments or resolutions are produced to prove the same. It is not known how in the absence of the above requirements, can the petitioner claim herself to be the Managing Trustee. Even otherwise, delegated powers cannot be sub delegated.

2.3. Admittedly no instrument of Trust was produced on record. In the present case, the petitioner has neither produced an instrument of Trust nor any resolution of the entire Trust committee of the petitioner Trust in the regular course.

It cannot be done through an ordinary power of attorney. Even in the power of attorney, the details of delegate's identity are not disclosed.

2.4. The delegation process by way of mere power of attorney is improper. Since there is lack of written authorizations, it is absolutely unclear and ambiguous process. In the event of non compliance of the Trust procedures, the petition ought to be rejected. Law is well settled that in respect of a public Trust, only the Trustees who figure in the proceedings can conduct the proceedings. The managing trustee cannot avoid the witness box. Hence, the petition ought to be dismissed.

### **3. Point for Consideration:-**

Whether the petition under Order 3 rule 2 of CPC to permit the petitioner to conduct the above suit on behalf of the petitioner/plaintiff is to be allowed?

### **4. Points:-**

4.1. Heard learned counsel for both the parties. On perusal of records the suit is filed by the Venkateswara Aranilaya Trust Rep by its Managing Trustee Sulochana wife of Gurusamy for the relief of declaration of suit property as absolute property of plaintiff trust and declaration of the partition deed dated 30.03.1998 as null and void and for permanent injunction against the respondent/defendants. The case is posted for trial in list, the present petitioner who is the son of the 1<sup>st</sup> plaintiff trustee Sulochana filed present petition to contest the case on the basis of power of attorney given by the Sulochana as power agent.

4.2. The respondents/defendants side have denied the contention the plaintiff itself is not produced their trust instrument and the Managing Trustee Sulochana can't redelegate her powers to power agent by appointing her son Venkatramachandran @ Ramachandran as power agent.

4.3. On perusal of Order 3 of CPC there is no specific provisions by restraining the trustees to appoint a power agent to contest the suit. Hence, the petitioner filed the power of attorney deed along with the petition, if any contention raised in the counter they have at liberty to adjudicate the same in trial. Considering

the age of Managing Trustee as 88, this court allowed this application by permitting her son as power agent to contest the suit on behalf of principal.

***In the result, this petition is allowed. No cost.***

Dictated to the Steno typist and directly typed by her in computer, corrected and pronounced by me in open court this the 27<sup>th</sup> day of January 2025.

Sd/N.Renuga  
District Munsif,  
Sulur.

**List of witnesses and documents on Petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/N.Renuga  
District Munsif,  
Sulur.

Draft/Fair Order  
I.A.No.8/2024 in  
O.S.No.227/2021  
Dated : 27.01.2025  
DMC, Sulur.