

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

In the Presence of: Tmt.J.Mavis Deepika Sundaravadhana, M.A., M.L.,
PRINCIPAL DISTRICT JUDGE

Monday the 14th day of March 2022

I.A.No. 2 / 2021
in
O.S.No.262 / 2014

J.Samala, represented by duly constituted

Power Agent J.Ananthapadmanaban . . . Petitioner / 1st

Defendant.

/Vs/

A.Dhanasamy . . . Respondent / Plaintiff.

This petition came up before me in this Court for final hearing on 25.02.2022, in the presence of Tvl.S.Premkumar, A.Duraibabu and V.Ramalingam and P.Vasudevan, Advocates for the petitioner and Tvl.S.Ravichandran and Vijaykumar, Advocates for the respondent, upon perusing the entire records and having stood over for consideration till this day, this Court delivers the following,

ORDER

This is an application filed by the petitioner under Order 3, Rules 1 and 2 of CPC, praying to recognize him as duly authorized power agent of 1st defendant and to permit him to act and proceed on behalf of his principal – 1st defendant in the original suit.

2. The case of the petitioner in brief :

The 1st defendant is the mother of the petitioner herein. She has executed an unregistered general power of attorney dated 10.11.2021 in favour of petitioner to do all legal acts including to file, prosecute and conduct suits by engaging advocates therefore concerning the suit property. The said power of attorney deed executed in favour of petitioner has not been modified or revoked and is still in force and the principal thereof i.e, the 1st defendant is still alive. The petitioner's mother / principal J.Samala is a senior citizen and has been suffering from several complications such as hear problems, diabetic for more than 30 years. Due to spinal disc compression she cannot climb stairs. After the demise of petitioner's father S.Jothiraman on 9.4.2021 the 1st defendant's health has further deteriorated. Because of her age and health condition, the 1st defendant is not in a position to travel to the court or to depose in the court proceedings. Her memory is also fading. As the elder son, the petitioner is taking care of her and is fully aware of all the transactions of his mother including those pertaining to the suit property by following the case, engaging advocates and looking after all the proceedings and hence, the petitioner is competent to depose in support of the case on behalf of his principal / 1st defendant. Therefore, the petitioner's mother has given a general power to him to act as her agent and to do all acts referred in the deed. No other agent other than the petitioner is expressly or impliedly authorized to make or do such appearance, applications or act in the court of law. Hence, petition to recognize him as

power agent of 1st defendant and to proceed the suit proceedings on behalf of 1st defendant.

3. The counter averments in brief :

The above suit is now posted for defendant's side evidence. The petition is neither maintainable in law nor on facts. The power of attorney holder can appear plead and act on behalf of the party but he cannot become a witness on behalf of the defendant. He can only appear in his own capacity and not on the capacity of the defendant. The acts used in Rule II of Order 3 of Code of Civil Procedure does not include the act of power of attorney holder to appear as a witness on behalf of a party. If the defendant is unable to appear in the court, she can very well file an application for appointment of Advocate Commissioner for recording her evidence. Hence, prays for dismissal of petition with cost.

4. The point that arises for consideration is whether the petition is liable to be allowed.

5. Point :

The case of the petitioner is that to recognize him as power agent of 1st defendant and to depose on behalf of his principal /mother. On the other hand, the respondent vehemently raised his objection that a power agent cannot depose on behalf of his principal except on his personal capacity.

6. A reading of **Order 3 Rule 1 CPC** runs as follows : No pleader shall act for any person in any Court, unless he has been appointed for the

purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

7. In the case on hand, the 1st defendant / principal had executed the power deed in favour of her son / petitioner due to her old age. The records do reveal that the 1st defendant is aged about 80 years. A son would very well know about the acts done by his mother at her old age. At the time of institution of suit also, the 1st defendant was a senior citizen who would have seek help of her family members to conduct the case. Here, the petitioner states that he has been involving in engaging advocates, looking after the case etc., Hence, the 1st defendant can appoint her son as her power agent to act on her behalf and also to depose on her behalf.

8. On the other hand, the respondent / plaintiff contends that even if the petitioner / 1st defendant cannot appear before this Court to depose evidence, an Advocate Commissioner can be appointed to record her evidence. Order 3 Rule 1 of CPC clearly speaks that the power agent should be appointed only through the document signed by the principal. Under such document i.e., Power of Attorney Deed dated 10.11.2021 only the petitioner has filed this application. Moreover, it is the plaintiff who filed the suit and the burden is on his shoulder to prove his case. Hence, being an aged woman, who generally expect family members' guidance, particularly in conducting the legal matters before the Court, the 1st defendant who is the defending party to the suit can appoint her

family members as her power agent to act on her behalf and to depose on her behalf. Therefore, this Court inclines to recognize the petitioner namely Ananthapadmanaban as power agent of his mother / 1st defendant Samala as per the power of attorney deed dated 10.11.2021. In view of the above discussion, this court inclines to allow the petition without costs.

9. As the result, the petition is allowed. No cost.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open Court, on this the 14th day of March 2022.

(Sd/-) J.Mavis Deepika Sundaravadhana,
Principal District Judge,
Chengalpattu.

Both side witness and exhibits :
Nil.

(Sd/-) J.Mavis Deepika Sundaravadhana,
Principal District Judge,
Chengalpattu.