

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM**

**Present: Mr. T.GANESH B.A., B.L.,
Subordinate Judge,
Madurantakam**

Monday, the 21st day of July, 2025

I.A. 1/2025

in

O.S No. 75/2019

(CNR.No.TNCG13-000586-2019)

Nandhakumar,
Rep.by his,
Power of Attorney,
Saraswathi.

...Petitioner /Plaintiff

Vs..

Shanmugam

... Respondent/Defendant

This petition coming up for final hearing on 17.06.2025 in the presence of Mr.E.Elango, counsel for the Petitioner/Plaintiff and Mr. R.S.Renganathan, counsel for the Respondent/Defendant and after hearing the arguments on both sides, upon perusing the case records and having stood over for the consideration of this court till date, this court delivered the following..

ORDER

This petition is filed by the alleged power agent of plaintiff under Order III Rule 2(a) of Civil Procedure Code to recognize her as power of attorney of plaintiff to conduct the above suit in O.S No. 75/2019.

2. Averments of the petitioner:

Plaintiff is the husband of the petitioner herein. Plaintiff is a patient and taking treatment continuously. Petitioner's husband could not attend the court often to conduct the above case. He is taking treatment at Chengalpattu Medical College Hospital, Chengalpattu. Hence, he has executed a power of attorney deed dated 04.12.2024, in favour of the petitioner to conduct the above case. Petitioner well acquainted with the facts of the case. Petitioner filed the power attorney deed dated 04.12.2024 executed by plaintiff namely Nandhakumar in favour of her. Hence, the Petitioner files this application to recognize her as power of attorney of plaintiff namely Nandhakumar to conduct the above case.

3. Averments of the respondent :

The respondent denies the allegations set out in the affidavit. The power agent of the petitioner/plaintiff in her affidavit did not state, aver and plead anything about the nature of the alleged illness of her husband and the particulars of treatment given to him by the doctors and further the power agent of the petitioner/plaintiff failed to and did not state anything in her affidavit that how for the alleged illness prevents the petitioner/plaintiff to appear before this Court to conduct the case by his own. No description of document of alleged medical certificate said to have filed by the power agent of the petitioner/plaintiff is given in the petition as list of documents. In any event the alleged medical certificate may be a cooked up and created document only for the purpose of filing the petition by power agent of the petitioner/plaintiff.

The alleged power of attorney dated 04.12.2024 may also be a cooked up and created document with an ulterior motive, in order to avoid to get admissions of the case facts by this respondent/defendant on his cross examination directly from petitioner/plaintiff. Petitioner/plaintiff having filed the suit by verifying his plaint pleadings by his own ought to have conducted the case by appearing in person before this Court. To the knowledge, belief and information to this respondent/defendant the

petitioner/plaintiff is hale and healthy and now in good state of health to appear before this Court to conduct the trial of the case by his own without the aid and help of his alleged power agent. Only the power agent of the petitioner/plaintiff prevents and obstructs the petitioner/plaintiff to appear before this Court in person with some ulterior motive in order to hush up the true and real facts come out of the mouth of the petitioner/plaintiff during the course of trial. So the present petition filed by the power agent of the petitioner/plaintiff has no merits in it and not bonafide one.

This Court by order dated 02.01.2025 in I.A.No. 1 of 2024 in suit O.S.No. 90 of 2018 ordered the above suit O.S.No. 75 of 2019 and O.S.No. 90 of 2018 are to be tried on merits by and through a joint trial by recording oral evidence in O.S.No. 90 of 2018. The power agent of the petitioner/plaintiff is the 2nd defendant in suit O.S.No. 90 of 2018. So as per law, being the wife of petitioner/plaintiff, the power agent of the petitioner/plaintiff can very well give and depose oral evidence for and on behalf of petitioner/plaintiff in the joint trial of O.S.No. 90 of 2018. So the present petition filed by the power agent of the petitioner/plaintiff to recognize her as the power agent of petitioner/plaintiff in the above suit O.S.No. 75 of 2019 based on the alleged created power of attorney after filing of the suit is unwarranted and unnecessary one. So the petition filed by the power agent of the petitioner/plaintiff is liable to be dismissed as unwarranted one on the commencement of the trial of the case O.S.No. 90 of 2018. Hence this petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by both sides.
5. Heard both sides. Perused the records carefully.

6. Point:

“Whether this application can be allowed or not?”

This petition is filed under Order III Rule 2(a) of the Code of Civil Procedure by the wife of the plaintiff seeking recognition as the power of attorney holder of her husband for the purpose of conducting the suit in O.S. No. 75 of 2019.

It is the case of the petitioner that her husband was sick and taking treatment at Hospital, who cannot able to conduct case in person, appoint her as his power attorney. Respondent defend the application that there is no pleading in affidavit about the illness and that the application was filed to obstruct him from getting admission from the mouth of plaintiff in evidence.

On careful consideration of the submissions, pleadings, and legal position, it is seen that Order III Rule 2(a) CPC permits representation by a duly constituted power agent. The petitioner has produced a registered power of attorney deed dated 04.12.2024, executed by the plaintiff. The explanation regarding the plaintiff's health condition, while not supported by documentary evidence, appears plausible considering the circumstances. Procedural law must be interpreted in a manner that furthers substantive justice. There is no bar under law for a power agent, even if related to the party, to represent and conduct proceedings if properly authorized. Further, the mere fact that oral evidence is being recorded in the connected suit does not preclude the present petition, as procedural convenience and representation are distinct legal facets. Apart from that the defence that the admission can be obtained from the plaintiff in evidence cannot be acceptable as the respondent can very well take the defence of adverse inference, if the plaintiff didn't enter the witness box.

There is no specific or concrete prejudice shown by the respondent that would be caused by allowing the petitioner to act as power agent. The apprehensions raised regarding fabrication or suppression can be tested during the course of trial, and cannot be a ground to reject the petition at this stage. Accordingly, the Court finds that the petitioner has made out a sufficient case for grant of permission under Order III Rule 2(a) CPC to act as power of attorney for the plaintiff. Hence this point is decided accordingly.

7. Result:

In the result this application is allowed on conditions that the petitioner shall carry out amendment and file the amended plaint copy into court on or before 01.08.2025. call on 02.08.2025.

Dictated by me to the Steno-Typist, typed by him in the computer directly, corrected and pronounced by me in the open court, this the 21st day of July, 2025.

Subordinate Judge,
Madurantakam

I. Petitioner side evidence and Exhibits :

Nil

II. Respondents side Evidence and Exhibits :

Nil

Subordinate Judge,
Madurantakam

FAIR/DRAFT ORDER
I.A No. 1/2025
IN
O.S No. 75/2019
D.D: 21.07.2025
SUB COURT,
MADURANTAKAM.