

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,  
NAGERCOIL.**

**Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,**  
I Additional District Munsif, Nagercoil.

Tuesday, on the 5<sup>th</sup> day of November, 2024.

**I.A. No. 2 of 2019**

**in**

**O.S. No. 90 of 2018**

P.Paulthurai

... Petitioner/Power holder of  
Defendants 2 and 3

-vs -

1. Y.Kala

2. A.Jebin Jino

3. A.Agustina Jenisha

...Respondents/Plaintiffs

4.V. Agustin Selvakumar

...Respondent/1<sup>st</sup> Defendant

This Petition came before this Court on 14.10.2024 for final hearing, in the Presence of Mr. A.Wesly, Learned Counsel for the Petitioner and Mr. Prakash Edmin Kumar, Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and 1<sup>st</sup> and 4<sup>th</sup> Respondents were set exparte and Upon hearing the Arguments of both sides and Upon perusing the case records and having stood over till date for Consideration, this Court hereby delivers the following:

**ORDER**

1. The Petitioner had filed the above Petition under Order III Rule 2, Section 151 of Code of Civil Procedure and Rule 16 of Civil Rules of Practice, seeking an

order to accept the Power of Attorney dated 21.08.2019 executed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, before Notary Public, State of Newyork, Peter A Cioppa. No. 01C16296448, duly adjudicated before the District Registrar, Kanyakumari on 18.09.2019 as Doc.No. 82 of 2019, in favour of the Petitioner P. Paulthurai and that the Petitioner be permitted to conduct the case on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

2. The Petitioner Paulthurai had stated that he is the Power Agent of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and Co-brother of the 2<sup>nd</sup> Defendant. He had stated that the 3<sup>rd</sup> Defendant is his wife's sister and that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have executed Power of Attorney, dated 21.08.2019 executed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, before Notary Public, State of Newyork, Peter A Cioppa. No. 01C16296448, duly adjudicated before the District Registrar, Kanyakumari on 18.09.2019 as Doc.No. 82 of 2019, in his favour. Hence he seeks leave of this Court, to accept the said Power of Attorney and permit him, to conduct the case on behalf of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

3. The 1<sup>st</sup> Respondent/Plaintiff had filed separate counter. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have filed Counter Jointly. The Respondents/Plaintiffs in their Counter have stated that the relationship between the Petitioner and the Defendants 2 and 3 and the execution of the Power of Attorney, Authorization and Adjudication, have all to be proved strictly. The Petitioner's claim to conduct the case is not legal, it lacks merits. On 04.07.2019 in pursuant to the Order Passed in I.A.No. 1 of 2019, fresh summons to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants through post to their abroad address, by way

of private notice was ordered. It is not clear, whether the said summons was served or not. However on 24.09.2019, the above Petition along with Vakalath for 2<sup>nd</sup> Defendant and 3<sup>rd</sup> Defendant was filed. The same is not permissible under law. The Petitioner Paulthurai has no locus standi, to file this application. The provision of law, quoted by him is not applicable for seeking permission of the Court. The Petitioner is not a party to the suit, he cannot get permission legally. The above Petition has been filed in order to drag on the proceedings and harass the Respondents/Plaintiffs. It lacks good faith and bonafide. Hence the Respondents prayed for dismissal of the above Petition.

4. The point for consideration is Whether be above Petition has been to be allowed or not ?

5. The Respondents/Plaintiffs have objected the above Petition, only by stating that the Petitioner has to prove, as to the authorization, the execution and adjudication of the Power of Attorney, stated to have been executed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in favour of the Petitioner herein. The Respondents/Plaintiffs have also stated that on 18.09.2019 summon were ordered to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's at their abroad address. Subsequently, it is not known whether the said summons, were served on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Petitioner had exhibited the Power of Attorney dated 21.08.2019 executed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, before Notary Public, State of Newyork, Peter A Cioppa. No. 01C16296448, duly adjudicated before the District

Registrar, Kanyakumari on 18.09.2019 as Doc.No. 82 of 2019, in Petitioner's favour as Ex. P1.

6. From Ex. P1 as well as from the Counter filed by the Respondents/Plaintiffs, stating that summons were ordered to be served on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, in their abroad address, gives probability that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are not residing in the address mentioned in the Plaint. Ex. P1 Power of Attorney has been executed by 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, from abroad. In such circumstances, it corroborates the fact that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are residing abroad.

7. Ex. P1 Power of Attorney, had been executed abroad, and upon coming into India, the same has been adjudicated. As such, there is no bar, in permitting the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Power Agent, namely the Petitioner herein, to conduct the suit on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. It is procedure, that upon institution of suit, summons in the suit will be issued to the Defendants. Even before service of summons, either by lodging Caveat or in any other manner, if the Defendant is aware of the suit proceedings, he could very well enter appearance in the suit and contest the suit. As such, the apprehension raised by the Respondents/Plaintiffs that the summons ordered to be served on the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in their foreign address is served or not, will arise, only in case, if the said Power Agent namely the Petitioner herein, acts to the detriment of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Respondents have not stated any such facts, in order give any finding, as such. In view of the discussions

made above this Court is of the considered view the Petitioner is entitled for the petition relief.

In the result the above Petition is allowed.

No cost.

Dictated to the Steno-Typist, transcribed and typed by her in Computer, corrected and pronounced by me, in Open Court this, the 5<sup>th</sup> day of November, 2024.

Sd/-

I Additional District Munsif,  
Nagercoil.

**Petitioners' side witnesses & documents : Nil.**

**Petitioners' side documents :**

Ex.P1      21.08.2019      Power of Attorney      executed by the 2<sup>nd</sup> and 3<sup>rd</sup>  
Defendants, in favour of Petitioner.

**Respondents' side witnesses & documents : Nil.**

Sd/-

I Additional District Munsif,  
Nagercoil.

*I ADM Court, Nagercoil.  
Draft/Fair Order in  
I.A.No.2/2019 in  
O.S.No.90/2018  
Date:05.11.2024*