

In the Court of District Munsif, Mudukulathur

Present : Ms.J.C.Aparna, B.A, L.L.B.,

District Munsif,

Mudukulathur.

Wednesday the 23rd day of April 2025

I.A.No.2/2025

in

O.S.No.6/2022

Aamina Beevi

through her power agent and son Ajarudeen

..... Petitioner/Plaintiff

/VS/

1. Panchavarnam

2. Meenambal

3. Jeyinsha Begam

..... Respondents/Defendants

This petition came on 03.04.2025 before this court for a final hearing in the presence of Thiru.G.Janakiraman, Learned Counsel for the Petitioner/Plaintiff and Thiru.M.Dharmar, Learned Counsel for the Respondents/Defendants and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

ORDER

This petition has been filed under Order 3 Rule 2 of Civil Procedure Code to permit the power agent to conduct the case and depose on behalf of the plaintiff.

2. Brief averments of the Petitioner/Plaintiff in brief:-

The power agent is the son the plaintiff in the main suit. The plaintiff has

filed this suit for Permanent Injunction against the defendants not to evict the plaintiff from the suit premises without due process of law. The power agent states since his mother/plaintiff is of old age and in ill health, she has executed a General Power of Attorney dated 08.12.2024 empowering the power agent to conduct the suit and depose on her behalf. He also states that he has complete knowledge about the suit and in respect of the suit property. It is also further stated that if the petition is not allowed, he would be subjected to irreparable loss and hardships. Hence prays to allow the petition.

3. Brief averments of 3rd Respondent for herself and on behalf of the other defendants in brief:

The respondents/defendants denies the facts except which are expressly admitted. The respondents/defendants denies that the plaintiff is in ill health and has executed a Power of Attorney in favour of her son to conduct the case and depose of her behalf. It is also further stated that the plaintiff is only 40 years of age and is in good health, she has been frequently visiting the police station to file complaint against the defendants. It is also further stated that since the suit is posted for examination of witnesses the petitioner/plaintiff has filed this petition to prolong the case. It is also further stated that since the defendants in this case are females this petition has been deliberately filed to delay the suit and to harass the respondents/defendants. Hence prays to dismiss the suit.

4. Point for consideration:-

Whether the petition be allowed and the power agent be allowed to conduct the case and depose on behalf of the plaintiff?

On the side of the petitioner/plaintiff, the General Power of Attorney dated 08.12.2024 was filed along with the petition. No documents on the side of the respondents/defendants. Heard both sides.

5. Answer to Point :-

5.1. On hearing both sides and considering the pleas it is seen that the plaintiff has executed a General Power of Attorney dated 08.12.2024 appointing her son as a power agent to conduct the case and depose on her behalf. The main reason put forth by the petitioner is that the plaintiff is of old age and of ill health and he is well aware and is accustomed to the fact and circumstances of the case. Whereas on the side of the respondents it is contended that the plaintiff is only of 40 years of age and this petition is primary filed to prolong the proceedings and to harass the defendants.

5.2. On plain reading of the Order 3 Rule 2 and in virtue of the judicial pronouncements it is a well settled law that a party can be represented by power agent, who is recognized agent of the party as per Order 3 Rule 2 CPC but the question to be decided is whether the petitioner/power agent can be allowed to depose in case and instead of the plaintiff. It is also well settled principle that even though a power of attorney cannot be allowed to depose as a witness, there can be circumstances in which the power of attorney so appointed may be otherwise competent to be a witness to speak as to the facts or cause of action in the suit but the facts which are exclusively within the knowledge of the plaintiff cannot be deposed on his behalf. In the present case the power agent is the son of the plaintiff and he has stated in the affidavit that he is well aware of the facts and circumstances of the suit. Currently the suit is posted for trial and even though the power agent claims to have personal knowledge over the suit, still he cannot depose on behalf of the plaintiff instead of her for the acts done by her which are within the plaintiff's personal knowledge.

5.3. It is also contended by the power agent that the plaintiff is in ill health, in that case her evidence can be taken down by appointing an Advocate

Commissioner. It is also well settled law that if the party to the suit has not stated his own case on oath and does not offer himself to the cross examined by other side, the presumption would arise that the case set by him was not correct.

5.4. Hence in the light of the above said discussions, even though the power agent may be permitted to conduct the case on behalf of the plaintiff, he cannot be allowed to depose in place and instead of the plaintiff. Hence the petition is dismissed. No cost.

In the result, this petition is dismissed with no cost.

Dictated by me to the Steno Typist, transcribed by her corrected by me and pronounced in open court 23rd day of April 2025.

**District Munsif,
Mudukulathur.**

