

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.

District Munsif, Devakottai

Wednesday, the 20th day of April, 2022

I.A. 02/2021

in

O.S. No. 141//2013

Murugesan 56/2021,
S/o Adhinamilagi
(Through his wife and Power Agent
Manimegalai 51/2021)
Thrani Village, Sarugani,
Devakottai Taluk

Petitioner/Plaintiff

Vs

1. Selvi @ Seethalakshmi, 50/2021
W/o Sundaram
2. Lakshmanan, 68/2021
W/o Karuppaiah
3. Vellaikannu 58/2021
S/o Thanarasu
4. Irulappan 68/2021
S/o Nachiyappan,

Respondents/Defendants

This petition having been finally heard on 20.04.2022 in the presence of Mr. N. Sekar, the learned counsel for the petitioner/plaintiff and in the presence of Mr. A. Ganesan, learned counsel for the respondents/defendants and after perusal of the entire records and having stood over for my consideration till this day, this Court delivers the following:

ORDER

This is a petition filed under Order 3 Rule 1 and 2 read with Section 151 of Civil Procedure Code for appearance by recognized agent.

2. The averments set out in the petition/affidavit filed by the petitioner is as follows:

2.1 The Petitioner states that she is the Power Agent and the wife of the Petitioner/Plaintiff.

2.2 The Petitioner states that the suit has been filed for the relief of permanent injunction against the defendants. The petitioner states that her husband was a Military man and during his tenure in Military, he suffered paralyses of the his upper and lower limbs and he was also unable to speak; and was bedridden for a quite a long period of time. The petitioner states that in order to contest the case her husband had executed a general power of attorney in her favor in the presence of a notary public and prays to recognize her as his agent.

2.3 The Petitioner further states that it is just and necessary to allow this application and to recognize the power agent and it does not cause any prejudice to the respondents.

3. The averments set out in the counter filed by respondents are as follows:

3.1 The respondents denies that the petitioner is a military man and he does not

possess any qualification for it. The respondents further states that the petitioner didn't mention when he had suffered paralysis during the course of his tenure in Military and does not furnish any documentary evidences with respect to it. The respondents further states that the power of attorney executed in the presence of a notary public is a fabricated one. The respondents further states that the plaintiff is not willing to conduct the case since 2013 and trying to adopt dilatory tactics to drag the case wantonly and this present petition is liable to be dismissed with costs.

4. Now the point for consideration is, whether this petition for recognizing agent is to be allowed or not?

5. The power of attorney deed was filed along with the petition on the side of the petitioner and no documentary evidences were let in on the side of the respondent.

6. Both side arguments heard. Both side learned counsels have contended by reiterating the averments made in the petition, affidavit and counter.

7. On perusal of the records, it comes to know that, the suit has been filed for the relief of permanent injunction.

8. Section 101 of Indian Evidence Act lays down that the burden of proving a fact, rests on the party who substantially asserts the affirmative of the issue. The burden of proving a fact always lies on the person who asserts, until such burden is discharged, the opposite party is not to prove his case.

9) It is relevant to mention that in *Kritakant Glelani Vs. Mathuresh Nagar Co operative Housing Society Ltd 2008(1) GUJ LR 43*, the Hon'ble Court had stated

that a Power of Attorney holder can appear, plead and act on behalf of principal, but he cannot be a witness on behalf of principal and depose in place instead of principal.

10) It is not as if proof of title is akin to a state of mind or a conduct which is only in the personal knowledge of the title holder and cannot therefore be spoken to by others knowing of it. So it cannot be said that unless such title holder deposes, the factum of title does not get proved.

11) Further, in law, the non-examination of the title holder cannot confer title on the person disputing his/her title by way of acquiescence, estoppel or silence.

12) It is also pertinent to state that the petitioner have not produced any relevant documentary evidences to substantiate her claim of medical illness and his inability to appear before this Court.

13) **The shady ground upon which the petitioner/plaintiff try to rest the case would not help the petitioner. This Court does not find any merit in this application.**

Hence, this petition is dismissed. No order as to costs.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 20th day of April, 2022.

**District Munsif,
Devakottai**

Annexure:

List of witnesses on the side of the Petitioner/Plaintiff
NIL

List of documents on the side of the Petitioner/Plaintiff
NIL

List of witnesses on the side of the Respondents/Defendants
NIL

List of documents on the side of the Respondents/Defendants
NIL

**District Munsif,
Devakottai**