

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Friday, the 5th day of January 2024

I.A. No. 1/2023

in

Probate O.P. No. 227/2022

.....

R. Thiyagamohan

.. Petitioner

/vs/

1) L. Rajammal

2) L. Sekar,

3) L. Rani

4) L. Radha

5) L. Vasanthi

.. Respondents

This petition came before me for final hearing on 15.12.2023 in the presence of Thiru.S. Duraisaravanan, Advocate for the petitioner, and of Thiru.M. Muthusivasubramaniyan, Advocate for the respondents and upon hearing arguments on petitioner side and perusing the case records, this Court passed the following

ORDER

This is a petition under Order 3, Rule 2 and 151 CPC to recognize the Power Agent of the petitioner.

1) Averments in the petition in brief are as follows:

The petitioner filed the original petition to probate the 'Will' executed by his father late P. Ramasamy on 31.10.2019. Due to old age and business, the petitioner is unable to appear before the court. The Power Agent is aware of the petition properties and also regarding the family members of the petitioner as the Power Agent is

working for more than 35 years in the petitioner's company. The petitioner executed Power Deed to the Power Agent to conduct the probate petition. The respondents will not be prejudiced by permitting the power agent to represent the petitioner. Hence prays to allow the petition.

2) Averment in the counter statement filed by the 2nd Respondent and adopted by the Respondents 1, 3 to 5.

The petition is not maintainable in law. The petitioner has only stated that due to his old age is unable to appear before court. However the petitioner has not stated regarding whom he has appointed as Power Agent and has also mentioned about the details of the Power Deed. The petitioner alone could depose regarding facts within his personal knowledge and cannot appoint a Power Agent for the same. If the petitioner could not appear before court, the petitioner could take steps to appoint a Commissioner to examine him. The main petition is based on a 'Will'. Hence the petitioner alone could depose regarding the genuineness, enforceability and circumstances in which the Will was executed. While the petitioner states that he has appointed a Power Agent, the petitioner prays to permit him to appoint a Power Agent. Hence it is not clear as to whether the petitioner has appointed a Power Agent or whether the petitioner seeks permission to appoint a Power Agent. Hence the petition is liable to be dismissed.

3) No oral or documentary evidence produced on either side. Heard both side. Records perused.

4) **Point for determination :-**

- 1) Whether the petitioner is to be permitted to be represented through his Power Agent?
- 2) Whether the petition is to be allowed or not?

5) **Point and answer :-**

The petitioner is the petitioner in the probate petition. This petition has been filed to recognize the Power Agent of the petitioner. At the outset the learned counsel for the respondent would object the petition stating that the prayer sought for by the petitioner is to permit him to appoint Power of attorney which cannot be permitted under Order 3 Rule 2 of CPC. The petitioner has categorically stated in his affidavit that he has already appointed Power of Attorney. The petition also has been filed under Order 3 Rule 2 CPC to recognize the Power Agent. However due to clumsy drafting the prayer portion has been mentioned as seeking permission to appoint Power Agent. The affidavit and the petition when read-in-tandem it is clear that the petitioner is seeking to permit him to be represented through his power agent.

6) The learned counsel for the 2nd respondent would object the petition and stated that the petitioner has not stated in his affidavit regarding who is the power agent. However in the petition it has been clearly stated regarding who is the power agent and his address also has been mentioned. Moreover the power deed also has been produced along with this petition which will also make it clear who is the power agent, when it was executed and in what manner. Hence the objections of the learned counsel for the 2nd respondent regarding the manner of execution and who the power

agent is not sustainable. Last but not the least, the learned counsel for the respondent submitted that the main petition is only for probate and hence the power agent cannot depose on behalf of the petitioner. This petition is only to recognize the power agent and to permit him to conduct the main petition in the stead of the petitioner. As rightly pointed out by the learned counsel for the 2nd respondent the power agent cannot depose regarding the facts within the personal knowledge of the petitioner. For such matters the petitioner only can appear and adduce evidence. However the scope of the present petition is only regarding whether the power agent has to be recognized or not. Considering that the petitioner has stated his old age as a reason to not frequently appear before court and follow the proceedings and also considering that the petitioner has granted power to the power agent to conduct the case on his behalf, this court does not find any reason to refuse permission to the petitioner to permit him to conduct the case through the power agent. However the power agent will not be entitled to adduce evidence regarding the matters within the personal knowledge of the petitioner.

In the result, the petition is allowed. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 5th day of January 2024.

Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,
Srivilliputtur,
I.A. No. 1/2023
in
Probate O.P. No. 227/2022
ORDER (Web copy)
Date: 05.01.2024*