

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Civil Revision Petition (PD).No.4211 of 2014  
and M.P.No.1 of 2014

1.V.N.Devadoss

2.D.Anusha

.. Petitioners/Defendants 1 & 2

Vs.

1.Sivakami

2.The Sub Registrar

Sembium Sub Registrar Office

Sembium

Chennai

3.The Sub Registrar

Connur Sub Registrar Office

Connur, Chennai

... Respondents

Prayer:- Civil Revision Petition filed to set aside the fair and decreetal order dated 22.08.2014 made in I.A.No.1026 of 2014 in O.S.No.30 of 2012 on the file of District Munsif, Ambattur.

For Petitioners : Mr.R.BharathKumar

For Respondents : Mr.E.D.Sethupathi, for R1.  
No appearance for R2 and R3.

O R D E R

Heard both sides.

2. This Revision Petition has been filed challenging the impugned order passed in I.A.No.1026 of 2014 in O.S.No.30 of 2012 dated

22.08.2014, which petition was filed under Order III Rule 2 of the Code of Civil Procedure has been dismissed by the court below.

3. The learned counsel appearing for the petitioners would submit that the first respondent is the Plaintiff in suit in O.S.No.30 of 2012 for declaration that the sale deed dated 17.09.21959 in favour of Gurusamy Naidu in respect of the suit schedule of property as null and void, forged one and not binding on the plaintiff; to declare that the Will document dated 31.03.1962 executed by Gurusamy Naidu in favour of the 1<sup>st</sup> defendant is null and void, forged one and not binding on the plaintiff; to declare that the settlement deed document dated 15.12.2005 executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant in respect of the suit schedule of property as null and void, unenforceable and not binding on the plaintiff and for a permanent injunction restraining the defendants from alienating or encumbering the suit property set forth in the schedule against one V.N.Devadoss, A.Anusha, the Sub-Registrar, Sembium Sub-Register Office and the Sub-Registrar, Konnur Sub-Register Office, Konnur, Chennai. After the filing of the Written Statement by defendants 1 and 2/petitioners herein, they filed I.A.No.1026 of 2014 for recognising one B.R.Nandakumar, Power Agent of the defendants 1 and 2 on their behalf and to permit the Power Agent to give evidence and prosecute the case. In the said application, it is stated as follows:-

"3. In these circumstances, I pray that this Hon'ble Court may be pleased to permit the Power Agent, myself, B.R.Nandakumar, to give evidence and prosecute the case further and render justice."

That application in I.A.1026 of 2014 was dismissed, against which, the present Civil Revision Petition is filed.

4. The learned counsel appearing for the petitioners submits that the petitioners appointed B.R.Nandakumar as Power Agent to mark the documents, since, as per Section 71 of the Evidence Act, those documents are public documents, viz., registered sale deed and other documents, if the attesting witness denies or does not recollect the execution of the document, the execution of document may be proved by other evidence. According to the learned counsel, in the present case, the trial court ought to have admitted the said Power Agent to give evidence as witness. To substantiate his argument, the learned counsel relied on the decisions reported in (2008) 7 MLJ 646 [John Kennady @ Murugan Vs. V.Bhagavathi, rep. By her Power of Attorney P.Cholaraj] and prayed for setting aside the impugned order and for allowing this Civil Revision Petition.

5. Resisting the above contentions, the learned counsel appearing for the first respondent submits that the petition in I.A.No1026 of 2014, filed by the Power Agent, B.R.Nandakumar seeking to give evidence and prosecute the case, itself is not maintainable. Further, he would submit that the Power Agent is not entitled to let his evidence due to the reason that he would not have personal knowledge about the documents to be marked. To substantiate his argument, learned counsel for R1 relied upon the decisions reported in ***AIR 2005 SCC 439 [Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others]*** and the decision reported in ***(2010) 10 SCC 512 [Man Kaur (dead) by Lrs., Vs. Hartar Singh Sangha]*** and prayed for dismissal of this Civil Revision Petition.

6. I have considered the submissions made on both sides and perused the typed set of papers.

7. The first respondent herein as Plaintiff prayed for the following reliefs in the Plaint in O.S.No.30 of 2012:-

“(i). for declaration that the sale deed dated 17.09.21959 in favour of Gurusamy Naidu in respect of the suit schedule of property as null and void, forged one and not binding on the plaintiff;

(ii). to declare that the Will document dated 31.03.1962 executed by Gurusamy Naidu in favour of the 1<sup>st</sup> defendant is null and void, forged one and not binding on the plaintiff;

(iii). to declare that the settlement deed document dated 15.12.2005 executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant in respect of the suit schedule of property as null and void, unenforceable and not binding on the plaintiff and

(iv). for a permanent injunction restraining the defendants from alienating or encumbering the suit property set forth in the schedule against one V.N.Devadoss, A.Anusha, the Sub-Registrar, Sembium Sub-Register Office and the Sub-Registrar, Konnur Sub-Register Office, Konnur, Chennai.”

8. Now, the points to be decided herein is Whether B.R.Nandakumar, who is the Power Agent could be permitted to give evidence and prosecute the case.

9. From a reading of the typed set of papers, it is seen that one B.R.Nandakumar, the Power Agent of V.N.Devadoss and D.Anusha, sworn the affidavit in I.A.No.1026 of 2014 seeking the relief as already stated

above. For considering the contentions raised on the petitioners side, at this juncture, it is appropriate to incorporate Order III Rule 2 of Code of Civil Procedure herein:-

“Recognised agents- The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts. ”

10. Admittedly, since the said B.R.Nandakumar is only the Power Agent of defendants 1 and 2, he is not the party to the proceedings. Further more, it is pertinent to note that whether the Power Agent could be recognized in the court proceedings as evidence to assist the defendants in conducting the case.

11. There is a specific averment in the petition in I.A.No.1026 of 2014 in paragraph Nos.2 and 3 as under:-

"2. I am entitled to give evidence on behalf of the petitioners in pursuance of the power deed dated 03.03.2014 executed by them and that powers is still in force and in addition I am aware about the facts of the case and no prejudice will be caused to the respondent if I give evidence.

3. In these circumstances, I pray that this Hon'ble Court may be pleased to permit the Power Agent, myself, B.R.Nandakumar, to give evidence and prosecute the case further and render justice."

In such circumstances, as per the dictum of the Apex Court, the Power Agent viz., B.R.Nandakumar filed petition in I.A.No.1026 of 2014 on behalf of the defendants 1 and 2 viz.,the Principal, cannot depose the averments in the plaint as he could not have personal knowledge of the Plaint averments and details. In this regard, it is appropriate to incorporate the decision relied on by the counsel for the petitioners herein/defendants 1 and 2 in the case of **John Kennady @ Murugan Vs. V.Bhagavathi, rep. By her Power of Attorney P.Cholaraja** reported in **(2008) 7 MLJ 646, wherein, in paragraph Nos.5 and 6,** wherein it is pointed out as under:-

"5. I am unable to accept the contention put forth by the learned counsel for the petitioner. As rightly pointed out by the trial court, the suit itself has been filed by the Power of Attorney after obtaining leave from the Court. At that point of time, there was no objection raised by the petitioner/defendant. Moreover, the proof affidavit has been filed by the Power of Attorney on behalf of the plaintiff. Therefore, as found by the trial court, in the proof affidavit, he has referred to certain registered documents executed by the parties prior to the date of execution of the Power of Attorney. Further, there is no legal bar for a power agent to give evidence on behalf of the principals and how far that evidence is valid is to be considered only at the time of disposing of the suit.

6. In the decision relied on by the learned counsel for the petitioner namely Janki Vashdeo Bhojwani Vs. Indusind Bank Limited (supra), the Honourable Supreme Court has only stated that the power of attorney holder has rendered some "acts" in pursuance to power of attorney and he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Therefore, in this case, the power of attorney being the plaintiff has only filed the proof affidavit and relied on certain registered documents which has been executed by the parties. Therefore, he is only going to depose in

respect of the documents which are in existence and it is always open to the petitioner/defendant to cross examine the power agent with regard to the documents.”

But the above decision cited by learned counsel for the petitioners herein/defendants 1 and 2 is not applicable to the case on hand. The suit in O.S.No.30 of 2012 was filed on 03.01.2012 by the first respondent herein viz., Sivakami. However, the Power of Attorney was executed on 03.03.2014 and the application in I.A.No.1026 of 2014 has been filed by the Power Agent-Nandakumar to permit him to give evidence and to prosecute the case. The court below pointed out that the Power Agent may not have personal knowledge or awareness about the plaint averments, which, in my considered view, is sustainable even though the same aspect could be decided at the time of trial. It is relevant to note that even while filing Written Statement in O.S.No.30 of 2012, the Power Agent was not appointed by defendants 1 and 2.

12. As regards the decision reported in **(2010) 10 SCC 512 [Man Kaur (dead) by Lrs., Vs. Hartar Singh Sangha]**, relied on by the learned counsel for the first respondent, in paragraph Nos.15 and 18, it is stated as under:-

"15. We may next refer to two decisions of this Court which considered the evidentiary value of the depositions of the attorney-holders. This Court in Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., held as follows: (SCC pp.222-224, paras 13, 17-18 & 21)

"13. Order 3 Rule 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word 'acts' employed in Order 3 Rule 1 and 2 CPC confines only to in respect of 'acts' done by the power-of-attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

18. We may now summarise for convenience, the petition as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of

attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be

examined. ....”

Thus it is clear that the Power Agent cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

13. As regards the another decision relied on by the counsel for the first respondent in the case of ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others*** reported in ***AIR 2005 SC 439***, it is stated in paragraph Nos. 15 and 18 as under:-

“15. ....where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

18. It was held that the word “acts” used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a Commissioner for recording his

evidence may be issued under the relevant provisions of the CPC.”

From the above principles of law, it is made clear that only the defendants 1 and 2 in the suit have to get into the Witness Box and give evidence, but not the Power of Attorney, since he is not competent to depose before the court for the reason that he would not have personal knowledge.

14. In view of the foregoing discussion, this court finds no interference in the impugned order and as such, the civil revision petition is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected M.P.No.1 of 2014 is closed.

17.12.2015

nvsri  
To

- 1.The Sub Registrar, Sembium Sub Registrar Office, Sembium  
Chennai
- 2.The Sub Registrar,Connur Sub Registrar Office,Connur, Chennai
3. The District Munsif, Ambattur.

R.MALA,J.

nvsri

C.R.P.(PD).No.4211 of 2014

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