

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.24 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.11.2014 in I.A.No.514 of 2014 in O.S.No.125 of 2007 on the file of Senior Civil Judge, Jagtial.

2. The petitioner herein is the General Power of Attorney of the plaintiff in the said suit.

3. The said suit had been filed by the principal of petitioner for declaration of his title to the plaint schedule property, for recovery of possession thereof, and for a mandatory injunction against the respondents.

4. After the suit was filed, it appears that on 25.08.2010, a Special Power of Attorney was executed by the plaintiff in favour of the petitioner, who is none other than his own brother in law, on the ground that he was suffering from continuous ill-health authorizing the petitioner not only to appear and appoint counsel, file written statements, plaints, petitions, counters, etc., in the suit, but also to give evidence in the suit. In view of the said Special Power of Attorney, the petitioner had in fact examined himself as PW.1 and also marked certain documents in the year 2011. The matter was further

coming up for further evidence of the plaintiff.

5. At that stage, I.A.No.514 of 2014 was filed by respondents not to allow the petitioner, who is the General Power of Attorney holder of the plaintiff, to give evidence on behalf of petitioner contending that a Division Bench of this Court in **T.D. Dayal v. Sri Madupu Harinarayana and others**^[1] had declared that a General Power of Attorney cannot even give evidence on behalf of a party to proceedings. In the said application it was contended that if the plaintiff was still suffering from ill-health, he may be permitted to give evidence on commission.

6. The petitioner opposed the said application.

7. By order dt.20.11.2014, the Court below allowed the said application. It observed that the plaintiff had filed the suit for declaration of title, recovery of possession and also mandatory injunction, and nowhere in the plaint it was indicated that the petitioner/Power of Attorney holder had done any act either of purchasing the property or of obtaining mutation pursuant to the Power of Attorney; that in view of the decision of the Supreme Court in **Janki Vashdeo Bhojwani v. Indusind Bank Ltd.**^[2], a Power of Attorney holder cannot depose for the principal for the acts done by the principal and not by him, and also cannot depose for the principal in respect of matters which only the principal can have a personal knowledge and in

respect of which the principal is entitled to be cross-examined; and in this view of the matter, the petitioner cannot be permitted to give evidence on behalf of plaintiff since there is no material to hold that he had done anything in relation to the suit property acting under the Special Power of Attorney.

8. Challenging the same, the present Revision is filed.

9. Heard Sri S. Kondapalli, counsel for petitioner; and Sri K. Venumadhav, counsel for respondents.

10. Although the counsel for petitioner sought to contend that evidence has already been recorded by the Court below of the Power of Attorney/petitioner herein; that the whole process would have to be now annulled in view of this order; no objection was raised at the time when the Power of Attorney was examined as PW.1; and therefore, this petition needs to be rejected. I am unable to agree with the said submissions.

11. The Supreme Court in **Janki Vashdeo Bhojwani** (2 supra), had held that a Power of Attorney holder cannot depose for the principal for the acts done by the principal and not by him; and that he also cannot depose for the principal in respect of matters which only the principal can have personal knowledge and in respect of which the

principal is entitled to be cross-examined.

12. Since there is no averment in the plaint that the petitioner/Power of Attorney holder had done anything in relation to the property pursuant to the Special Power of Attorney, and since admittedly the petitioner had entered into the picture as Power of Attorney holder three years after the suit had been filed, he cannot be said to have personal knowledge of the matters involved in the suit, entitling him to give evidence thereon. Therefore, necessarily the evidence of petitioner which was already recorded needs to be eschewed from consideration giving liberty to the plaintiff to examine himself on commission in the event he is suffering from ill-health.

13. Therefore, I do not find any merit in the Revision and it is accordingly dismissed, granting liberty to plaintiff in the suit to give evidence either in court or in commission in the event he is shown to be suffering from ill-health. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.09.2015

Ndr/*

^[1] 2013 (6) ALD 734

^[2] AIR 2005 SC 439