

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.948 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, 1949 is filed by the petitioner-plaintiff challenging the order dated 04.02.2016, passed in I.A. No.85 of 2016 in Original Suit No.255 of 2013 by the Principal Junior Civil Judge, Nizamabad, (for short, 'the trial Court'), wherein the trial Court dismissed the petition filed by Tum Jagan, general power of attorney, on behalf of his principal *i.e.* petitioner-plaintiff, under Order III Rule 2 of C.P.C. to file the affidavit as examination-in-chief under Order XVIII Rule 4(2) of C.P.C. and to depose and pursue the Court proceedings by him on behalf of the petitioner-plaintiff.

Smt. K. Guravamma, petitioner-plaintiff filed a suit in O.S. No.255 of 2013 for perpetual injunction against the respondents-defendants, before the trial Court. Subsequently, during pendency of the suit, as she was suffering from left ankle joint injury, executed general power of attorney in favour of Tum Jagan, authorizing him to act on her behalf and, hence, prayed to allow the petition.

The respondents-defendants filed counter specifically denying the right of the petitioner-plaintiff to examine her general power of attorney as a party to the suit, while contending that Order III Rule 2 of C.P.C. speaks as to who is a recognized agent and it does not permit a general power of attorney to give evidence on behalf of the petitioner-plaintiff and prayed for dismissal of the petition.

The trial Court dismissed the petition on the ground that Order III Rule 2(a) of C.P.C. does not permit and recognize the general power of attorney as a witness on behalf of the party to a suit; at the most, the general power of attorney can represent and appear on behalf of his principal but cannot be permitted to step into the shoes of the petitioner-plaintiff to give evidence.

The petitioner assailed the impugned order on various grounds mainly contending that Order III Rule 2 permits the general power of attorney to give evidence and to act on behalf of his principal but the trial Court did not consider the same in proper perspective, illegally rejected permission to examine the general power of attorney as a witness in place of the petitioner-plaintiff, thereby committed an error; finally, prayed to allow the Revision Petition.

During course of argument, Sri T.V. Kalyan Singh, learned counsel for the petitioner-plaintiff, laying emphasis on the decisions of this Court in ***Ismath Ahmedizade Mahmoodi Abidi Vs. Kurshidunnisa Begum***^[1], ***Durgampudi***

Padmamma Vs. Kallutla Kotamma and another^[2], ***G. Venkatamma and another Vs. Dr. Vijay Chandra Mathur***^[3] and ***Ranga Lingaiah Vs. Sajjala Venkat Reddy***^[4] requested this Court to grant permission to examine the general power of attorney in place of petitioner-plaintiff since the probative value of evidence of the witnesses can be examined only at the time of pronouncement of judgment.

Per contra, Sri M. Raja Malla Reddy, learned counsel for the respondents, while contending that the word 'acts' used under Order III Rule 2 of C.P.C. does not include deposing by general power of attorney on behalf of the petitioner-plaintiff, placed reliance on the decisions of the Apex Court in ***Janki Vashdeo Bhojwani Vs. Indusind Bank Limited***^[5] and ***S. Kesari Hanuman Goud Vs. Anjum Jehan and others***^[6].

The dispute before this Court is whether a general power of attorney can be examined in place of petitioner-plaintiff in a suit?

Admittedly, the suit was filed in the year 2013 and the petitioner-plaintiff executed the general power of attorney in favour of Tum Jagan on 26.11.2015 authorizing him to look after the pending litigation, prefer Appeal, Revision there against, if need be, and sign on the memos, deposit and withdraw cash etc., before the Court since she sustained left ankle injury, unable to attend the Court on the date of adjournments.

The suit was filed for a bare injunction to restrain the respondents-defendants and their men from interfering with the petitioner's peaceful possession and enjoyment of the property while contending that she is in possession and enjoyment of the suit schedule property; by the date of filing suit, the petitioner-plaintiff herself verified the pleadings and the facts stated therein were within her knowledge but due to her ill-health *i.e.*, sustaining fracture to her left ankle knee, she was unable to move from her bed to attend the trial Court in connection with the above suit. Therefore, she authorized Tum Jagan, general power of attorney to look after her case. As per Clause 2 of the general power of attorney, the petitioner-plaintiff authorized Tum Jagan to act and depose on her behalf in O.S. No.255 of 2013. The petition before the trial Court is filed only on the ground that she could not move from her bed due to her left ankle joint injury and she was advised to take bed rest for a period of 45 days *i.e.* from 23.11.2015 to 10.01.2016 and, in support of her contention, produced a medical certificate. Therefore, Tum Jagan, general power of attorney sought permission to depose on behalf his principal.

Admittedly, the cause shown by the petitioner-plaintiff for execution of general power of attorney is sustaining fracture to her left ankle joint; if really she is unable to move from bed due to her injury, nothing prevented her to apply for appointment of an

Advocate Commissioner to record her evidence. The alleged high handed acts of the respondents-defendants to interfere with her possession and enjoyment of the property, which gave rise to cause of action, are within her exclusive knowledge and she alone is competent to testify the same. If really, the general power of attorney is also posted with the said facts, he is a competent witness to speak before the Court to corroborate the evidence of the petitioner-plaintiff, if any examined. Leave alone the facts of the case, the word 'acts' contemplated under Order III Rule 2 of C.P.C. is only for limited purpose and it does not include deposing by a general power of attorney on behalf of his principal.

Sri T.V. Kalyan Singh, learned counsel for the petitioner, mostly relied on a decision of this Court in ***Ranga Lingaiah***⁴, wherein this Court held that if a fact is known to the general power of attorney, personally, he is always at liberty to give evidence either as a general power of attorney or in his personal capacity. In ***G. Venkatamma***³, this Court while deciding the probative value of the witness examined on behalf of the land lady, held that the land lady need not be examined when her elder son who is looking after the affairs of the family is examined.

Learned counsel appearing for the petitioner-plaintiff also relied on another decision of this Court in ***Durgampudi Padmamma***², wherein this Court in Para 16 held that the general power of attorney is competent to testify before the Court about the facts within his knowledge and his evidence cannot be brushed aside on the ground that the sole plaintiff is not examined. In ***Ismath Ahmedizade***¹, this Court in Para 11 held that the general power of attorney cannot be permitted to represent a party in the suit and depose on his behalf but it is always open to the general power of attorney to appear as a witness in his personal capacity, to speak about the facts which are in his personal knowledge.

In ***Ranga Lingaiah***⁴ this Court, deciding about the competency of a general power of attorney, took a view that the general power of attorney can be examined as a witness either as a general power of attorney or in his personal capacity but in the other decision, this Court held that he can be examined only as an independent witness on behalf of the plaintiff.

In the other decisions, the probative value of the evidence of general power of attorney as a witness examined before the Court was examined by the courts. Only the decision of this Court in ***Ranga Lingaiah***⁴, is in favour of the petitioner but the other decisions are against his contention. The principle laid down in the above decision has no direct application to the present facts.

Sri M. Raja Malla Reddy, learned counsel for the respondents-defendants, placed reliance on a decision of the Apex Court in ***Kesari Hanuman Goud***⁶, wherein in Para 13 it was held as follows:

“It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules [1](#) and [2](#) Code of Civil Procedure empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of 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 performed any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined.”

Similar principle is laid down by the Apex Court in ***Vidhyadhar Vs. Manikrao and another***⁷, ***Janki Vashdeo Bhojwan***⁵, ***M/s. Shankar Finance and Investment Vs. State of A.P. and others***⁸ and ***Man Kaur Vs. Hartar Singh Sangha***⁹. In view of the principles laid down in the above decisions, the word ‘acts’ contemplated under Order III Rule 2 of C.P.C. does not include deposing by general power of attorney in the place and instead of the principal. In other words, if the general power of attorney has rendered some acts in pursuance of execution of general power of attorney, he may depose for such acts as a witness on behalf of the petitioner-plaintiff.

In the present case, general power of attorney was executed almost 2 years after filing of the suit and to prove any act subsequent to or in pursuance of execution of general power of attorney, he can depose before the Court only as a witness not as a plaintiff or in the place of plaintiff to substantiate the case of the plaintiff. Therefore, by applying the principle laid down by the Apex Court in the decisions referred supra, I find no ground to interfere with the impugned order, by exercising power under Article 227 of the Constitution of India, and thereby the Revision is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed confirming the decree and decretal order dated 04.02.2016, passed in I.A. No.85 of 2016 in O.S. No.255 of 2013 by the learned Principal Junior Civil Judge, Nizamabad.

In consequence, miscellaneous petitions, if any, pending in this Revision shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 07-04-2016.

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[\[1\]](#) 2002 (6) ALD 101

[\[2\]](#) 2015 (3) ALD 490

[\[3\]](#) 2014 (1) ALD 347

[\[4\]](#) 2013 (4) ALD 580

[\[5\]](#) AIR 2005 SC 439

[\[6\]](#) 2013 (4) ALD 150 (SC)

[\[7\]](#) 1999 SC 1441

[\[8\]](#) AIR 2009 SC 422

[\[9\]](#) 2010 (10) SCC 512