

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2965 of 2011

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful 1st defendant, is directed against the order dated 29.06.2011 of the learned I Additional Junior Civil Judge, Visakhapatnam passed in I.A.No.131 of 2011 in O.S.No.513 of 2011 filed under Rule 32 of Civil Rules of Practice read with Section 151 of the Code Civil Procedure, 1908 requesting to permit the General Power of Attorney Holder ('the GPA Holder' for brevity), namely S.N. Padmini, to appear and act on her behalf in the aforementioned suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('the 1st defendant' for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff' for brevity) and perused the material record.

3. The case of the 1st defendant in support of her request for permission to be represented by her GPA Holder in the aforementioned suit, in brief, is as follows:

The plaintiff filed the suit for a declaration that the Deed of Cancellation by the 1st defendant vide Document No.230/2011 dated 23.05.2011, registered in the office of the Joint Sub-Registrar-I, Visakhapatnam is null, void and unenforceable. The 1st defendant had cancelled the registered GPA issued in favour of the plaintiff on the ground that the plaintiff had committed breach of trust and had acted adverse to the interests of the 1st defendant and her property. After cancellation of the registered GPA in favour of the plaintiff, the 1st defendant had executed a registered General Power of Attorney in favour of the present GPA Holder i.e., S.N. Padmini and the said

G.P.A. in favour of S.N. Padmini is registered in the office of the Joint Sub-Registrar-I, Visakhapatnam as Document No.231/2011 dated 23.05.2011. The 1st defendant authorized her said GPA Holder to represent her in matters relating to her property mentioned in the said document and also in cases related to the said property. In view of the said fact, the instant application is filed by the 1st defendant requesting to accord permission to her GPA Holder, S.N. Padmini, to appear and act on her behalf in the above mentioned suit. The notarised true copy of the said registered GPA dated 23.05.2011 is filed along with the application.

4. The case in the counter of the plaintiff, in brief, is as follows:

The material allegations in the affidavit of S.N. Padmini, who is said to be the GPA Holder of the 1st defendant, are all false. The affidavit filed by her does not disclose any valid grounds; the application is not maintainable. The 1st defendant gave a false statement before the Joint Sub-Registrar-I, Visakhapatnam by claiming that she is a resident of Door No.13-9-10, Dandu Bazar, Visakhapatnam. However, the 1st defendant had never resided in the said premises; and, she is also not residing in the said premises. Hence, the GPA executed in favour of S.N. Padmini is itself illegal and hence, she has no authority to represent the 1st defendant in the suit. Since the executant of the document i.e., the 1st defendant had made a false statement in the document, the Power Attorney is not valid and consequently the interlocutory application filed seeking permission for the GPA Holder to represent her is liable to be dismissed. The deponent i.e., S.N. Padmini, in her affidavit did not state that the Power of Attorney is subsisting, though such a statement is a mandatory requirement as per the provision of Rule 32 of the Civil Rules of Practice. The original of registered Power of Attorney dated 23.05.2011 is not filed into the Court; even a certified copy of the same

is not filed into the Court. Since the deponent has not filed a properly authenticated copy, the same cannot be recognized as a valid Power of Attorney. Therefore, S.N. Padmini cannot be recognized as a duly appointed Agent of the 1st defendant. Hence, the said S.N. Padmini cannot be permitted to appear and act on behalf of the 1st defendant and represent her in the suit. The cancellation of the Power of Attorney in favour of the plaintiff is illegal. The claim of S.N. Padmini that she is authorised to represent the 1st defendant in the suit as well as in the interlocutory application is denied. It is not disclosed by the deponent - S.N. Padmini as to how the 1st defendant has got knowledge of the present suit and hence, it is not known whether the 1st defendant had really authorized S.N. Padmini, at all, inasmuch as any amount of fraud is being played by the 2nd defendant through the deponent S.N. Padmini as he is her paramour and illegal bigamous husband and as they both are leading adulterous life, as the 2nd defendant is having a wife living. Hence, the application may be dismissed.

5. At the hearing before the Court below, no oral and documentary evidence was adduced. On merits, and by the order impugned, the Court below had dismissed the application. Therefore, the 1st defendant had filed this revision.

6. The learned counsel for the 1st defendant, while reiterating the case of the 1st defendant, which is already stated supra, would further contend as follows:

By executing a registered General Power of Attorney dated 23.05.2011, the 1st defendant had authorised her sister to represent her in all the matters relating to the property mentioned in the said document and also in cases related to the said property. However, the

Court below had erroneously dismissed the application by making incorrect observations. The Court below had erroneously observed that as per the recitals in the registered General Power of Attorney dated 23.05.2011, the 1st defendant is very much a resident of Visakhapatnam. Further, the Court below simply extracted the contentions of the plaintiff and accepted the same and had erroneously held that there are no tenable grounds to permit the GPA holder, S.N. Padmini, to represent the 1st defendant in the suit proceedings. The Court below has erroneously dismissed the application by merely recording the contentions of the plaintiff in the counter without recording any findings much less reasoned findings. The Court below ought to have adverted to the contentions of the 1st defendant also and ought to have passed a reasoned order after taking into consideration the submissions of the 1st defendant also. The Court below ought to have seen that the address given by the 1st defendant in the Deed of Cancellation, by which the General Power of Attorney, which is challenged in the suit, was cancelled and the address that was given in the General Power of Attorney executed in favour of S.N. Padmini is one and the same. The apprehension of the plaintiff that the 1st defendant is avoiding to receive summons in the suit without disclosing her address is wrongly accepted by the Court below. The Court below ought to have seen that since the 1st defendant has come to know about the suit, she had instructed the GPA holder to enter appearance in the suit on her behalf as her GPA holder. The Court below ought not to have accepted unfounded and erroneous apprehension of the plaintiff, when the 1st defendant herself got filed an application under Rule 32 of the Civil Rules of Practice seeking permission to enter appearance through her GPA holder. The order impugned is unsustainable.

7. On the other hand, the learned counsel for the plaintiff while

supporting the orders of the Court below had reiterated the contentions urged in the counter of the plaintiff filed in the said application.

8. I have bestowed my attention to the facts and the submissions of both the learned counsel.

9. The General Power of Attorney executed by the 1st defendant in favour of her sister S.N. Padmini is a registered document. The affidavit of the said GPA holder filed in support of the application discloses that a Notarised true copy of the registered General Power of Attorney is filed before the trial Court along with the said interlocutory application. Since a copy thereof is not filed before this Court, it is not possible to answer the question whether it is a properly authenticated copy or not. A perusal of the copy of the registered Power of Attorney filed before this Court, though it is not an exact copy of the copy filed before the Court below, would show that the GPA Holder S.N. Padmini is authorized to sign the pleadings and do all the necessary acts, including appointment of Advocates in matters pending before any Courts or authorities. Along with the application for permission to enter appearance by the GPA Holder, the affidavit of the 1st defendant is not filed, but only the affidavit of S.N. Padmini, who is said to be the GPA Holder appointed under registered GPA dated 23.05.2011 is filed. It is not specifically stated in the said affidavit that the said power of attorney is subsisting though it is stated in her affidavit that she was authorized to represent the 1st defendant. A plain perusal of the impugned order of the Court below would show that the Court below did not advert, at all, to the contentions of the 1st defendant, but had only noted that the 1st defendant is a resident of Visakhapatnam and then recorded the contentions of the plaintiff and then went on to say that the Court is satisfied with the contentions of the plaintiff and that it is of the opinion that there are no tenable grounds to permit the GPA Holder to represent the 1st defendant in the suit proceedings. The

grievance of the 1st defendant is that her contentions were not at all adverted to in the order and that no valid reasons are assigned in support of the conclusions arrived at by the Court below. In view of the complexity and intricacies of the contentions, the Court below ought to have passed a reasoned order after adverting to the contentions of both the sides. As the order of the Court below does not depict any valid reasons in support of the finding that there no tenable grounds for according permission and in view of the further fact that after the cancellation of the Power of Attorney in favour of the plaintiff, the Power of Attorney in favour of S.N. Padmini is said to have been executed and that the address of the 1st defendant mentioned in both the Powers of Attorney is the same, the matter requires a detailed examination, afresh, by the Court below, in the well considered view of this Court. Be it noted that, as a rule the Court would not insist that the affidavit of the principal shall be filed with the application filed under Rule 32 of the Civil Rules of Practice. Nevertheless for the reasons aforementioned and in view of the contentions and rival contentions, this Court finds that it would be just and fair to remit the matter to the Court below to give an opportunity to the 1st defendant to file her affidavit, if she so desires and is so advised, in support of her request to be represented by her G.P.A holder S.N. Padmini and/or a better affidavit of her GPA holder as she chooses, before her request is reconsidered by the Court below in accordance with the facts and law.

Viewed thus, this Court finds that this revision can be disposed of with appropriate directions.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 29.06.2011 is set aside. However, I.A.No.131 of 2011 in O.S.No.513 of 2011 is remitted to the Court below for *de novo* disposal on merits and in strict accordance with the procedure established by law, however, after giving an opportunity to the 1st defendant to file her affidavit, if she so desires or so advised and/or the

affidavit of S.N. Padmini with necessary averments in due compliance with the legal requirements in support of her request to permit her to be represented by her GPA Holder S.N. Padmini, who was said to have been appointed vide registered GPA dated 23.05.2011. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

10.06.2016.
Msr