

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2685 OF 2017

O R D E R

The petitioners are the fourth and eighth defendants in O.S.No.324 of 2011 on the file of the learned XIV Additional District Judge, Ranga Reddy District at L.B.Nagar. They filed I.A.No.1960 of 2016 therein under Order 18 Rule 3-A CPC praying that the evidence tendered by the agent of the plaintiffs (P.W.1) be eschewed. By order dated 23.01.2017, the trial Court dismissed the said I.A. Aggrieved thereby, they filed this revision under Article 227 of the Constitution.

By order dated 23.06.2017, this Court observed that the order under revision requires examination as P.W.1 came into the picture in 2016 under a General Power of Attorney of the year 2010, whereas the transactions in question dated back to the 1980s and opined that P.W.1 could not be examined *prima facie* in the context of the said transactions as he would have no personal knowledge thereof and accordingly granted interim stay of further proceedings in the suit.

CRPMP No.4481 of 2017 was filed by third parties to the CRP seeking to be impleaded claiming that they were already added as plaintiffs 7 to 13 in O.S.No.324 of 2011. The implead petition was ordered by this Court on 04.08.2017. CRPMP No.4482 of 2017 was filed by the newly impleaded respondents 148 to 154 to vacate the stay order granted by this Court on 23.06.2017.

As comprehensive arguments were advanced by Sri S.R.Mahajir, learned counsel for the petitioners, and Sri V.L.N.G.K.Murthy, learned senior counsel appearing for Sri Ch.Koteswar Rao, learned counsel for the newly impleaded respondents 148 to 154, the matter is taken up for final disposal.

It appears that O.S.No.324 of 2011 was initially filed by six plaintiffs. The prayer in the said suit was to declare 107 registered documents as null and void and to grant a permanent injunction restraining defendants 1 to 144 from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit schedule property and from alienating the same to third parties. The documents in question ranged from the years 2005 to 2011.

While so, it appears that respondents 148 to 154 herein were impleaded in the suit as plaintiffs 7 to 13, by order dated 01.04.2016 passed in I.A.No.893 of 2016 in O.S.No.324 of 2011. An amended copy of the plaint was filed thereupon in the suit reflecting their names as plaintiffs along with the original plaintiffs 1 to 6. The petitioners herein, the fourth and eighth defendants, are stated to have contested the implead petition in I.A.No.893 of 2016 filed in the suit. Surprisingly, the fourth and eighth defendants then filed I.A.No.1960 of 2016 in the suit, in August, 2016, long after the impleadment of plaintiffs 7 to 13, but they did not choose to show them as parties to the said I.A. This I.A., as already stated *supra*, was filed by them to eschew the evidence tendered by P.W.1, the agent of plaintiffs 1 to 6. Significantly, they also filed I.A.No.1961 of 2016 in the suit seeking re-call of the very same witness, P.W.1, for cross-examination by them. This I.A. was allowed by the trial Court. In effect, the fourth and eighth defendants, on the one hand, sought eschewing the evidence of P.W.1 but, on the other, they sought an opportunity to cross-examine him.

Perusal of the order under revision reflects that the trial Court took note of the contention of the fourth and eighth defendants in the suit that a General Power of Attorney holder could not depose on

behalf of the principals, plaintiffs 1 to 6, and observed that P.W.1 was none other than the eighth plaintiff who was added in the suit. In effect, P.W.1 was not a third party to the suit but was himself a plaintiff in his individual capacity. Plaintiffs 1 to 6 had alienated the suit property in favour of plaintiff No.7 company under a registered agreement of sale-cum-General Power of Attorney dated 19.04.2010 and the eighth plaintiff was the General Power of Attorney holder of the seventh plaintiff company. The case law cited by the fourth and eighth defendants in support of their contention was therefore held inapplicable to the case. The trial Court also took note of the fact that I.A.No.1961 of 2016 by them to re-call P.W.1 for the purpose of their cross-examination had been allowed on 17.01.2017 and, accordingly, permitted them to cross-examine P.W.1. I.A.No.1960 of 2016 was therefore held to be not maintainable.

This Court granted interim stay of further proceedings in the suit being under the impression that P.W.1 was only a General Power of Attorney Holder and was examined in the context of his principals' transactions, of which he had no knowledge. However, as rightly pointed out by the trial Court, in the context of the case law cited, a General Power of Attorney holder can depose for the principal only in respect of acts which he had rendered pursuant to the power of attorney and cannot depose for the principal in relation to the acts done by such principal and not by him. Therefore, the evidence of P.W.1 would necessarily have to be within the ambit of the aforestated legal principle.

Though Sri S.R.Mahajir, learned counsel, would contend that plaintiffs 1 to 6 necessarily have to speak of the transactions dating back to the 1980s in favour of his clients and that P.W.1, having

come into picture long thereafter, cannot speak of the same, this Court finds merit in the submission of Sri V.L.N.G.K.Murthy, learned senior counsel, that it is for the plaintiffs to decide as to who would be examined on their behalf. P.W.1, being the eighth plaintiff in the suit, and the General Power of Attorney holder of the seventh plaintiff company, chose to be examined as the first witness. If plaintiffs 1 to 6 do not choose to enter into the witness box, it is their choice and depending upon the circumstances of the case, it is for the trial Court to draw an adverse inference from their failure to do so, if warranted. A plaintiff cannot be compelled to give evidence against his will, but such failure may lead to an adverse inference being drawn in a fit case. As the trial Court was fully conscious of the legal norm that a General Power of Attorney holder cannot speak of the acts of the principal which are not within his knowledge or domain, there is no necessity to clarify that P.W.1's evidence would have to be viewed and considered in the context thereof. As the petitioners herein, the fourth and eighth defendants in the suit, themselves sought an opportunity to cross-examine P.W.1 upon his recall, it is not open to them to ask for eschewing of his evidence at this stage, irrespective of the nature thereof, in the context of the aforestated legal principle.

The civil revision petition is therefore devoid of merit and is accordingly dismissed. Interim stay dated 23.06.2017 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

18th AUGUST, 2017

PGS