

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1148 of 2017

ORDER:

This Civil Revision petition, under Article 227 of the Constitution of India, is directed against the order, dated 09.12.2016, of the learned Senior Civil Judge, Vikarabad, Ranga Reddy District, passed in I.A.No.236 of 2013 in O.S.No.131 of 2013.

2. I have heard the submissions of *Sri K. Laxmi Manohar*, learned counsel for the petitioner/ plaintiff, and of *Sri Suresh Bhaktula*, learned counsel for the respondent/ defendant. I have perused the material record.

3. The plaintiff, who is the mother of the defendant, brought the suit for cancellation of gift deed on various averments mentioned in the plaint. The defendant is resisting the said suit. In the said suit, she filed the afore-stated application to permit her grandson, Mohd. Hasamath Ali, to represent her in the suit and prosecute the suit through the said agent in whose favour, she has executed a General Power of Attorney, duly registered in the office of a Sub Registrar in the State of Karnataka. In support of her request, she stated in her affidavit that she is aged more than 80 years and that she is not in a position to attend the Court and prosecute the suit personally and that therefore, it is in the interests of justice to accord permission to her said GPA holder to represent her and to appear and act on her behalf and prosecute the suit.

4. The respondent/ defendant filed a counter stating that the petition cannot be entertained and that the plaintiff cannot authorize a

GPA holder to prosecute the suit unless stamp duty and penalty are paid on the power of attorney.

5. The trial Court, by the order impugned, having referred to Section 33(a) of the Registration Act, 1908, held that the power of attorney executed in the State of Karnataka, is inadmissible and on the basis of such a power of attorney, permission cannot be granted to the plaintiff to be represented by a power of attorney holder and accordingly dismissed the petition of the plaintiff.

6. Hence, the aggrieved plaintiff is before this Court.

7. Learned counsel appearing for the petitioner/plaintiff submits that the trial Court erroneously applied a wrong provision of law and that the said provision of law has no application to the facts of the case as the power of attorney is not given for presenting a document for registration and that under the power of attorney given to her grandson, the plaintiff is seeking permission to be represented by the said GPA holder in a suit filed by her and to prosecute the suit through the said GPA holder. He further submits that when the power of attorney is a registered power of attorney and its execution is undisputed and the law permits a plaintiff to be represented by a power of attorney holder, the trial Court ought to have allowed the petition instead of dismissing the same by erroneous reasoning. Making the said submissions, he requests to set aside the order impugned and grant permission as sought for in the application of the plaintiff.

8. Learned counsel for the defendant while reiterating the defence of the defendant would submit as follows: 'The defendant is admittedly the son of the plaintiff. The father of the defendant, in the presence of

his mother, that is the plaintiff, gifted the suit schedule property under an oral HIBA. There are disputes between him and his brother and that the plaintiff, who is the mother of the defendant, is staying with his said brother, and that the said brother of the defendant is behind the litigation and that therefore, at his instance, his son was appointed as a GPA holder of the plaintiff and that the examination of the mother/ plaintiff as a witness in the suit is highly essential and that the defendant has no objection if the plaintiff, who is his mother, is permitted to be represented by a power of attorney holder; but, he cannot depose in the place of the plaintiff and instead of the plaintiff in view of the precedential guidance in *S.Kesari Hanuman Goud v. Anjum Jehan and Others*¹.

9. I have given earnest consideration to the facts and submissions.

10. This Court, at this stage, is only considering the request of the plaintiff to be represented by a duly appointed GPA holder, to represent her and act on her behalf and prosecute the suit on her behalf. The defendant has no objection for the plaintiff to be represented by her duly appointed GPA holder. Further, in the facts and circumstances of the case, the plaintiff made out a case for according permission to be represented by a GPA holder. Therefore, in the considered view of this Court, the order impugned is liable to be set aside being unsustainable under facts and in law.

11. Before parting, it is to be noted that the defendant *inter alia* contended that the plaintiff alone has to appear as a witness and offer herself for cross-examination and that she cannot be accorded permission to examine her GPA holder in her place instead of appearing

¹ 2013 (4) ALD 150 (SC)

personally as a witness. This aspect need not be gone into at this stage and the said aspect requires examination if the plaintiff files an application for permission to examine her GPA holder without entering into the witness box. Be that as it may, it is for the plaintiff to take a call in the first place as to whether she would appear as a witness or not to substantiate the pleaded case. The trial Court has to take a decision at the appropriate stage, if necessary, keeping in view the precedential guidance in the decisions of the Supreme Court including the decision In *Man Kaur (dead) by LRs v. Hartar Singh Sangha*², wherein the Supreme Court summarized for convenience, the position 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.

© 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

² (2010) 10 SCC 512

authorized 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.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/ wife exclusively managing the affairs of his/ her spouse, a son/ daughter exclusively managing the affairs of an old and infirm parent, a father/ mother exclusively managing the affairs of a son/ daughter living abroad.

12. Viewed thus, this Court finds that there is no need to express any opinion on the subject contention of the defendant in this order.

13. In the result, the Civil Revision Petition is allowed and the order impugned, dated 09.12.2016, passed in I.A.No.236 of 2013 is set aside. As a sequel, I.A.No.236 of 2013 in O.S.No.131 of 2013 is allowed permitting the GPA holder of the plaintiff to act on behalf of the plaintiff and prosecute the suit through her GPA holder.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13th September, 2017

Note:- Issue CC within a week
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