

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1254 of 2015

ORDER :

This revision is filed under Article 227 of Constitution of India by the respondent/plaintiff in I.A.No.92 of 2015 in O.S.No.51 of 2013, challenging the order, dated 12.03.2015, passed by the learned Senior Civil Judge, Kothapeta, East Godavari District, whereby the petition filed by the petitioners/defendants under Order XVI Rule 6 of C.P.C. to summon the original passport of the plaintiff-P.Saibabu, who is represented by Power of Attorney Holder, the wife of the plaintiff P.Santakumari, to prove that the respondent-revision petitioner herein was in India on the date of execution of notarized General Power of Attorney (GPA) authorizing his wife to file and prosecute the proceedings in the said suit.

2. The revision petitioner/plaintiff filed suit for grant of permanent injunction restraining the defendants, their family members, their men, agents, etc., from interfering with the peaceful possession and enjoyment of the schedule property of Ac.0.01 ½ cents within the boundaries specified in the scheduled annexed to the plaint. P.Saibabu, who is the owner of the property, executed GPA in favour of P.Santhakumari, who is no other than his wife, to file a suit and prosecute the proceedings. The GPA was marked as Ex.A.2, dated 06.07.2013, which allegedly executed by P.Saibabu in favour of his wife-P.Santhakumari and it appears that the said P.Santhakumari

complied Rule 32 of Civil Rules of Practice seeking permission to verify the pleadings and prosecute the proceedings and thereafter the defendants appeared after receiving notice in the said suit and filed their written statement and specifically contended in para 11 of the written statement that the GPA executed by P.Saibabu in favour of P.Santhakumari on 06.07.2016 is not at all true and correct and the defendants denied the very execution of GPA while contending that the husband of P.Santhakumari i.e., P.Saibabu, is in Gulf countries since long time, therefore, the alleged GPA executed by P.Saibabu in favour of the plaintiff, dated 06.07.2013, does not arise and it is a forged and fabricated document by the family members of the plaintiff for filing the present suit. Thus, the plaintiff traced her power to file a suit based on the GPA, dated 06.07.2013, and sought permission from the Court as required under Rule 32 of Civil Rules of Practice and prosecuting the proceedings. The defendants specifically denied the very execution on the ground that the plaintiff was in Gulf countries on the date of execution of GPA and contended that the GPA is a forged document. In such case, it is for the plaintiff to prove that Ex.A.2-GPA, dated 06.07.2013, is valid and enforceable under law, which authorized P.Santhakumari to file suit and prosecute the same, creating a relationship of principle and agent. When the very authorization is questioned, specifically in para 11 of the written statement, it is the duty of the plaintiff to prove her authorization by producing evidence. In the cross-examination of PW.1 at page 2

bottom seven lines, she admitted the following:

“If necessary I can bring a copy of passport and file in this court to prove that as on 6.7.2013 my husband was in India. Ex.A.2 is a type written document. It is not true to suggest that Ex.A2 is fraudulent document and hence I cannot say the names of the witnesses also. One Srinivas, a Karanam, prepared Ex.A.2 document at Ravulapalem.”

3. This specific assertion and admission of PW.1 would show that she can produce a copy of passport of her husband to prove that on the date of execution of GPA i.e., on 06.07.2013, her husband was in India, therefore, her authorization is true and genuine. Similarly, in the last 10 lines of cross-examination of PW.1 at page 3, a suggestion was put to her that her husband is not the owner of the total schedule site and that he never executed Ex.A.2 in her favour, the same was denied by PW.1. PW.2 is another witness, who examined on behalf of the plaintiff, but he did not state anything about execution of Ex.A.2. But, in the evidence of PW.3, who is the scribe of Ex.A.2, asserted that he is the scribe of the document. In the cross-examination, a suggestion was put to him that on 06.07.2013 the plaintiff was in Dubai and by impersonating him the GPA was brought into existence. Thus, from the beginning the defendants contending that the P.Santhakumari, wife of plaintiff-P.Saibabu, is incompetent to file the suit and prosecute the proceedings. The contentions of the petitioner before this Court are as follows.

1. No steps were taken by the defendants to challenge the GPA.
2. Permission was obtained under Rule 32 of the Civil Rules of Practice at the time of registration of the suit and the permission remained unchallenged till today.
3. When the GPA was marked as exhibit, the defendants did not raise any objection about admissibility of document in the evidence.
4. Passport is not a material or vital document for adjudication of real controversy between the parties
5. When the scribe was examined as PW.3, who testified that he scribed Ex.A.2 and his evidence is sufficient to prove execution of Ex.A.2-GPA in favor of P.Santhakumari by her husband- P.Saibabu.

In those circumstances, the defendants are dis-entitled to claim any relief in the petition i.e., summoning of P.Saibabu to produce his passport and it is unnecessary.

4. During argument, Sri R.K.Suri, learned counsel for the petitioner, vehemently contended that when no steps were taken to challenge the GPA before filing written statement, the defendants are not entitled to challenge the validity and due execution of Ex.A.2 by raising a plea for the first time in the written statement and more particularly when the permission granted under Rule 32 of the Civil Rules of Practice was not challenged.

5. In view of the specific contentions raised before this Court by Sri R.K.Suri, learned counsel appearing for the petitioners, I would like to deal with those contentions in seriatim.

6. First and foremost contention is that the defendants did not take any steps to challenge the GPA at the initial stage. Rule 32 of Civil Rules of Practices permits a party to appear by an Agent and certain requirements are prescribed to obtain permission of the Court and grant of such permission is between the Court and the Agent, who appeared on behalf of the Principle, by complying necessary requirement under this Rule. No summon was received by the defendants and an order was passed in their absence. Therefore, failure to challenge the permission granted under Rule 32 of the Civil Rules of Practice is not a ground to deny the relief in the present petition filed under Order XVI Rule 6 C.P.C.

7. The second contention that the defendants failed to take steps to challenge the GPA at the initial stage, to my knowledge, earliest stage to raise a plea is only by way of written statement not by any other procedure. Even Sri R.K.Suri, appearing for the petitioner, did not bring to my notice the other procedure prescribed to raise such plea before filing written statement. Therefore, the earliest stage to raise a plea is only written statement. In para 11 of the written statement, the defendants denied the very execution of GPA-Ex.A.2 on the ground that P.Saibabu was abroad and it was created to institute the

proceedings with the help of the relatives of P.Santhakumari, alleged agent of P.Saibabu her husband. When the very competency of P.Santhakumari, wife of P.Saibabu, is challenged, more particularly when she agreed to produce the copy of passport of her husband, summoning of the plaintiff to produce the passport of P. Saibabu is not illegal, but summoning the plaintiff as a court witness does not arise and it is for the plaintiff to prove that Ex.A.2 was validly executed while her husband P.Saibabu was in India. In view of the undertaking given by P.Santhakumari in her cross-examination, she can as well produce the copy of passport since the original is required by P.Saibabu to stay in Dubai or any other country. Production of copy as agreed by PW.1 in her cross-examination is sufficient to prove that he was in India on the date of execution of GPA-Ex.A.2. Sri S.K.Suri, learned counsel, by his over vehemence contended that it is irrelevant and the petitioner need not prove the presence of P.Saibabu in India on the date of execution by adducing any evidence and it is for the defendant to rebut the evidence adduced by the plaintiff. Summoning a document is one of the mode to rebut the evidence. Therefore, insisting upon husband of P.Santhakumari to produce the document i.e., passport coming over to India may not be a proper procedure. However, PW.1 can be compelled to produce a copy of the passport in view of her undertaking given in the cross-examination, which I extracted in the earlier paras. Therefore, failure

to take steps prior to filing of the written statement is not a ground to deny the relief in the petition under Order XVI Rule 6 of C.P.C.

8. The third contention raised by the counsel for the petitioner is that when the GPA was marked as exhibit in the evidence without any objection, the defendants cannot now challenge the validity of execution of the same by P.Saibabu on relevant date. This contention is wholly without substance for the reason that since the GPA is notarized document and it can be admitted in view of the presumptions under Section 85 of the Evidence Act, but still it is a rebuttable. Marking of a document is different from proof of the contents and its execution. When the document is admissible even any objection is raised, normally the Court will turn down such objection as it is devoid of merit. But a strange argument advanced before this Court is that the defendants cannot raise objection about validity of execution of GPA, which I cannot accept. Proof of due execution is different from admitting a document in evidence.

9. The fourth contention raised by Sri R.K.Suri, learned counsel for the petitioner, is that the passport of P.Saibabu is not material and vital document and thereby compelling him to produce the document before the Court would cause prejudice to him and same cannot be ordered. No doubt, the suit was filed for injunction simplicitor where the Court is required to record its findings that whether the plaintiff was in lawful possession and enjoyment of the property on the date of

filing of the suit and whether the defendant infringed or invaded the legal right of the plaintiff, to give rise to cause of action for filing the suit. But, here, the basis for filing suit is the GPA-Ex.A.2. When the very basis for filing a plaint is challenged questioning the competency to sue, it is for her to prove her competency, though it is not for deciding the real controversy. But, it is relevant and material to decide her competency to sue claiming to be an Agent of P.Saibabu. The source of power to sue is Ex.A.2, in the absence of Ex.A.2, she being the wife of P.Saibabu cannot maintain a suit. Therefore, the contention of the learned counsel for the petitioner is without any substance and the same is not a ground to reverse the order passed by the trial Court.

10. The last contention urged before this Court is that the plaintiff examined the scribe of Ex.A.2 to prove execution of the document. Even in the cross-examination of PWs.1 and 3 specific suggestions were put to them that P.Saibabu was not in India on the date of execution of Ex.A.2 and it was forged and fabricated document, ofcourse, got denial from the witness. Therefore, mere examining of the scribe as PW.3 at best sufficient to prove the due execution of Ex.A.2 by the plaintiff to discharge onus initially. Since, burden shifts to the defendants, the defendants have to rebut the evidence by producing sufficient material. The defendants also filed affidavit under Order XVIII Rule 4 of C.P.C. on 06.02.2015 in lieu of examination in chief. In para 8 of the affidavit, DW.1 clearly denied

the very execution of GPA. It is mainly contended that the alleged GPA dated 06.07.2013 is a forged and fabricated document and that his brother i.e., P.Saibabu was in Gulf country by the date of execution of GPA. Therefore, summoning the plaintiff to produce the document may cause inconvenience to P.Saibabu for the reason that he cannot stay in Dubai without any passport. In such circumstances, directing the plaintiff to produce the notarized copy of the passport to establish her husband P.Saibabu was in India on the relevant date i.e., on 06.07.2013, the date of execution of GPA. Otherwise, it amounts to denial of an opportunity to the defendants to dis-prove the execution of Ex.A.2-GPA and competency to P.Santhakumari, wife of P.Saibabu, to sue the defendants. Hence, I find that the argument advanced by Sri R.K.Suri, learned counsel for the petitioner, is not based on any law and on the basis of such argument that the order passed by the trial Court cannot be turned down allowing this revision by setting aside the order passed by the trial Court. Hence, I find no ground. However, exercising the jurisdiction under Article 227 of the Constitution of India, the order passed by the trial Court is modified directing PW.1 P.Santhakumari-the plaintiff in the suit, to produce notarized or attested copy of the passport of her husband P.Saibabu before the trial Court within one month from today. Otherwise, the Court can draw presumption under the Evidence Act.

11. With the above modification, the revision is dismissed. No order as to costs.

12. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

21st April 2017

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