

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.6265 of 2012

ORDER:

Heard Mr.Hari Sreedhar for revision petitioner.

No representation for respondents, inspite of service of notice.

The defendant in O.S.No.185 of 2010 is the revision petitioner. The respondent executed General Power of Attorney (GPA) in favour of her son, who was examined as P.W.1. The matter is posted for the evidence of plaintiff/respondent. At that stage, the respondent filed I.A.No.1045 of 2012 to permit her to depose as P.W.2. Through the order impugned in the revision, the application is allowed.

The operative portion of the order reads thus.

“As in the instant case, the petitioner has examined her son, as her General Power of Attorney holder, and she has not examined any third parties as witnesses, prior to seeking to adduce her evidence, as it is the contention of the petitioner that her evidence is required for adjudication of the dispute involved in this case and it is just and necessary to permit her to give evidence, this court is of the opinion that no prejudice would be caused to the respondent, as he would get an opportunity to cross-examine her, and it is just and proper to permit the petitioner to give evidence as P.W.2”.

The foremost objection raised is that the impugned order contravenes Rule 3(A) of Order 18 of Code of Civil Procedure (CPC) which reads thus:

“Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.”

The petitioner objects to examination of plaintiff as P.W.2. P.W.1 was examined as General Power of Attorney of plaintiff. The evidence is already on record. The effort, it is contended appears to continue the evidence of P.W.1 or fill up the gaps in the evidence of P.W.1, by examining plaintiff/principal as P.W.2

I have perused the order and taken note of requirement under Rule 3(A) of CPC.

In the case on hand, the examination of P.W.1 as GPA of plaintiff is in accordance with Rule 3(A) of CPC.

Mr.Hari Sreedhar rightly pointed out that the plaintiff/respondent cannot now come as witness continue the trial and such procedure is impermissible.

I am satisfied the order under Revision is unsustainable and accordingly set aside.

The Civil Revision Petition is accordingly allowed. No order as to costs.

The trial Court is directed to dispose of the suit as expeditiously as possible, within four weeks from the date of receipt of copy of this order.

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

S. V. BHATT, J

Dt: 11.09.2018
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