

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Second Appeal No.1216 of 2017

JUDGMENT:

Heard Sri P. Raj Kumar, learned counsel for the appellants and Sri Vinod Kumar Tarlada, learned counsel for the respondents 1 to 3.

2. Substantial question of law formulated in paragraph-13 of Grounds reads thus:

- (a) Whether the Courts below are right in holding that non-examination of the plaintiffs to prove the authenticity of Ex.A1 Will when their GPA holder is looking after their case by virtue of a registered GPA?

3. The plaintiffs 1 and 2 were, in fact, represented through registered General Power of Attorney-holder, Lotti Lakshmana Rao, in O.S. No.184 of 2006 on the file of Additional Senior Civil Judge, Srikakulam, which was filed for declaration of title over the plaint schedule property and for recovery of possession, which alleged to have been encroached by the defendants and to evict them, and for costs.

4. The learned Additional Senior Civil Judge, Srikakulam, basing on the pleadings has settled the following issues:

- “(1) Whether the schedule is correct?
(2) Whether the suit is barred by limitation?
(3) Whether the plaintiffs are entitled for declaration as prayed for?

(4) Whether the plaintiffs are entitled for recovery of possession of the schedule property as prayed for?

(5) To what relief?"

Then, recorded the findings based on the evidence of P.Ws.1 to 3 and Exs.A1 to A9 on behalf of the plaintiffs, and on behalf of the defendants D.Ws.1 and 2 and Exs.B1 to B4.

5. The trial Court having found that the evidence of attorney-holder cannot be substituted for the evidence of plaintiffs 1 and 2 or the party-witnesses and that Ex.A1, which is the certified copy of the Will, dated 21.01.1986, was not proved in accordance with evidentiary rule for the reason that none of the attestors thereto was examined, and, on the other hand, holding that the evidence of P.Ws.2 and 3 who are the neighbouring land owner and attestor of GPA would not *suffice* to substantiate the case of the plaintiffs, dismissed the suit.

6. The plaintiffs, aggrieved over the same, preferred Regular Appeal Suit No.43 of 2010 on the file of the Special Judge for trial of Cases under SCs & STs (PoA) Act-cum-Additional District & Sessions Judge, Srikakulam. The learned Special Judge by his judgment dated 23.06.2014, re-appreciating the evidence on record, tendered the findings on points 1 and 2 formulated by him in paragraph-9 affirming the findings recorded by the trial Court. In fact, the learned lower Appellate Court referred to Section 68 of the Indian Evidence Act, 1872, which deals with proof of execution of

document required by law to be attested, and held that Ex.A1 will not satisfy the mandatory requirement of Sections 68 of the Evidence Act as no competent witness was examined to prove due execution or the contents therein, and also holding that the evidence of P.Ws. 1 to 3 would not lead anywhere as P.W.2 is only an elder in the village, whereas P.W.3 is intended to speak about the execution of Ex.A2, General Power of Attorney, dated 14.11.2005, dismissed the Appeal.

7. When examined intrinsically, the findings recorded by the Courts below, which are concurrent findings, and also on perusal of the judgments rendered by the Courts below, it is true Ex.A1-certified copy of Will, by any stretch of imagination, cannot be viewed as having been proved. The plaintiffs would succeed only in case they prove in proving due attestation as required by the provisions of Section 68 of the Evidence Act. But none of the attestors i.e., at least one of the attestors is required to be examined to prove any document as per the evidentiary rule. This apart, certainly, General Power of Attorney-holder is not a substitute for the plaintiffs or the parties and in the absence of the evidence of the parties, the GPA's evidence cannot be viewed as the evidence on behalf of the parties. No doubt, the GPA can be examined as a witness, but his evidence only to aid the evidence of witnesses.

8. The law is well settled on this aspect of the case. In **S. Padmavathamma v. S. Sudha Rani** (AIR 2004 AP 309) the Andhra Pradesh High Court held that the general power of attorney

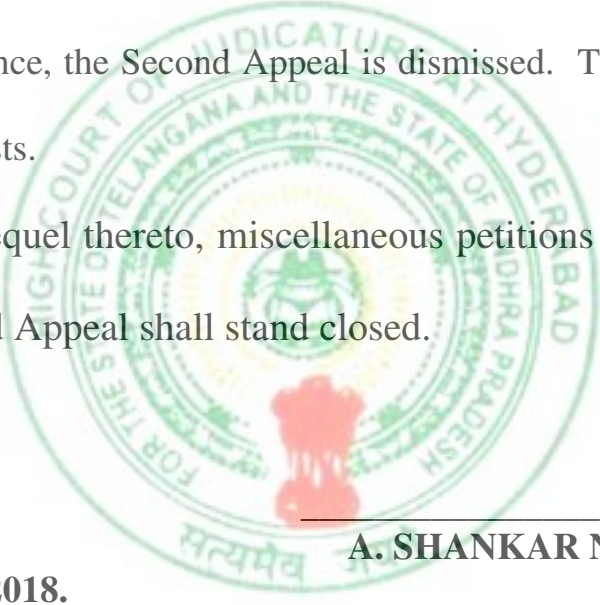
holder can appear as a witness only in his personal capacity. He cannot appear as witness on behalf of the plaintiff in the capacity of plaintiff as he cannot speak about the facts which are within the personal knowledge of the party. The Court approved that a power of attorney is not a substitute for his principal, and he cannot speak about the facts which are within the personal knowledge of the party.

9. Thus, viewed from any angle, there is no question of law involved much less substantial question of law.

10. Hence, the Second Appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the Second Appeal shall stand closed.

January 25, 2018.
gbs



A. SHANKAR NARAYANA, J