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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.4479 of 2018

Date of Decision : 03.08.2018

Ranjna and another

... Petitioners

Versus

Rajesh Kumar and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. K.B. Raheja, Advocate for the petitioners.

Mr. Ranbir Singh Sekhon, Advocate for respondent No.1.

None for respondent Nos. 2 to 22.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed praying for setting aside order dated 31.05.2018 (Annexure P-4), passed by the learned Civil Judge (Junior Division), Ferozepur de-exhibiting the Special Power of Attorney executed by petitioner No.1 in favour of petitioner No.2 and directing petitioner No.1 to appear for deposition in person.

2. Brief facts of the case leading to the filing of the revision petition are that a civil suit was filed by respondent No.1/plaintiff for a declaration to the effect that he is the owner/co-sharer of land measuring 12 kanals 7 marlas 5 sarsee out of total land measuring 171 kanals 18 marlas on the basis of Will dated 26.05.2007 executed by Baldev Singh S/o Gian Chand i.e. father of respondent No.1/plaintiff, petitioner No.1 and husband of respondent No.22 etc.

3. Petitioner No.1 executed a Special Power of Attorney (Ex.P/1) dated 13.04.2018 in favour of petitioner No.2 to appear on her behalf and to do all acts necessary for the due prosecution of case titled as Rajesh Kumar versus Satpal Singh and others, pending in the Court of Smt. Shikha Goel, PCS, Civil Judge (Sr. Division), Ferozepur. The Special Power of Attorney further conferred powers on the attorney i.e. petitioner No.2 to make statement on behalf of petitioner No.1, to enter into compromise and file any application qua the due prosecution of the case as she was not in a position to attend the Court on account of family traditions. Petitioner No.2 i.e. power of attorney holder of petitioner No.1/defendant No.23 also appeared as a witness in his own individual capacity and was cross-examined qua the evidence led by him in his individual capacity. However, petitioner No.2 was not cross-examined qua the evidence led by him on behalf of the principal i.e. petitioner No.1/defendant No.23.

4. An application was moved by respondent No.1/plaintiff before the Court below for de-exhibiting the Special Power of Attorney dated 13.04.2018 executed by petitioner No.1/defendant No.23 in favour of petitioner No.2 and for directing petitioner No.1/defendant No.23 to make statement, if any, in person before the Court. The application was allowed vide order dated 31.05.2018 by the learned Civil Judge (Jr.Division) Ferozepur, observing that the arguments advanced by the counsel for petitioner No.1 that she was unable to appear in Court on account of being parda nashin lady was not tenable as she could always be examined by way of commission for examination on interrogatories and she would not have to appear in Court as per custom.

5. Learned counsel for the petitioners by relying upon the decision of Hon'ble the Jharkhand High Court in Ram Chandra Prasad Gupta vs. Kaushalya Devi and another 2011 (10) RCR (Civil) 729, contended that the impugned order directing de-exhibition of the Special Power of Attorney executed by petitioner No.1 in favour of petitioner No.2 is legally unsustainable as there is no provision for de-exhibiting a document.

6. Per contra, learned counsel for respondent No.1 contended that an attorney could appear as a witness only in respect of facts which were in his personal knowledge and an attorney could neither depose nor be cross-examined in respect of facts which were in the personal knowledge of the principal. Learned counsel for the respondent No.1 relied upon the decision of Hon'ble the Karnataka High Court in Bhimappa and others vs. Allisab and others 2006 (2) RCR (Rent) 174, wherein a reference has been made to the decision of Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd. 2004 (2) RCR (Civil), 613, to contend that no doubt in terms of Order 3 Rule 1 and 2 CPC, holder of attorney is competent to act on behalf of the principal but the word act mentioned in Order 3 Rules 1 and 2 CPC was confined only qua the act done by the power of attorney holder in exercise of powers granted by the instrument. In other words, if the power of attorney holder had done some act in pursuance of grant of power of attorney then he could depose for the principal in respect of said act but he could not depose for the principal for the acts done by the principal and not by him. Likewise, he could not depose for the principal in respect of matters of which only the principal could have a personal knowledge and in

respect of which the principal was entitled to be cross-examined. Relevant extract of the decision in Bhimappa's case (supra) is as under:-

“12.In the context of the direction given by this Court, shifting the burden of proving on to the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have personal knowledge of the matter of the appellants and, therefore, he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

7. Learned counsel for respondent No.1 contended that as per the stand of petitioner No.1, the will relied upon by respondent No.1/plaintiff

was forged and fabricated. Learned counsel contends that this fact was specially in the knowledge of petitioner No.1, therefore, her attorney i.e. petitioner No.2 could not depose in respect thereto on the basis of power of attorney and further that in the absence of there being any evidence by petitioner No.1 qua the facts which were specifically to her knowledge, an adverse inference was liable to be drawn against her if she did not step in the witness box to make a statement and lead evidence.

8. Faced with the aforementioned situation, learned counsel for the petitioner contended that the petitioner did not wish to appear in Court on account of family traditions and that in the circumstances, she confined her plea to there being no provision for de-exhibiting a document particularly in view of the legal position that merely because a document had been exhibited it had 100% evidentiary value and in terms of the decision in Ram Chandra Prashad Gupta's case (*supra*), it was open to a Court after final hearing to point out in the judgment with the help of oral evidence as well as documentary evidence that a particular document which had been given exhibit number had no evidentiary value vis-à-vis a fact to be proved. Learned counsel reiterated that there was no provision for de-marking or de-exhibiting a document already exhibited and placed on the record of the Court file.

9. I have considered the submissions of learned counsel for the parties. Admittedly, there is no provision for de-exhibiting a document which has already been exhibited. However, the mere fact that a document has been exhibited does not mean that it has to be read in evidence or in other words it has 100% evidentiary value. It is for the learned trial Court

at the time of final hearing to hold in the light of oral as well as other documentary evidence as well as law that a particular document, even if given a exhibit number, has got no evidentiary value vis-à-vis a fact to be proved. At this stage, learned counsel contended that petitioner No.2 had appeared as witness on behalf of petitioner No.1 as well as in his own individual capacity and although he had been cross-examined qua the evidence led by him in his individual capacity, he had not been cross-examined qua the evidence led by him on behalf of petitioner No.1. It is for petitioner No.1 to lead evidence qua facts in her knowledge and to offer herself for cross-examination qua the evidence led by her. In case petitioner No.1 does not lead evidence qua facts exclusively in her knowledge nor offers herself for cross-examination, necessary consequences will ensue as per law in view of well settled law that an attorney can depose only qua facts which are to his personal knowledge and cannot be allowed to be examined/cross-examined qua facts which are to the personal knowledge of the principal.

10. Accordingly, impugned order dated 31.05.2018 allowing the application and de-exhibiting the Special Power of Attorney is set aside and revision petition is allowed in the light of observations made above.

(B.S.WALIA)
JUDGE

03.08.2018

sandeep/rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No