NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 287 of 2019

1. Shrimati Sita Devi Agrawal, aged about 53 years, W/o. Late Shri Ramesh Kumar Agrawal, R/o. B-1, Samta Colony, Raipur, Tehsil & District Raipur, Chhattisgarh.
   (Through her constituent attorney, Anand Kumar Agrawal, aged about 42 years, S/o. Late Shri Ramesh Kumar Agrawal, R/o. B-1, Samta Colony, Raipur, Tehsil & District Raipur, Chhattisgarh)

2. Shrimati Kanta Devi Agrawal, aged about 47years, W/o. Shri Naval Kishore Agrawal, R/o. B-2, Samta Colony, Raipur, Tehsil & District Raipur, Chhattisgarh.
   (Through her constituent attorney, Anand Kumar Agrawal, aged about 42 years, S/o. Late Shri Ramesh Kumar Agrawal, R/o. B-1, Samta Colony, Raipur, Tehsil & District Raipur, Chhattisgarh)

---Petitioners

Versus

1. Sarvjeet Singh (Baba), aged about 64 years, S/o. Shri Swarn Singh, R/o. J.E. Road, In front of Power Grid, Village Janjgiri, Tehsil Dhamdha, District Durg, Chhattisgarh.

2. State of Chhattisgarh (Through District Magistrate, Durg)

---Respondents

For petitioners	:	Mr. Pankaj Singh, Advocate
For respondent No.1	:	Mrs. Aditi Singhvi, Advocate
For respondent/State	:	Mr. Saleem Kazi, Dy. Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19.07.2019

1. This writ petition is directed against the impugned order dated 06.03.2019 by which the application filed by the petitioners/plaintiffs under Order 3 Rule 1 read with Order 6 Rule 17 of the CPC has been rejected by learned trial Court finding no merit.

2. Mr. Pankaj Singh, learned counsel for the petitioners/plaintiffs would submit that the trial Court is absolutely unjustified in rejecting the application under Order 3 Rule 1 read with Order 6 Rule 17 of the CPC filed by the plaintiffs on untenable grounds. He would further submit that the power of attorney holder is the son of plaintiff No.1 and nephew of plaintiff No.2 therefore, in light of the decision rendered by the Supreme Court in the matter of **Man Kaur v. Hartar Singh Sangha**[1] the power of attorney holder can depose on behalf of plaintiffs, hence, the impugned order is liable to be set aside.

3. Mrs. Aditi Singhvi, learned counsel for the defendants would submit that the trial court is absolutely justified in rejecting the application filed by the petitioners/plaintiffs, as that application was filed to delay the progress of the trial, as the suit is pending consideration since 01.11.2008. She would further submit that in light of the decision rendered by the Supreme Court in the matter of **S. Kesari Hanuman Goud v. Anjum Jehan**[2], the power of attorney holder cannot be examined in place of principal, therefore, the writ petition deserves to be dismissed with cost.

4. I have heard learned counsel for the parties, considered their rival

1 (2010) 10 SCC 512
2 (2013) 12 SCC 64

submissions made herein-above and went through the records with utmost circumspection.

5. In the suit which is pending since 01.11.2008, the petitioners/plaintiffs herein filed the subject application on 19.02.2019 praying that Shri Anand Kumar Agrawal, son of plaintiff No.1, be allowed to appear on behalf of the plaintiffs and act in the proceedings, including making deposition before the Court and also sought leave to amend the cause title. The said application was rejected by the trial Court finding no substance. From the careful perusal of the record, it appears that now, the pleadings of the parties are complete and the case is fixed for evidence but, instead of adducing evidence, the plaintiffs filed subject application for deposing through the power of attorney. The plaintiff's suit is for declaration of title and for permanent injunction which is pending since 01.11.2008. Since then, the plaintiffs are contesting the suit personally, and after ten years they have filed the subject application with the power of attorney executed on 24.06.2009. Learned trial Court, after considering the entire facts of the case, came to the conclusion that the subject application is filed belatedly i.e. after nine years of execution of power of attorney, as also, after considering the nature of dispute, came to the conclusion that if such a permission is granted, the defence of the defendant No.1 is likely to suffer prejudice and thereby, rejected the application.

6. The Supreme Court, in the matter of **Man Kaur** (supra) has clearly held that where a party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. However, their Lordships while in paragraph 18 laid down the law as under:-

> "18. We may now summarise 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.
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> (*c*) 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 authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.
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> (*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 recognised 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."

7. However, in the matter of **S. Kesari Hanuman Goud** (supra) their Lordships of the Supreme Court followed the principle of law laid down in **Man Kaur** (supra) and held as under:-

> "23. It is a settled legal proposition that the power-of-attorney holder cannot depose in place of the principal. The provisions of Order 3 Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of 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 preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled (sic liable) to be cross-examined. (See *Vidhyadhar v. Manikrao*[3], *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*[4], *Shankar Finance and Investments v. State of A.P.*[5] and *Man Kaur v. Hartar Singh Sangha*(supra)"

8. Reverting to the facts of the present case, in light of the submissions made by the parties and findings of trial Court *qua* the subject application and further considering that the plaintiffs allowed and contested the suit personally for a long period of more than ten years and the application filed for deposing on behalf of plaintiff is as vague as it can be, I am of the considered opinion that the trial Court is absolutely justified in rejecting the application filed by the

3 (1999) 3 SCC 573
4 (2005) 2 SCC 217
5 (2008) 8 SCC 536

petitioners/plaintiffs. I do not find any perversity or illegality in the impugned order warranting interference under Article 227 of the Constitution of India.

9. Accordingly, this writ petition stands dismissed. However, the trial Court is directed to conclude the trial within two months from the date of receipt of the copy of this order, as the suit is pending consideration since 01.11.2008.

Sd/-

(Sanjay K. Agrawal)
Judge

Harneet