

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1126 of 2022

Baidhar Bal

....

Petitioner

Mr. Niranjana Lenka, Advocate

-versus-

Prativa Muduli and another

....

Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

16.12.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 9th September, 2022 (Annexure-5) passed by learned 1st Additional Senior Civil Judge, Cuttack in CS No.517 of 2013, whereby an application filed by the Petitioner with a prayer not to admit certain documents in evidence produced by PW-1, who is the Power of Attorney of the Plaintiffs has been rejected.
- 3 Mr. Lenka, learned counsel submits that PW-1, namely, Dushasan Muduli is the Power of Attorney of the Plaintiff No.1. As the Plaintiff No.1 was ill, a petition was filed to examine her Power of Attorney. The said petition was allowed by order dated 27th January, 2021 and said Dushasan Muduli as PW-1 produced his evidence-in-affidavit. Along with his evidence in-chief, the PW-1 produced certain documents, which were executed prior to the date of execution of the Power of Attorney, i.e., dated 30th January, 2019. It is his submission that the Power of Attorney does not have any knowledge about those documents, as those were executed prior to the date of execution of the POA. It is only the Plaintiff No.1, who is

competent to admit those into evidence. Since the Plaintiff No.1 has not yet been examined in the suit, those documents should not be marked as exhibits. In support of his case, Mr. Lenka, learned counsel for the Petitioner placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others***, reported in AIR 2005 SC 439, in para-17 of which, it is held as under:-

“17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 (2) WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.”

He, therefore, submits that no one can delegate power to appear for someone else in a witness box on his behalf. Thus, a general power of attorney holder cannot be allowed to appear as a witness on behalf of the Plaintiff in the capacity of the Plaintiff. Learned trial Court failed to take this position of law into consideration while passing the impugned order. Hence, the impugned order is not sustainable and hence the same is liable to be set aside.

4. Considering the submission of learned counsel for the Petitioner, it is clear that the Court has permitted Dushasan Muduli, the Power of Attorney of PW-1 to be examined as an witness vide application dated 27th January, 2021 and the said order was never challenged. While examining himself as PW-1, he exhibited certain documents, which were allegedly in

existence prior to the date of execution of Power of Attorney. It is trite law that a Power of Attorney can lead evidence on the facts which are in his knowledge, but he cannot be examined in the capacity of the Plaintiff (the principal). There is no doubt that PW-1 is being examined as Power of Attorney of Plaintiff No.1. Whether documents were in his knowledge or not can only be ascertained at the time of argument of the suit taking into consideration the materials on record. It is also not disputed that PW-1 has not yet been cross-examined. Thus, the Petitioner, who is the Defendant, has an opportunity to put questions with regard to those documents of PW-1. Thus, I find no infirmity in the impugned order rejecting the application as stated above.

5. Accordingly, the CMP stands dismissed being devoid of any merit.

6. Since the suit is of the year 2013, parties should cooperate with learned trial Court for early disposal of the same.

(K.R. Mohapatra)
Judge