

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.940 of 2018**

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Ratnesh Tiwary S/o Late Ram Parikshan Tiwary, R/o Village- Chandraha
Rupwalia, PS- Bathawariya, District- West Champaran.

... .. Petitioner/s

Versus

1. Sheo Kumari Devi W/o Shri Fahindra Mishra, D/o Jagat Narain Tiwary, R/o Village Chandraha Rupwalia, PS- Bathawariya, District- West Champaran.
2. Farindra Mishra, S/o Late Bhola Nath Mishra Raj, R/o Village- Chandraha Rupwalia, PS- Bathawariya, District- West Champaran.
3. Shesh Mani Pandey, S/o Late Parasuram Pandey,
4. Saumyajeet Kumar, S/o Shri Sanjeet Pandey, Sanjeet Pandey, S/o Shesh Mani Pandey, All are R/o Village Chandraha Rupwalia, PS- Bathawariya, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant, Advocate
For the Respondent/s : Mr. K.K. Tiwari, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 03-05-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 29.05.2018 passed by learned Sub Judge, Bagaha, West Champaran in Title Suit No. 7 of 2014, whereby and whereunder the learned Court has granted permission to the respondent No. 2 to adduce evidence on the basis of power of attorney of original plaintiff.

3. The plaintiff / respondent 1st set filed suit bearing Title Suit No. 7 of 2014 for declaration of right and title over the suit land and also for declaration that the sale deed dated



18.07.2013 is null and void and not binding on the plaintiff. The claim of the plaintiff is that she is the owner of the suit land which was allotted to her in partition. The plaintiff has right and title over the suit land, hence sale deed executed by defendant No.1 to defendant Nos. 2 and 3 is illegal and not valid.

4. Defendants appeared in the case and filed written statement and denied the statement of the plaintiff. The case of the defendants is that in partition the suit land was allotted to the share of defendants alongwith some other lands and the said land was sold to defendant Nos. 2 and 3 on consideration of money who are in possession of the suit property.

5. The trial Court framed issues and directed the parties to lead evidence in the case. The respondent No. 2 filed a petition in the Court below on 23.02.2018 stating that plaintiff, who is his wife, had executed a power of attorney in his favour and through power of attorney plaintiff has given him power to adduce evidence in the case in her place. The petitioner opposed the said petition by filing the rejoinder. The said petition was allowed by the learned trial Court vide the impugned order.

6. Learned counsel for the petitioner has submitted that the power of attorney has been prepared during the pendency of the suit and the power of attorney holder cannot depose on



behalf of the principal as such he has only to act on behalf of the principal. The Power of attorney holder can do certain thing on behalf of the principal like doing pairavi in the case on behalf of plaintiff but he cannot give evidence regarding devolution of property on the plaintiff. He has further submitted that the petition has been filed by the power of Attorney holder, not by the plaintiff which cannot be permitted.

7. On the other hand, learned counsel for the respondents submits that respondent No. 2 is husband of the plaintiff who has registered power of attorney in his favour and as such he has full interest in the disputed land. It is further submitted that plaintiff is an old lady suffering from several diseases and found it difficult to attend the Court herself and therefore executed power of attorney to her husband / respondent No. 2 on 16.02.2018 to adduce evidence on her behalf and to do needful pairavi. Further it is submitted that the learned trial Court after fully considering the submission made by both the parties and considering the facts and circumstances, rightly passed the impugned order and there is no illegality in the same.

8. The issue with regard to appointment of power of attorney to lead evidence is no more *res integra*. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to “act”



on behalf of the principal. The “acts” employed in Order III, Rules 1 and 2 CPC, confines only 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.

9. In **Janki Vashdeo Bhojwani and Ors.,Vs. Indusind Bank Ltd. and Ors.**, reported in **AIR (2005) SC 439; (2005) 2 SCC 217**, it was held that a power of attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by the power of attorney holder. Likewise, the power of attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross examined.

10. The Hon’ble Supreme Court in the case of **Man Kaur (Dead) by Lrs. Vrs. Hartar Singh Sangha** reported in **(2010) 10 SCC 512** considered the evidentiary value of the deposition of attorney holders and summarised the position as to who should give evidence in regard to matters involving personal knowledge. The Hon’ble Supreme Court in paragraph 12(g) held as follows:-



“(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 recognized 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 fide or ‘readiness and willingness’ example 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 parents, a father / mother exclusively managing the affairs of a son / daughter living abroad.”

11. The Apex Court in **Janki Vashdeo Bhojwani** (supra) which has been followed in **Man Kaur (Dead) by Lrs.** (Supra) has held that the plaintiff has to enter the witness box and state his own case on oath and if he does not do so to depose or to get cross examined adverse inference can be drawn against him. The power of attorney holder of the plaintiff may also enter in



the witness box but he cannot depose about the facts of which he has no personal knowledge.

12. The three Judge Bench of the Hon'ble Supreme Court in the Judgment of **A.C. Narayanan Vs. State of Maharashtra & Anr. (2014) 11 SCC 790**, which relates to the interpretation of Section 142(a) of the Negotiable Instruments Act also considered the said judgment of Janki Vashdeo Bhojwani (supra) and other decisions and held that the power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transactions as an agent of the payee / holder in due course or possess due knowledge regarding the said transactions.

13. The ratio of the above authorities is that the power of attorney holder of the plaintiff cannot depose about the facts which are within the personal knowledge of the plaintiff or which are not within the personal knowledge of the power of attorney holder.

14. The above authorities are not on the proposition that the husband cannot depose on behalf of the wife or that power of attorney cannot appear as a witness at all for the plaintiff. On the contrary Section 120 of the Indian Evidence Act, 1872



provides for the deposition of the husband and wife as a witness. The said provision permits the husband to depose for the wife and vice versa. The above rule of law has been enunciated on the well founded Indian mythology wherein husband and wife are believed to be one person and not a separate. It is not in dispute that under Section 120 of the Indian Evidence Act, the husband is a competent witness for a wife in a civil proceedings.

15. Parties to a suit or proceeding are permitted to give evidence with the limit prescribed by Section 5 of the Indian Evidence Act, 1872. A Power of Attorney holder of a party can be examined as a witness like any other witness, if he is competent in law to testify to the existence or non-existence of any fact is issue in any suit or proceeding or of such other facts as are declared to be relevant under the provisions of the Evidence Act, if such facts are within his personal knowledge, but he cannot appear as a witness in the capacity of that party i.e. himself as plaintiff or the defendant.

16. In view of the legal position as enunciated above, it is clear that the evidence of power of attorney holder may be limited and not to be stretched to the facts beyond the personal knowledge of the deponent.

17. The finding as to who got title is an inference of law,



arising out of certain set of facts. In the instant case, being the husband of the plaintiff would naturally be aware of the details of acquisition of title of his wife which is based on the documents and it is not as if proof of title is akin to state of mind or conduct which is only in personal knowledge of the title holder and cannot be spoken to by others knowing it. So, it cannot be said that unless such title holder deposes, the factum of title does not get proved.

18. If power of attorney holder is conversant with the facts of the case and material question involved in the matter, he can examine and depose before the Court. Section 120 of the Indian Evidence Act, 1872 makes the husband a competent witness. The relevancy of power of attorney holder and his evidence can be considered in the facts and circumstances of each case. The extent of personal knowledge is a matter to be seen on a case to case basis. The fact, however, remain that a general power of attorney holder cannot give evidence 'in place' of plaintiff. He can only depose of the facts which are within his knowledge and his actions as a general power of attorney. The plaintiff has to discharge the burden cast upon her to prove her case.

19. It is well settled law that rules of procedures are



meant to sub-serve the cause of justice.

20. The learned trial Court has given permission only to make pairavi in the case and to give evidence by the power of attorney holder of the plaintiff. In view of the above, I find that there is no material infirmity or irregularity in the order of the trial Court which requires interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. However, it requires clarification / modification that the power of attorney holder (respondent No. 2) of plaintiff is permitted to do pairavi in the case and to give evidence for the planitiff-wife to the extent of his personal knowledge of the case but not in place of the plaintiff.

21. In view of the above, this Civil Miscellaneous Application is disposed of with the aforesaid clarification / modification in the impugned order.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	AFR
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