

21.06.2023
sayandeep
Sl. No. 90
Ct. No.652

CO 1370 of 2019
With
CAN 01 of 2020 (Old CAN 2018 of 2019), CAN 02 of 2023

Pushpa Mondal
Vs.
Nemai Chandra Gorai & Anr.

Mr. Debdutta Basu

.....for the petitioner

Mr. Supriyo Chattopadhyay

Mr. Sudip Kr. Maiti

.....for the O.P.

This is an application under Article 227 of the Constitution of India against order passed by learned Civil Judge (Senior Division) 2nd court, Asansol in Title Suit No.107 of 2014/212 of 2013.

Mr. Basu on behalf of petitioner contended that the petitioner being the plaintiff filed aforesaid suit for specific performance of agreement for sale dated 30th September, 2011 against the defendant. The defendant appeared in the said suit and filed written statement. The present plaintiff/petitioner is the wife of Brindaban Mondal who is the constituted attorney of the plaintiff and said Brindaban Mondal being the husband of the plaintiff is acquainted and aware with the facts and circumstances of the case, from the date when the property in question was purchased by the present plaintiff and defendants jointly in the year 2006 from the erstwhile owner and also subsequently when

the agreement for sale was entered into on 30th September, 2011.

After initiation of the suit plaintiff executed power of attorney in favour of her husband Brindaban Mondal empowering him to take all steps in favour of the plaintiff which includes adducing evidence on behalf of plaintiff. Pursuant to said power of attorney, said Brindaban Mondal filed affidavit-in-chief as P.W. 1. The defendant raised objection to such affidavit filed by PW1 and also prayed for expunging the evidence-in-chief filed by the PW1, which was objected by the plaintiff.

The matter came up for hearing before the Court below and learned Court below after hearing both the parties was pleased to allow the defendant's prayer and disallowed plaintiff's contention to adduce evidence by his constituted attorney Brindaban Mondal.

Mr. Supriyo Chattopadhyay, learned counsel appearing on behalf of the opposite party raised strong objection and referring **S. Kesari Hanuman Goud vs. Anjum Jehan & Ors.** reported in **(2013) 12 SCC 64** contended that it is not the case of the plaintiff that her husband who is her constituted attorney is aware of the impugned transaction and as such he has got no authority to depose on behalf of the plaintiff.

I have considered the submissions made by both the parties In **S. Kesari Kesari Hanuman Goud case (supra)**, Supreme Court has clearly laid down the

proposition of law on this point and paragraph 23 of the Judgment runs follow:-

“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 [(1999) 3 SCC 573 : AIR 1999 SC 1441] , Janki Vashdeo Bhojwani v. Indusind Bank Ltd. [(2005) 2 SCC 217] , Shankar Finance and Investments v. State of A.P. [(2008) 8 SCC 536 : (2008) 3 SCC (Cri) 558 : AIR 2009 SC 422] and Man Kaur v. Hartar Singh Sangha [(2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239] .)” (emphasis added)*

On perusal of the averments made in the plaint, it appears that plaintiff has not disclosed anywhere that her power of attorney holder Shri Brindaban Mandal has sufficient personal knowledge about the impugned transaction or he has acted in connection with subject matter of the suit on behalf of his principal i.e. plaintiff and as such the principle laid down in **S. Kesari Hanuman Goud case (supra)** squarely applicable in the present case. Considering the aforesaid facts and circumstances of the case, I do not find any illegality or impropriety in the order passed by the Court below which requires interference by this Court.

In view of the above, CO 1370 of 2019 is dismissed.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

CAN 01 of 2020 (Old CAN 2018 of 2019) and CAN 02 of 2023 are also accordingly disposed of.

(Ajoy Kumar Mukherjee, J.)