
(2007) 11 MAD CK 0074

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 2209 of 2007 and M.P. No. 1 of 2007

Mrs. Sakunthala

APPELLANT

Vs

Anandarajan

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2008) 1 MLJ 354

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S.S. Swaminathan, for the Appellant; Pradeep Kumar, for T. Dhanyakumar, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The revision petitioner, who is the plaintiff in the suit, filed this revision under Article 227 of the Constitution of India,

against the order of the learned District Munsif, Alandur in allowing the application filed by the 5th defendant in the suit u/s 151 of the CPC for

rejecting the proof affidavit filed by the Power Agent of the plaintiff, Mrs. Sakunthala.

2. The petitioner filed the suit for specific performance of a contract of sale stated to have been entered orally on 20.04.1994 and for a direction

against the defendants to execute and register sale deed after receiving the additional sale consideration of Rs. 15,000/- and also for permanent

injunction. The defendants have filed written statement denying categorically that no contract or oral agreement was entered on 20.04.1994 to sell

the suit property to the plaintiff. Further, the fixation of sale price at Rs. 15,000/- is also denied. However, the defendants have stated that they

have given power in favour of the 4th defendant, who, on his behalf and as power of attorney agent, sold the land in favour of one Sabeena Beevi.

It is the definite case of the defendants in the written statement that the plaintiff has set up her brother Ramalingam to claim as if a sale agreement

was entered into on 20.04.1994. It is the further case of the defendants in the written statement that Ramalingam, the brother of the plaintiff

approached the defendants and insisted them to sell the property and it is the said Ramalingam, who has set up the plaintiff to issue notice.

3. It is not in dispute that the plaintiff was permitted to appear through her brother Ramalingam as her power agent. It is also not in dispute that the

said power was given to the said Ramalingam after the plaintiff was examined in chief partly. When the said Ramalingam was intended to give

evidence about the alleged oral agreement dated 20.04.1994 between the plaintiff and the defendants, the 5th defendant has filed an application in

I.A. No. 2776 of 2006 as stated above for rejecting the proof affidavit filed by the power of attorney agent of the plaintiff Mrs. Sakuntha. The said

application was filed on the basis that the power agent of the plaintiff cannot be allowed to speak about the oral agreement for sale stated to have

been executed between the plaintiff and the defendants on 20.04.1994. Further, it was the case of the 5th defendant that when the suit was filed on

20.04.1995 based on the oral agreement, the power stated to have been given by the plaintiff to her brother Ramalingam is of the year 2003 and

therefore, the power of attorney cannot be expected to speak about the contract stated to have been entered seven years prior to the power

executed.

4. The learned trial Judge has allowed the said application and rejected the proof affidavit filed by the power of attorney on behalf of the plaintiff.

Against that, the plaintiff has filed this revision under Article 227 of the Constitution of India.

5. The contention raised by the learned Counsel for the petitioner against the order of the trial Judge is that admittedly the power of attorney agent,

Ramalingam is the brother of the plaintiff and even as per the contention in the written statement, the defendants have admitted that it was the said

Ramalingam, who has set up the plaintiff to file the suit and therefore, the said Ramalingam is the proper person to give evidence about the oral

agreement entered between the plaintiff and defendants on 20.04.1994.

6. On the other hand, learned Counsel appearing for the respondent would contend that when the power was given several years after the

agreement alleged to have been executed between the plaintiff and the defendants, the power of attorney agent is not expected to speak about the

agreement. He would rely upon the latest judgment of the Supreme Court rendered in Janki Vashdeo Bhojwani and Another Vs. Indusind Bank

Ltd. and Others, , wherein the Supreme Court in similar circumstances has held that a person, who got power much after the transaction, cannot

be expected to depose on behalf of the principal since it was a personal knowledge of the principal. He would also rely upon the judgment of the

Patna High Court rendered in Rajmuni Devi Vs. Smt. Shyama Devi and Others wherein the judgment of the Supreme Court in Janki Vashdeo

Bhojwani and Another Vs. Indusind Bank Ltd. and Others, was referred.

7. Order III Rule 2 of the CPC authorises a recognised power of attorney holder to appear in a case and act on behalf of the original person. The

said provision also contemplates that any person who has connection with trade or business or commercial transaction, can also appear and give

evidence, if so expressly authorised. Order III Rules 1 and 2 of the CPC state as follows:

Order 3: Recognised Agents and Pleadings:

1. Appearances, etc., may be in person, by recognised agent or by pleader - Any appearance, application or act in or to any Court, required or

authorised by law to be made or done by a party in such Court may, except where otherwise expressly provided by any law for the time being in

force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on

his behalf;

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognised agents - The recognised agents of parties by whom such appearances, applications and acts may be made or done are -

(a) persons holding powers of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not

resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

8. It was while construing the said provision of the CPC authorising an agent to represent a party, the Supreme Court has held that empowerment of the agent to do ""an act"" would not include deposing in place and instead of the principal. The Supreme Court has held that in cases where the evidence is to be given based on the personal knowledge of the principal such agent authorised cannot be permitted to give evidence. The Supreme Court has further held that in cases where the power of attorney came into existence, later cannot be expected to speak about the previous conduct. That was a case wherein evidence was given by the agent in respect of an independent source of purchase of a property, and the Supreme Court has held that the fact as to whether the amount of purchase had come from independent income of the party is the personal knowledge of the party and that cannot be deposed by a power agent. In that view of the matter, the term ""act"" was construed by the Supreme Court as follows:

12. In the context of the directions given by this Court, shifting the burden of proving on 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 the 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 III, Rules 1 and 2, CPC, empowers the holder of power of attorney to ""act"" on behalf of the principal. In our view the word ""acts"" employed in Order III, Rules 1 and 2, CPC, confines only in respect of ""act"" 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 to power of attorney, he may depose for the principal in respect of such acts but he cannot depose for the principal for him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

9. The Supreme Court has also considered the judgment of the Rajasthan High Court in Ram Prasad Vs. Hari Narain and Others, , wherein it was held that the word ""act"" under Order III Rule 2, CPC does not include the act of power of attorney holder to appear as witness on behalf of the party. It was further held that the power of attorney holder can appear only as a witness in his personal capacity and whatever knowledge he has about the case, he can state orally and he cannot appear as witness on behalf of the party in the capacity of that party. It was further observed that even if the plaintiff is not able to appear before the Court, the plaintiff is not left in the lurch. There is a provision for appointment of commissioner for recording evidence under CPC.

10. Therefore, as per the judgment of the Supreme Court and also the construction of the provision of Order III Rule 1 and 2 of CPC, it is very clear that the power agent of the plaintiff, though he being her brother, cannot be expected to speak about the oral agreement stated to have been entered between the plaintiff and the defendants on 20.04.1994. Further, the person who has been appointed as power agent in the year 2003 cannot be expected to know the normal course of business which is stated to have happened in the year 1994.

11. In view of the said categorical legal position and also on the factual situation, I do not see any irregularity or illegality in the order impugned.

Accordingly, the revision petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.