

Vijayanagar Syndicate Vs. B.C. Narayan

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Court : Karnataka

Decided On : Jun-18-1992

Reported in : ILR1993KAR1104; 1992(3)KarLJ291

Judge : Vasanthakumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rules 14 and 17 - Order 7, Rule 1; [Partnership Act, 1932](#) - Sections 69(2)

Appeal No. : C.Ps. Nos. 275 and 277 to 279 of 1991

Appellant : Vijayanagar Syndicate

Respondent : B.C. Narayan

Advocate for Pet/Ap. : Mirle L. Krishna Murthy, Adv.

Disposition : Revision petition allowed

Judgement :
ORDER

Vasanthakumar, J.

1. Perused the impugned orders in the following Civil Revision Petitions, the details of which are:-

CRP Nos.

Impugned Order in

Petitioner/Plaintiff

Respondents/Defendant

275/91

SC 1518/86

M/s.Vijayanagar Syndicate (Regd) No. 92, 5th Cross, Magadi Road, Bangalore-23,
by its Managing Partner Sri V, Varadarajulu

B.C.Naryan B.C. Lingaraju

277/91

SC 1415/86

-do-

1 . B.C.Shivaprasad

2. B.C.Lingaraju

278/91

SC 1416/86

-do-

1. R.Jayaram

2. B.R.Manjunath

279/91

SC 1414/86

-do-

1. B.C.Shivaprasad

2. B.C.Narayan

2. The interesting question that arises for consideration in all the above Civil Revision Petitions is whether the Court-below committed an error of law in arriving at a finding that one Sri V. Varadarajulu who has signed and verified the plaints as Managing Partner of plaintiff's firm namely M/s. Vijayanagar Syndicate (Regd) was not competent to institute the suits on behalf of plaintiff's partnership Firm?

3. M/s. Vijayanagar Syndicate (Regd) a Partnership Firm represented by one Sri V. Varadarajulu as Managing Partner instituted suits against defendants who were subscribers to the Chit fund transaction run by the plaintiff's Firm.

4. The defendants contested the suit and raised the following defences namely:-

1. That the plaintiff's Firm as being not a registered firm.

2. That Sri. V. Varadarajulu who has signed and verified the plaints as Managing Partner of the plaintiff's Firm as being not competent to represent the plaintiff's Firm in the capacity of Managing Partner in view of the fact that his name having not been included as partner in the Certificate of Registration of Firm.

3. That the plaintiff's Firm having not registered itself under the Karnataka Chit Funds Act, the suit as being not maintainable,

5. The trial Court formulated the following four Points for its Consideration:

1. Whether the plaintiff proved that Vijayanagar Syndicate is a registered Firm?

2. Whether the plaintiff proved that Sri V. Varadarajulu was competent to sign the plaint as its Managing Partner

3. Whether the plaintiff proved that the plaintiff's firm without registering itself under the Karnataka Chit Funds Act is entitled to sue?

4. Whether the plaintiff proved that the defendants 1 and 2 borrowed the loan of Rs. 3600/- and executed the suit pronote?

The trial Court answered Points 1 and 2 in the negative while answering Points 3 and 4 in the affirmative.

6. The plaintiffs examined two witnesses and got certain documents marked as Exhibits and first-defendant got himself examined and the second defendant adopted the same. The number of documents exhibited by the plaintiff in each of the above cases are as follows:

a) In CRP.275/91 arising out of SC 1518/86 plaintiff's exhibits P-1 to P-53

b) In CRP.277/91 arising out of SC 1415/86 P-1 to P-53

c) In CRP.278/91 arising out of SC 1416/86 P-1 to P-53

d) In CRP.279/91 arising out of SC 1414/86 P-1 to P-37

7. The trial Court regarding first Point formulated by it has observed that the suit as being not in compliance with Order 31 Rule 1 of the 'Code of Civil Procedure. Regarding the second point formulated by it the trial Court has observed that the plaintiff failed to fulfil the mandatory requirements of Section 69(2) of the Indian Partnership Act.

8. The petitioner - M/s. Vijayanagar Syndicate in all the above petitions have challenged the findings arrived at by the trial Court on first and second points as aforesaid. The petitioner during the course of arguments have filed Interlocutory Applications under Order 6 Rule 17 of C.P.C. in all these Civil Revision Petitions seeking amendment of the cause title and as well as amendment of para 2 of the plaint. The nature of the amendment sought for are:-

Amendment of cause-title

In place of petitioner-Vijayanagar Syndicate (Regd) No. 92, 5th Cross, Magadi Road, Bangalore-23, by its Managing Partner Sri V. Varadarajulu, substitute Vijayanagar Syndicate (Regd) No. 92, 5th Cross, Magadi' Road, Bangalore-23, by its power of attorney holder Sri V. Varadarajulu'. Similar amendment may be made in the plaint also.

Plaint para-2 which reads. The plaintiff is a registered partnership firm doing the business of running Chits and other financial business at the address furnished in the cause title above.

Add the following

The Firm consists of 8 following partners

1. S. Suryanarayana Setty
2. R. Venkateshaiah Setty
3. Smt. Adi Sanjeeva Lakshmi
4. Smt. N. Vijaya
5. Smt. L. Indira
6. V. Nagendranath
7. Smt. M.A. Sathyavadi
8. K.M. Rangadhama Setty

The above firm of partners represented by V. Varadarajulu under General Power of Attorney from the Managing Partner of the Firm.'

9. Respondents have been deemed to have been served by affixture of notices seeking recourse to Order 5 Rule 20 of the C.P.C. In OWNERS AND PARTIES INTERESTED IN M.V.VALI PERO v. FERNANDEZ LOPEZ : AIR 1989 SC2206 the Supreme Court has observed:-

'Rules of Procedure are not by themselves an end but means to achieve the ends of justice. Rules of Procedure are tools forged to achieve justice and are not hurdles to obstruct pathway to justice construction of Rules of procedure which promotes justice and prevents miscarriage by enabling the Court to do justice in Myriad situations all of which can not be envisaged acting within the limits of permissible construction must be preferred to that which is rigid and negatives the

cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and essentials of prescribed procedure have been followed there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. This is pragmatic approach which needs to be adapted while construing a purely procedural provision otherwise Rules of Procedure will become the mistress instead of remaining handmaid of justice contrary to the role to it in our legal system'.

The proposed amendments sought for neither introduces entirely a different case nor would it prejudice the others looking at the nature of defences set-up by the defendants. Few facts to briefly state are:- It is seen that two Firms styled under Firm name M/s. Vijayanagar Syndicate (Regd) and M/s. Vijayanagar Finance Corporation (Regd) were carrying on financing business i.e., lending Commercial loans and running chits and members constituting partners of these firms being the same except one member. The aforesaid two firms were being managed by Sri S. Suryanarayana Setty, Managing Partner. One Sri V. Varadarajulu, who was partner of M/s. Vijayanagar Finance Corporation was entrusted the carrying on of the business M/s. Vijayanagar Syndicate by virtue of Resolution dated 1.4.82 which reads as follows:-

'It is resolved that the responsibility and management of Chit Fund Business will be run at Magadi Road of Vijayanagar Syndicate will be entrusted to Sri V. Varadarajulu partner of Vijayanagar Finance Corporation. He should run the Chits. Sri S. Suryanarayan Setty Managing Partner to look after Rajajinagar Branch Business exclusively. Sri S. Suryanarayana Setty to take necessary steps authorising Sri V. Varadarajulu.'

On the strength of the Resolution V. Varadarajulu instituted suits against the subscribers, which are the subject matter of the suits under Revision. Apparently, the plaintiff in the cause title has described itself as:-

'M/s. Vijayanagar Syndicate (Regd) No.92, 5th Cross, Magadi Road, Bangalore-23 by its Managing Partner Sri V. Varadarajulu.'

It is seen from the Certificate of Registration of Firm of M/s. Vijayanagar Syndicate name of Sri V. Varadarajulu is not found in the list of partners who constituted that Firm and as such the description in the cause title that M/s. Vijayanagar Syndicate as being represented by Sri V. Varadarajulu as Managing Partner is obviously not correct and the same is defective description. Obviously Sri V. Varadarajulu by virtue of Resolution passed on 1.4.82 misdirected himself as Managing Partner while in fact he was not even a partner of M/s. Vijayanagar Syndicate, it is apparent the aforesaid Resolution authorised Sri S. Suryanarayana Setty who was the Managing Partner of M/s. Vijayanagar Syndicate to empower Sri V. Varadarajulu to look after the business of M/s. Vijayanagar Syndicate. So, as on the date of filing of the suits the subject matter of the above referred Civil Revision Petitions Sri V. Varadarajulu was not empowered by Sri Suryanarayana Setty to look after the business of M/s. Vijayanagar Syndicate that means Sri V. Varadarajulu had no power of attorney in his favour by the aforesaid Sri S. Suryanarayana Setty. For purposes of considering whether the complaints signed and verified and instituted by V. Varadarajulu representing M/s. Vijayanagar Syndicate would amount to legally valid presentations and suits as being maintainable, it would be proper to understand the real intendment of Order 6 Rule 14 of the Code of Civil Procedure. Subsequently, during the pendency of the suits, the plaintiff has produced General Power of Attorney executed by Sri S. Suryanarayana Setty in favour of Sri V. Varadarajulu the execution of which is admittedly subsequent to filing of the suits. Following are few excerpts from the Decision rendered in *MAKTAMBI v. SHANTABAI*, 1964 Mys. L.J. Supp 302 by Justice A.R. Somanath Iyer reported in 1964 Suppt. Mysore Law Journal 302:-

'Rule 14 of Order VI of the CPC., requires a pleading to be signed by the party and his pleader, if any, unless the party is by reason of absence or for other good cause, unable to sign the pleading, in which event it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. Rule 15 similarly requires every pleading to be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Rule 2 of Order III provides for appearances applications and acts in a suit by recognised agents of parties.'

What has been urged is that presentation of the plaint by V. Varadarajulu as Managing Partner is not only misconceived but the same suffers from legal infirmities as V. Varadarajulu had not even power of attorney executed by Sri S. Suryanarayana Setty empowering him to sign, verify and present the plaints as on the date of institution of suits in question.

'It is clear that even if it can be said that the signature to a plaint or its verification to part of the plaint, the omission on the part of a person to sign the plaint or verify it is a mere defect or irregularity not affecting the merits of the case or the jurisdiction of the Court and Section 99 of CPC forbids the reversal or substantial variation of any decree or remand of the proceedings, on account of any misjoinder of parties or causes of action or any error OF defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. The contention urged on behalf of the defendant is not that the omission to sign or verify the plaint is nothing more than a defect or irregularity and it cannot be disputed that if a person' has forgotten to sign and verify his plaint, he can be allowed to make good the defect at subsequent stage.'

'It is also equally well settled that if a plaint is not signed or verified? the plaintiff could be permitted by the Court in the exercise of its discretion to affix his signature and verify it at a subsequent date.

Code of Civil Procedure does not define a plaint. Section 26 of CPC. reads:

'Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.'

'Order VI Rule 1 of the Code says that 'pleading' shall mean plaint or written statement. Rule 2 enumerates the contents of a pleading. Rules 3 and 4 prescribe the forms of pleadings and the particulars to be given in certain cases. Rule 14 requires the pleading to be signed and Rule 15 requires its verification. Rule 17 authorises the amendment of pleading in suitable cases with the permission of the Court. Likewise Order VII Rule 1 enumerates the particulars to be contained in a plaint. That the plaint presented by the plaintiff in this case ail the particulars required by Rule 2 of Order VI and Rule 1 of Order VII were contained is

undisputed. If therefore the plaint conformed to the requirements of Rule 2 of Order VI and Rule 1 of Order VII, but the plaintiff did not affix his signature to it as required by Rule 14 of Order VI and she did not verify the plaint as required by Rule 15 of Order VI can it be said whatever produced by the plaintiff...was not a pleading or plaint but was a piece of waste 'paper'.

10. 'It seems to me that the Rule 14 of Order VI says that every pleading shall be signed and Rule 15 says that every pleading shall be verified makes it abundantly clear that what makes a document produced by the plaintiff before a Court a pleading is not his signature or verification to it, but the fact that the particulars required by Rule 2 of Order VI and Rule 1 of Order VII of the C.P.C. are contained in it. The requirement intended to bestow upon the pleading a prima facie guarantee of the truth or the correctness of the allegations contained in it is the correctness of the allegations contained in it is the statutory requirement of Rule 14 that the plaintiff should sign the plaint and further requirement of Rule 15 that he should verify it. In my opinion a plaint by reason of its conforming to the requirements of Rule 1 of Order VII and Rule 2 of Order VI does not cease to be a plaint merely for the reason that further requirement of CPC that it should be signed and verified was not complied with.'

11. In the cases under reference Sri V. Varadarajulu has signed the plaints as Managing Partner of M/s. Vijayanagar Syndicate but as not duly authorised agent of Sri S. Suryanarayana Setty the Managing Partner of M/s. Vijaynagar Syndicate. However, General Power of Attorney executed by S. Suryanarayanasetty has been produced which not only empowers but ratifies the acts done by Sri V. Varadarajuiu,

12. In SUBBIAH PILLAI v. SANKARA PANDIAM PILLAI, AIR 1948 Madras 369 it has held that defect in the form of an omission to affix the signature to the plaint is what can be cured even in appeal. It is seen from the impugned order, that defendants have urged that when the suit has been brought in the name of Partnership Firm Sri V. Varadarajuiu should be deemed to be as one of the partners suing and since his name was not shown in the Register of Firms as a partner on the date of institution of suit, Section 69(2) of Indian Partnership Act

constitutes a clear bar to the maintainability of the suit. Section 69(2) of the Act reads thus:-

'No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a Firm against third party unless the Firm is registered and the person suing in Section 69(2) has to be construed to mean all the partners constituting the Firm at the time of accrual of cause of action'.

In the instant case name of Sri S. Suryanarayana Setty is shown as the Partner of Firm M/s. Vijayanagar Syndicate at the time the suit transaction took place and defendants have not denied the fact of his being as Managing Partner of Firm. In GURUSHIDDAYYA v. SHAH HIRACHAND, 1972(1) Mys.L.J. 291 it is observed:-

'The question is who are the 'persons suing' in a suit which is instituted by or on behalf of a Firm against any third party. For answering the said question we have to turn to the provisions of Section 4 of the Act, Section 45 of the Contract Act and Order XXX Rule 1 of the CPC. Persons who have entered into partnership with one another are called individually partners and collectively a firm and the name under which their business is carried on is called the Firm Name (Vide Section 4 of the Act). Order XXX Rule 1 of CPC enables two or more persons claiming or being liable as partners and carrying on business in India to sue or to be sued in the name of the Firm of which they were partners at the time of accrual of cause of action. Rule 1 shows name. Rule 2 provides that on disclosure of the names of partners of the plaintiff firm the suit proceeds as if they are named as plaintiffs in the plaint. A suit by or in the name of a Firm is thus really a suit by or in the name of all its partners.'

Settled position as decided in MANDALASA DEVI v. AMANARAIN P. LTD. : (1985)ILLJ409SC is:-

'1. A suit by or in the name of a Firm is really a suit by or in the name of all its partners. So also a suit against the Firm is really against all partners of the Firm.

2. A suit by the Firm is really a suit by all the partners who were its partners at the time of the accrual of the cause of action. The expression 'persons suing in 69(2)

therefore means all the partners of the Firm who were its partners at the time of accrual of the cause of action.'

In the Decisions of High Courts of Punjab, Rajasthan and Jammu and Kashmir relied on by the learned Counsel for the appellants the view taken is that all the persons who are the partners of the firm at the time of institution of the suit must be or have been shown as such in the Register of Firms with respect we dissent from that view.'

13. 'For the reasons stated above, persons who were not partners at the time of accrual of cause of action are not the persons suing notwithstanding the fact that they are partners of firm on the date of suit. In our Judgment, a suit by or in the name of Firm is a suit by or in the name of all its partners at the time of the accrual of cause of action our view is supported by the Decision in BHARAT SARVODAYA MILL v. MOHATA BROS (1969 Guj 176).'

13. Admittedly Sri S. Suryanarayana Setty was the Managing Partner of the Firm Vijayanagar Syndicate not only on the date when cause of action accrued but also on the date when the suits were filed.

14. The arguments canvassed by the defendants before the trial Court if summarised would lead to;

1. Original plaint is no plaint in law and therefore it is a mere nullity of a process.
2. Suit as filed by V. Varadarajulu as Managing Partner of M/s. Vijayanagar Syndicate is not a case of misnomer or mis-description.
3. When plaint is filed showing that the plaintiff was not a legally recognised person at all such a plaint must be regarded as nullity.

In PURUSHOTTAM & Co v. MANU & SONS : [1961]1SCR982 the Supreme Court has held:-

'Section 4 of the Indian [Partnership Act, 1932](#), hereinafter referred to as the Act, states that:-

'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually 'Partners' and collectively 'a firm and the name under which their business is carried on is called the 'firm name'.'

It is clear from this provision of the Act that the word 'firm' or the 'firm name' is merely a compendious description of all the partners collectively. It follows, therefore, that where a suit is filed in the name of a firm it is still a suit by all the partners of the firm unless it is proved that all the partners had not authorised the suit. A firm may not be a legal entity in the sense of a corporation or a Company incorporated under the Indian Companies Act but it is still an existing concern where business is done by a number of persons in partnership. When a suit is filed in the name of a firm it is in reality a suit by all the partners of the firm. If Order XXX had not been introduced into the Code and a suit had been filed in the name of a firm it would not be a case of a suit filed by a non-existent person. It would still be a suit by the partners of a firm, the defect being that they were described as a firm, In order to clarify matters a Court would permit an amendment by striking out the name of the firm and replacing it with the name of the persons forming the partnership. It would be a case of misdescription. Even if the provisions of Order 1 Rule 10 and Order VI, Rule 17 did not strictly apply the amendment could be permitted under Section 153 of the Civil Procedure Code because it was not a case of either adding parties or substituting parties. The High Court referred to a number of decisions to which no particular reference need to be made but they do support the view taken by the High Court that in the present case the plaintiff described in the plaint as the firm of Manilal & Sons was a mere misdescription capable of amendment and not a case where a plaint had been filed by a non-existent person and therefore a nullity.

We now refer to certain provisions of Order XXX, C.P.C. Order XXX, Rule 1. C.P.C. states:

'1. Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm if any of which such

persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

2. Where persons sue or are sued as partners in the name of their firm under Sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons'.

This rule enables any party to a suit filed in the name of a firm doing business in India to apply to the Court for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action partners in the firm to be furnished and verified in such manner as the Court may direct. Order XXX, Rule 2 states:

'1. Where a suit is instituted by partners in the name of their firm, the plaintiff's or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

2. Where the plaintiffs or their pleader fail to comply with any demand made under Sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

3. Where the names of the partners are described in the manner referred to in Sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm'.

This makes it obligatory, in the case of a suit instituted by the partners in the name of the firm, on demand in writing by or on behalf of any defendant, to declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. If the plaintiffs fail to comply with the demand made under Sub-rule (1) of this rule, all the proceedings in the suit may be stayed on such terms as the Court may direct. Under Sub-rule (3) if the names of the partners are declared in the manner referred to in Sub-rule (1) the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the plaint, provided that all the proceedings shall nevertheless be continued in the name of the firm. Rule 1 of Order XXX is a general provision. Rule 2, however, is confined to a suit instituted by partners in the name of the firm. It is clear from this rule that although the suit is filed in the name of the firm a disclosure has to be made, on demand in writing by or on behalf of any defendant, of names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. The provisions of Rule 2 would indicate that although the suit is filed in the name of a firm, it is nonetheless a suit by all the partners of the firm because if a disclosure of the names of the partners is asked for by any defendant, on such disclosure, the suit shall proceed as if the partners had been named as plaintiffs in the suit, even though the proceedings shall nevertheless be continued in the name of the firm. It is clear, therefore, that the provisions of Order XXX Rule 1 and 2 are enabling provisions to permit several persons who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of Order XXX, being enabling provisions, do not prevent the partners of a firm from suing or being sued in their individual names. These rules also do not prohibit the partners of a firm suing in India in their names individually although they may be doing business outside India. Indeed, this was not disputed on behalf of the appellant. Since, however, a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons who, as partners, are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If, however, under some

misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted is by them, they being known collectively as a firm. It seems, therefore, that a plaint filed in a Court in India in the name of a firm doing business outside India is not by itself a nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purposes of the Code of Civil Procedure. In these circumstances, a Civil Court could permit, under the provisions of Section 153 of the Code (or possibly under Order VI Rule 17, about which we say nothing) an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the Court in determining the real question or issue between the parties. Strictly speaking Order I, Rule 10(1) has no application to a case of this kind because the suit has not been instituted in the name of a wrong person, nor is it a case of there being a doubt whether it has been instituted in the name of the right plaintiff. The provisions of Order I, Rule 10(2) also do not apply because it is not a case of any party having been improperly joined whose name has to be struck out or a case of adding a person or a party who ought to have been joined or whose presence before the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The suit has been from its very inception a suit by the partners of the firm and no question of adding or substituting any person arises, the partners collectively being described as a firm with a particular name.'

By virtue of Ex.P.-12 that is the Resolution dated 1.4.1982, it is established that S. Suryanarayana Setty was being authorised by Firm M/s. Vijaya Syndicate to empower V. Varadarajulu to run the business of the Firm. Section 2 of the Power of Attorney Act, 1982 runs as follows;

'The Donee of a Power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature and his own seal where sealing is required, by the authority of the Donor of the power and every assurance, instrument and thing so executed and done shall be effectual in law as if it had been executed or done by the Donee of the power in the name and with the signature and seal of the Donor thereof.'

15. S. Suryanarayana Setty as Managing Partner of M/s. Vijayanagar Syndicate by himself had authority to sign, verify and present the complaints on behalf of M/s. Vijayanagar Syndicate. Order VI Rule 14 contemplates signing of the pleadings by duly authorised person and to sue and to be sued whether subsequent ratification of the acts of V. Varadarajulu by S. Suryanarayana Setty would result in any declaration that instruments so executed would be invalid and results in the process of nullity?

16. The object of Section 2 of the Power of Attorney Act is to effectuate instruments executed by an agent but not in accordance with the rule of the common law and the enactment is more procedural than substantive.

17. Power of running the business and owning responsibility thereon by itself denotes that person having been empowered to do all acts including initiation of legal actions for recovery of monies due under business transaction which are necessary for effective business administration and management. It is held that in cases where vendor who was stationed in USA, had given a power of attorney not duly authenticated for purposes of execution and presentation of sale deed for registration and after noticing the power of attorney that had been given as being defective, the vendor executed a second power of attorney duly ratifying the earlier. Held that second power as validating transaction and registration even though execution and presentation of the sale deed both being earlier to the second power, such ratification relates back to date of act done and agent is put in same position as if he had authority to do it at that date and illegality in registration being cured. [-Ratio decidendi of the case reported in : [1971]1SCR38 ,Jugraj v. Jaswant is referred]

18. Having in view the Decisions referred supra, I am of the opinion that findings arrived at by the trial Court on first and second Points formulated by it deserves to be re-examined and reconsidered.

19. Hence the trial Court is hereby directed to re-consider and re-examine its findings recorded on First and Second Points formulated by it, in the light of the Decisions referred supra after hearing both the parties on record.

20. Accordingly, these Civil Revision Petitions are allowed.

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