

SamsuddIn Vs. Jagdish

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Court : Madhya Pradesh

Decided On : Jul-13-2000

Reported in : 2000(3)MPHT421

Judge : J.G. Chitre, J.

Acts : Evidence Act - Sections 3 and 118; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 3, Rules 1, 2 and 3

Appeal No. : Civil Revision No. 560/99

Appellant : Samsuddin

Respondent : Jagdish

Advocate for Def. : None

Advocate for Pet/Ap. : A.S. Garg, ;O.P. Arya and ;P.L. Choudhary, Advs.

Disposition : Petition allowed

Judgement :

ORDER

J.G. Chitre, J.

1. In the interest of justice and for avoiding the obstruction to the hearing of the suit before the trial Court, this petition is decided hereby finally at motion hearing

stage.

2. The petitioner happens to be a plaintiff in the matter of Civil Suit No. 230-A/96. He appointed a person named Iqbalkhan as the holder of his general power of attorney to appear and act on his behalf in the matter of said suit before the trial Court i.e., Civil Judge Class I, Indore, who was to decide the said suit. On 5-2-99 he entered in the witness-box and the Court started recording his evidence. At that time the lawyer representing the opponents raised an objection that said Iqbalkhan was incompetent, to give evidence as he was the holder of General Power of Attorney of the present petitioner. The learned trial Judge after placing the reliance on the judgment of Rajasthan High Court (Single Bench) in the matter Ramprasad v. Harinarain and Ors., reported in AIR 1998 Raj 185. concluded that said Iqbalkhan was incompetent to give evidence on behalf of present petitioner. He thus, stopped recording the evidence of said Iqbalkhan by passing an Order dated 3-2-99 which is the subject matter of challenge in the present, petition.

3. Shri A.S. Garg by placing reliance on the judgment of this Court in the matter of Mangalia v. Prabhu, reported in 1999 (1) MPWN Note 178 Page 265, submitted that the view taken by the trial Court is totally erroneous and not consistent with the provisions of law as indicated by Order 3 Rule 2 C.P.C. He submitted that the Order which has been challenged in the revision petition be set-aside and appropriate Order be passed by allowing this revision petition.

4. Order 3 Rule 1 CPC provides that 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 recognized 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.

5. Rule 2 provides-- The recognized agents of parties by whom such appearance, applications and acts may be made or done-- (a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

6. In this context provision; of Order 3 Rule 3 will have to be also considered which provide (1) Process served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs; (2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent.

7. Single Bench of Rajasthan High Court took the view in Ramprasad's case (supra) that provisions of Order 3 Rule 2 CPC will have to be read in context with provisions of Section 118 of the Indian Evidence Act which provides 'All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind'.

8. By making reference to the provisions of Section 118 of Indian Evidence Act, Single Bench, Rajasthan High Court, went further ahead in considering the ratio of the judgment of Single Bench of Rajasthan High Court in Revision No. 805/85 (Roopchand v. Narayanlal, decided on 9-1-1986) wherein the Single Bench held, 'Thus the defendant is entitled to examine either Roopchand or his power of attorney holder Kistoor Chand as a witness, even though his name has not been mentioned in the list of witnesses'.

9. By making the reference to the said observations of Single Bench in the matter of Roopchand's case (supra), the Single Bench while deciding the matter in Ramprasad's case (supra) went further in observing that it was evident that in Roopchand v. Narayanlais case (supra), Rajasthan High Court was only examining the question of inclusion of name of witness in the list and only a passing remark was made in respect of examination of power of attorney holder or the party. Neither the provisions contained in Order 3 Rule 2 were discussed nor the word 'acts' was interpreted. After this, the learned Single Judge progressed ahead by making reference to another judgment of Rajasthan High Court (Single Bench) in the matter of Shambhu Dutta Shastri v. State of Rajasthan, (1986) 2 WLN 713, where Rajasthan High Court (Single Bench) held-- '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.'

10. After considering this observation of the Single Bench of Rajasthan in Shambhu Dutta's case, the Single Bench of Rajasthan High Court decided to place reliance on these observations in Ramprasad's case (supra) and held that 'word 'acts' used in Rule 2 of Order 3 CPC does not include the act of power-of-attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever he has knowledge about the case, he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the Court a commission for recording his evidence may be issued under the relevant provisions of C.P.C.'

11. In the matter of Mangalia (supra) the Single Bench of this Court held that a special power of attorney holder can act for the party in the Court. In that matter the Single Bench was considering the credence of the document authorising the said person i.e. General power of attorney and therefore, without interpreting the correct meaning of provisions of Order 3 Rule 2 CPC the Single Bench decided the said matter and held that such holder of power of attorney can appear and act on behalf of the party and can certainly appear as a witness and his testimony would be judged on its own merits.

12. The word (used in Rule 2 of Order 3 CPC) 'acts' will have to be interpreted in a broader approach keeping in view the provisions of Rule 1 CPC as well as Rule 3 of CPC. In view of provision of Rule 1, the party is permitted to put up appearance through a recognized agent or by a pleader for 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. It has been indicated by the said provision that such appearance, application and act by such recognized agent or pleader would be the act of such

party. The same meaning has been also indicated by provisions of Rule 3 where the service on such recognized agent has been allowed to be accepted by the Court as a lawful service on the party. The impact created by provisions of Rules 1, 2 and 3 CPC will have to be taken together for interpreting what should be the meaning of word 'acts' used in Rule 1 and Rule 2 CPC. A careful reading of provisions of Rules 1 and 2 of Order 3 does not permit any inference to be drawn that the legal status of the person holding the power-of-general-attorney has been in any way minimised or restricted. Once a party decides to appoint a person to act for all purposes as its General Attorney and when provisions of Rules 1 and 2 CPC provide that the party can put such appearance the word 'acts' will have to be given a broader meaning. Nowhere it has been indicated by these rules that such holder of power-of-attorney can be prevented from being examined as a witness. What credence the Court should give to his evidence would be a matter pertaining to the act of appreciation of evidence. The impact created by such evidence would be pertaining to the domain of appreciation of evidence and that would relate to word 'proved' used in Section 3 of the Indian Evidence Act. That would be a subject matter of discussion in coming to a conclusion as to which extent such party has discharged the onus of proving the facts in issue. That does not in any way permits a Court to prevent such a person to give evidence in the suit. If he is holder of General-power-of-attorney the Court would be at liberty to give a befitting credence to his evidence. That would be a different aspect altogether. He cannot be prevented from being examined as a witness and when he has entered into a witness-box it would not be proper for the Court to stop his examination and to ask him to get out of the witness box. That would be not only improper but would be against the spirit and the provisions of law.

13. In the present matter the said witness was being examined, his examination started and thereafter the objection was raised and the trial Judge asked him to withdraw from witness-box by stopping recording of his evidence. For doing so, the trial Judge, placed reliance on the judgment of Single Bench of Rajasthan High Court quoted supra.

14. In view of discussion above I cannot allow myself to agree with the view taken by the learned Single Judge of Rajasthan High Court in case of Ramprasad

(supra). I concur with the view taken by the Single Bench of this High Court in the case quoted supra but I spell out the interpretation of the word 'acts' which is lacking in the judgment, for the interest of justice and for giving a solace to the litigants who should not be required to face such a situation in future.

15. Thus, petition stands allowed. The Order which has been assailed by this revision petition is set-aside. The trial Court is hereby directed to continue the examination of witness Iqbalkhan. The trial Court would be at liberty to assess the impact created by his evidence in view of provisions of Indian Evidence Act while doing the act of appreciation of evidence for the purpose of passing appropriate judgment and decree.

16. No Order as to costs.

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