



2026:AHC:145266

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 2414 of 2017

Sri Bhagwan Bhajdashram And Another

.....Petitioner(s)

Versus

Sri Ram Babu Upadhyay

.....Respondent(s)

Counsel for Petitioner(s)	:	Chhaya Gupta, Sujeet Kumar
Counsel for Respondent(s)	:	Rahul Sahai

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Shri Shravan Kumar Yadav holding brief of Shri Sujeet Kumar, learned counsel for the petitioners and Shri Siddharth Srivastava holding brief of Shri Rahul Sahai, learned counsel for the respondents are present

2. The petitioner, who were plaintiffs in Original Suit No.29 of 2010, have preferred this petition with a prayer to set aside the order dated 13.1.2017 passed by Additional District Judge, Court No.2, Mathura in J.S.C.C. Revision No.9 of 2016. By means of the said impugned order, the trial court has set aside the judgment and decree dated 14.1.2016 passed in O.S. No.29 of 2010 and remanded the matter back for fresh consideration.

3. Parties in the judgement will be referred to their nomenclature as mentioned in the plaint. Petitioners at present are plaintiffs and the respondent is the defendant in the aforesaid suit.

4. Short question which arises for consideration is whether a Power of Attorney Holder is entitled to testify in place of his Principal?

5. Briefly stated, the petitioner, a registered society, instituted O.S. No. 29 of 2010 (Shri Bhagwan Bhajanashram, Vrindavan Society through its Secretary and others vs. Shri Rambabu Upadhaya) seeking termination of tenancy and ejection of the respondent-tenant. The suit was decreed by the Trial Court by judgment and decree dated 14.1.2016.

6. Aggrieved by the said judgment and decree, the respondent-tenant preferred Civil Revision No. 09 of 2016. The Revisional Court, by the

impugned judgment, allowed the revision solely on the ground that the plaintiff had not entered the witness box and had instead examined its Power of Attorney Holder in support of its case.

7. Assailing the impugned order, learned counsel for the petitioners submitted that the petitioner no.1 is a registered society, which, being a juristic person, necessarily acts through its office bearers or duly authorised representatives. It is contended that the Society had executed a valid Power of Attorney in favour of its authorised representative empowering him not only to institute and prosecute the proceedings but also to depose on behalf of the Society. It is, therefore, submitted that there is no legal prohibition against a duly authorised Power of Attorney Holder appearing as a witness on behalf of the Society merely because the Society itself could not step into the witness box. It is further submitted that the Revisional Court has committed a manifest error of law in setting aside the decree of the Trial Court on this ground alone.

8. Per contra, learned counsel for the respondent supported the impugned judgment and submitted that the Revisional Court has committed no illegality in setting aside the decree passed by the Trial Court. It was contended that although the suit had been instituted by the plaintiff-Society, none of its office bearers or persons having personal knowledge of the facts entered the witness box. Instead, the plaintiff examined only its alleged Power of Attorney Holder, Shri Prem Chand Goyal, who deposed in place of the plaintiff.

9. It was further submitted that the law does not permit a Power of Attorney Holder to assume the position of the principal for the purpose of giving evidence merely on the strength of the authority conferred upon him. According to the respondent, although a Power of Attorney Holder may institute or conduct proceedings on behalf of the principal, he cannot, as a matter of course, step into the witness box in substitution of the principal. It was contended that the Trial Court committed a manifest error in treating the testimony of the Power of Attorney Holder as that of the plaintiff itself and decreeing the suit on such evidence.

10. In support of his submissions, learned counsel placed reliance upon the judgments of **S. Kesari Hanuman Goud v. Anjum Jehan & Others**,

2013 AIR SCW 3561, and **Surya Prakash and Others v. Ayodhya Prasad**, **2015 (33) LCD 1351**, and contended that both the aforesaid decisions unequivocally lay down that a Power of Attorney Holder cannot depose in place of the principal with respect to matters which are within the personal knowledge of the principal. It was, therefore, urged that the Revisional Court rightly interfered with the decree passed by the Trial Court and the present petition, being devoid of merit, deserves to be dismissed.

12. Heard learned counsel for the parties and perused the judgment and decree dated 14.1.2016 passed by the learned Trial Court.

13. A perusal of the judgment shows that the learned Trial Court framed five issues for determination. The first issue related to the existence of the relationship of landlord and tenant between the parties. The said issue was decided in favour of the plaintiff in view of the categorical admission made by the defendant regarding such relationship. The second issue pertained to the validity of termination of tenancy by service of notice under Section 106 of the Transfer of Property Act. The defendant admitted receipt of the notice and also admitted that a reply thereto had been sent through his counsel. Consequently, the learned Trial Court held that the tenancy had been validly terminated and decided the issue in favour of the plaintiff. The third issue was whether the disputed premises was exempt from the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972). This issue was seriously contested by the parties. Upon appreciation of the evidence on record, the learned Trial Court recorded a finding in favour of the plaintiff and held that the provisions of the Act were not applicable to the premises in question. The remaining issue related to the relief to which the plaintiff was entitled. In view of the findings recorded on the material issues, the learned Trial Court decreed the suit and directed the defendant to vacate the tenanted premises within thirty days.

14. Considering the facts as stated above, following question, therefore, arises for consideration:

Whether it is mandatory in every suit, irrespective of its nature, that the plaintiff must himself enter the witness box to prove his case?

15. The answer to the aforesaid question can be found by examining the basic principles governing pleadings and the law of evidence. Pleadings contain the material facts constituting the cause of action on which a party seeks relief. Mere pleadings, however, do not by themselves prove the facts pleaded. Sections 101 and 102 of the Indian Evidence Act embody the fundamental rule that the burden of proving a fact lies upon the person who asserts it. In other words, the party who approaches the Court with a particular case must lead evidence in support of the facts pleaded by him. Unless such burden is discharged, no relief can ordinarily be granted in his favour. The question, however, is not whether the plaintiff is required to adduce evidence, but whether such evidence must invariably be given by the plaintiff personally or whether, in an appropriate case, it can be adduced through a person legally authorised to act on his behalf. It is this aspect which requires consideration in the present case.

16. The answer lies in a well-settled principle of the law of evidence. The law requires a party to produce the best evidence available to prove the facts asserted by it. Where a party, despite being in possession of the best available evidence, withholds the same without any justifiable reason, the Court may draw an adverse inference against such party. It is for this reason that, in an ordinary case, the plaintiff is expected to enter the witness box and subject himself to examination and cross-examination. The plaintiff is ordinarily the person best acquainted with the facts pleaded by him and is, therefore, the most competent witness to prove those facts. His failure to appear without sufficient cause may, depending upon the facts and circumstances of the case, justify drawing an adverse inference under the law of evidence.

17. However, this principle cannot be elevated to an inflexible rule that in every suit, irrespective of its nature or the status of the plaintiff, the plaintiff must necessarily enter the witness box. Whether such personal appearance is indispensable depends upon the nature of the parties, the facts in issue, and the evidence required to prove them.

18. The aforesaid principle, however, has to be applied keeping in view the nature of the litigant. The position stands on a different footing where the plaintiff is a juristic person, such as a registered society, a company or any other artificial legal entity. A juristic person has no physical existence

and, therefore, cannot itself step into the witness box. It necessarily acts through its office bearers, directors, secretaries or other duly authorised representatives. Consequently, the requirement of leading evidence by the plaintiff stands satisfied when a competent and duly authorised representative enters the witness box and deposes on behalf of such juristic person. To hold otherwise would amount to requiring an impossibility, which the law neither contemplates nor insists upon.

19. In the present case, the first and foremost aspect which deserves consideration is that the suit has been instituted by a juristic person, namely, a registered society. A juristic person, by its very nature, can neither act nor depose except through a duly authorised human agency. Therefore, where a Power of Attorney Holder or any other authorised representative of such juristic person enters the witness box on its behalf, his testimony cannot be discarded merely on the ground that the juristic person itself did not “appear” before the Court. Equally, the suit cannot be dismissed solely for the reason that the plaintiff failed to enter the witness box.

20. A different consideration may arise where the facts pleaded are of such a nature that they can be proved only by a particular office bearer or functionary of the Society possessing exclusive or special knowledge of those facts. In such a case, failure to examine such person may invite an adverse inference depending upon the facts and circumstances of the case. However, where the facts in issue are capable of being proved by a duly authorised representative having knowledge of the transaction and the records of the Society, there is no legal impediment in accepting his testimony merely because he is a Power of Attorney Holder.

21. Coming to the facts of the present case, it is apparent that although five issues were framed by the learned Trial Court, only a limited number of them involved disputed questions of fact. The relationship of landlord and tenant as well as the service and receipt of notice under Section 106 of the Transfer of Property Act were not in dispute, the defendant having admitted both. The only substantial issue requiring adjudication was whether the tenanted building was exempt from the provisions of U.P. Act No. 13 of 1972, which depended primarily upon the nature of the plaintiff-Society and the documentary evidence relating to the Trust and

the property in question.

22. Thus, none of the issues was of such a nature as to necessarily require oral testimony from any particular office bearer of the plaintiff-Society. The controversy could substantially be adjudicated on the basis of the documentary evidence produced on record and the evidence led to prove those documents. The plaintiff examined only one witness, namely, its Power of Attorney Holder, P.W.-1 Prem Chand Goyal, whereas the defendant examined two witnesses. Significantly, the learned Trial Court has not discussed even a single line of the oral testimony of any of these witnesses while recording its findings. The testimony of P.W.-1 Prem Chand Goyal came to be noticed for the first time by the Revisional Court, which observed that he had been examined for the purpose of proving the valuation of the suit.

23. In the aforesaid factual background, the evidence of P.W.-1 was not directed towards proving any fact which, by its very nature, could have been proved only by an office bearer of the plaintiff-Society. The matters on which evidence was required were either undisputed or rested principally upon documentary evidence. Therefore, the mere fact that the witness examined was the authorised Power of Attorney Holder and not an office bearer of the Society could not, by itself, furnish a valid ground for discarding his testimony or for holding that the plaintiff had failed to prove its case.

24. Learned counsel for the respondent has placed reliance upon the judgments of the Hon'ble Supreme Court in **S. Kesari Hanuman Goud** (supra) and of this Court in **Surya Prakash** (supra). In **S. Kesari Hanuman Goud** (supra), the Hon'ble Supreme Court reiterated the well-settled principle that a Power of Attorney Holder cannot depose in place of the principal with regard to matters which are exclusively within the personal knowledge of the principal. The Court held that while a Power of Attorney Holder is competent to depose regarding the acts performed by him in exercise of the authority conferred upon him, he cannot substitute the principal for proving those facts which only the principal is capable of proving. The decision thus emphasizes the distinction between acts done by the attorney himself and matters lying exclusively within the personal knowledge of the principal.

25. Similarly, in **Surya Prakash** (supra), this Court, following the aforesaid principle, held that where the controversy relates to facts which require the personal testimony of the plaintiff, such facts cannot be proved merely by examining a Power of Attorney Holder. The Court observed that the testimony of the attorney cannot be treated as a substitute for the testimony of the principal in respect of matters exclusively within the latter's knowledge.

26. The ratio laid down in the aforesaid judgments is unexceptionable. However, the applicability of a precedent depends upon the facts of the case before the Court. Neither of the aforesaid decisions lays down as an absolute proposition of law that in every suit a Power of Attorney Holder is incompetent to depose on behalf of the principal or that non-examination of the plaintiff would, by itself, result in dismissal of the suit. Both are founded upon the principles enunciated by the Hon'ble Supreme Court in **Janki Vashdeo Bhojwani & Another v. Indusind Bank Ltd. & Others**, (2005) 2 SCC 217.

27. In **Janki Vashdeo Bhojwani** (supra), the Hon'ble Supreme Court held that a Power of Attorney Holder is competent to depose in respect of the acts performed by him in exercise of the authority granted under the Power of Attorney. However, he cannot depose regarding matters which are exclusively within the personal knowledge of the principal, nor can he be examined as a substitute for the principal in respect of such matters. The judgment, therefore, does not lay down an absolute proposition that a Power of Attorney Holder is altogether incompetent to enter the witness box. On the contrary, it recognizes his competency to depose regarding matters within his own knowledge and the acts done by him on behalf of the principal.

28. It is this principle which has been reiterated in **S. Kesari Hanuman Goud** (supra) as well as in **Surya Prakash** (supra). Thus, the ratio of these decisions is that the admissibility and evidentiary value of the testimony of a Power of Attorney Holder depends upon the nature of the facts sought to be proved and not upon any absolute rule that the principal must, in every case, enter the witness box personally.

29. Therefore, this Court is of the view that setting aside the judgment and

decree dated 14.1.2016 passed in O.S. No.29 of 2010 is perverse in nature and has been passed upon irrelevant consideration.

30. In view of the aforesaid discussion, the writ petition succeeds and is, accordingly, **allowed**. The impugned order dated 13.1.2017 passed by Additional District Judge, Court No.2, Mathura in J.S.C.C. Revision No.9 of 2016 cannot be sustained and is, accordingly, set aside. Consequently, the Original Suit No.29 of 2010 stands decreed.

(Anil Kumar-X,J.)

July 16, 2026
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