



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22nd DAY OF JANUARY, 2004.

BEFORE

THE HON'BLE MR. JUSTICE R. GURURAJAN

WRIT PETITION NO. 50794/2003 (GM-RES/CFC)

BETWEEN:

H.S. Indires, h,
S/o H.S. Siddalingappa, A/a 11 yrs.,
Occupation: Business,
R/o Brahmin's Street,
Hoskote Town, Hoskote Taluk,
Bangalore District,
Rep. by his Power of Attorney Holder,
R. Chikka Rudrapa,
S/o late Dodda Rudrappa, A/a 62 yrs.,
R/o Keshavaswami Temple Street,
Vijayapura Town, Devanahalli Taluk,
Bangalore District.

... Petitioner

(BY SRI. Goutham & Rajeswar, Advs)

AND:

Mr. N. Ravi S/o late Ganachari Nanjappa,
A/a 40 yrs.,
R/a Dharmarayaswamy Temple Street,
Vijayapura Town, Devanahalli Tq,
Bangalore District.

... Respondent

(BY Sri. H.S. Ramamurthy, for c/R1)

This WP is filed u/a 226 & 227 of the Constitution praying to quash the order, dt. 20.11.2003 passed in O.S. No. 192/1991 by the Hon'ble court of the Civil Judge (Jr. Dn.) Devanahalli vide Ann. A and etc.,

This WP coming on for Preliminary Hearing and havinb been for orders, the Court made the following order this day:

ORDER

Petitioner H.S.Indiresh is challenging the order dated 20.11.2003 passed in O.S.No.192 of 1991 by the learned Civil Judge (Junior Division), Devanahalli in terms of Annexure-A.

2. Respondent Ravi filed a suit for declaration of ownership and for permanent injunction in respect of the landed property bearing No.166/2 measuring 1 acre situated at Vijayapura Kasba, Devanahalli Taluk. Petitioner was not initially impleaded and later he got himself impleaded in the suit. Suit has ripened for evidence. Defendant's evidence is to be commenced. At this stage, petitioner sought permission to lead his evidence through his power of attorney holder. An application was filed and the same was rejected. Petitioner is therefore me.

3. Heard Sri Goutham, learned counsel for the petitioner and Sri Ramamurthy H.S., learned counsel for the respondent and perused the material on record.

4. Sri Goutham, learned counsel for the petitioner essentially contends that the learned Judge is wrong in rejecting the request of the petitioner in terms of the order impugned herein. Learned counsel says that there is no prohibition to examine himself through his power of attorney. He relies on a judgment of this Court in SMT.GANGAVVA v. ARJUNSA, reported in ILR 2001 KAR 2628. Per contra, learned counsel for the respondent supports the order.

5. A suit for declaration and injunction was filed by the respondent. Petitioner was to examine himself. At this stage, petitioner wanted to get himself examined through his power of attorney. The said request has been rejected by the learned trial Judge in the impugned order. Learned trial Judge in the impugned order notices that the petitioner is running a Bakery Shop and a petty shop in Vijayapura. After noticing this, he says that sufficient grounds are not made out for permitting the petitioner to lead evidence through his power of attorney holder. Order III Rule 1 and 2 read as under:

"1. **Appearances, etc., may be in person, by recognized 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. **Recognized agents.**- The recognized agents of parties by whom such appearances, applications and acts may be made or done are -

- (a) persons holding powers of attorney authorizing 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 authorized to make and do such appearances, applications and acts."

6. Rule 1 of Order III provides for appearance, act in or to any Court by recognized agent. Its proviso says that any such appearance shall, if the Court so directs, be made by the party in person. It is not an unconditional provision. In the case on hand, learned trial Judge notices that the petitioner is running Bakery and a petty shop and that there is no disability or hardship in the matter of his coming to Court and give evidence. Learned trial Judge in his discretion has chosen to direct the petitioner to give evidence. This, in my opinion, cannot be said to be unreasonable on the facts of this case. No party can feel shy of appearing in courts. Courts are temples of justice and all are equal in a court of law. Persons with ego, power or position make no difference in courts of law. In the circumstances, learned trial Judge cannot be said to have committed any error requiring my interference in the case on hand.

7. Petitioner's counsel refers to a judgment of this Court in SMT.GANGAVVA Vs. ARJUNSA(supra). The said judgment, no doubt, says that a power of attorney holder can give evidence on behalf of a party. That judgment does not say that discretion is not available to the Judge. The said judgment is clearly distinguishable to the facts of this case.

8. At the time of arguments, learned counsel for the petitioner would say that his client is scared to give evidence. Learned counsel for the respondent also assures that there is no reason for his apprehension. Parties are advised not to get themselves emotionally upset during trial. They have to keep calm and help themselves to get fair justice from courts of law.

9. With these observations, petition stands rejected. No costs.

Sd/-
Judge

rk.