
(2023) 5 ILRA 1518
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.01.2023

BEFORE

THE HON'BLE SUNEET KUMAR, J.
THE HON'BLE RAJENDRA KUMAR-IV, J.

First Appeal No. 43 of 2023

Smt. Monica Saravanan **...Appellant**
Versus
R. Sarwanan **...Respondent**

Counsel for the Appellant:
Sri Sujan Singh

Counsel for the Respondent:

**Civil Law - Family Courts Act, 1984-
Section 10 - Hindu Marriage Act, 1955 -
Section 13 - Divorce Petition – Power of
attorney - Whether wife can appoint her
father to do pairvi of the Divorce Petition
on her behalf, through special power of
attorney? - Held - Safeguard noted in
*Syed Wasif Husain Rizvi Vs Hasan Raza
Khan & 6 others*, AIR 2016 All 5, would
generally apply to power of attorney filed
in court proceedings on behalf of the
principal/donor or on behalf of a party to
a lis. Power of attorney by which the
donor authorises the donee must be
brought on the record and must be filed
together with the petition/application;
The affidavit which is executed by the
holder of a power of attorney must
contain a St.ment that the donor is alive
and specify the reasons for the inability of
the donor to remain present before the
Court to swear the affidavit; and The
donee must be confined to those acts
which he is authorised by the power of
attorney to discharge. In the event the
Court requires oral evidence, that can be
ensured through video conference. (Para
11, 12, 14)**

Allowed. (E-5)

List of Cases cited:

1. S. Ramachandra Rao Vs S. Nagabhushana Rao & ors. (AIR 2022 SC 517)
2. Manju Devi Vs St. of Raj. & anr., (2019) 0 Supreme (SC) 462.
3. Haseen Siddiqui @ Jahangir Vs St. of U.P. & ors., (2013) 0 Supreme (All) 2700.
4. Syed Wasif Husain Rizvi Vs Hasan Raza Khan & ors., (AIR 2016 All 52).

(Delivered by Hon'ble Suneet Kumar, J.
&
Hon'ble Rajendra Kumar-IV, J.)

1. Heard learned Counsel for the plaintiff-appellant/wife.

2. The instant appeal is directed against the order dated 17.11.2022, passed by the Principal Judge, Family Court, Agra, in Case No.3039 of 2022, (Smt. Monica Saravanan versus R. Saravanan), on an Application (8-Ga) filed by the appellant, wherein, the prayer of the appellant, appointing her father, to do pairvi in the case through special power of attorney, as appellant would not be available in the country, as she intends to proceed to Canada to pursue her carrier. Application came to be rejected by the impugned order, wherein, it is noted by the learned Trial Court that the application under Order 3 Rule 2 CPC has not been instituted through an agent or power of attorney holder. It is further noted that the appellant-plaintiff is present in the Court and submits that for further proceedings she has appointed her father through special power of attorney to do pairvi in the matter. The application came to be rejected, as in the opinion of the

Court, the power of attorney has not been filed in the representative capacity.

3. Learned Counsel for the applicant submits that the Court below committed an error in rejecting the Application (8-Ga), the suit under Section 13 of the Hindu Marriage Act, 1955, was filed by the appellant, and in order to pursue her carrier she has to proceed abroad, therefore, the appellant was justified to appoint a confidant through special power of attorney to do parivi. Further, an undertaking was also given that she would be bound by the outcome of the judicial proceedings. Learned Counsel for the appellant further submits that her oral evidence, if required, or directed by the Court, the appellant is prepared to join the court proceedings through video conference which is permissible under the Code of Civil Procedure, as well as, the Evidence Act.

4. Attention of the Court has also be drawn to Section 10 of the Family Courts Act, 1984, which provides the procedure applicable to the Family Courts, which reads as under:-

"10. Procedure generally.--(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of

1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

5. Further Section 11 of the Family Courts Act, 1984, mandates that proceedings to be held in camera, which reads as under:-

"11. Proceedings to be held in camera.--In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires."

6. Reliance have been placed upon the judgments passed by Supreme Court in *S. Ramachandra Rao versus S. Nagabhushana Rao & Others (AIR 2022 SC 517) Paragraph 14* and *Manju Devi versus State of Rajasthan and another, (2019) 0 Supreme (SC) 462.*

7. Further, reliance have also been placed upon the judgments of this Court in the case of *Haseen Siddiqui @ Jahangir versus State of U.P. and others, (2013) 0 Supreme (All) 2700.* Full Bench judgment rendered in *Syed Wasif Husain Rizvi versus Hasan Raza Khan & 6 others, (AIR 2016 All 52).*

8. The term power of attorney refers to a legal authorization that gives a designated person the power to act for someone else. As such, a power of attorney gives the

agent or attorney-in-fact the authority to act on behalf the principal. The agent may be given broad or limited authority to make decisions about the principal's property, finances, investments, or for any other purpose. A power of attorney is a legal document that involves the agent or attorney-in-fact, and the principal. It is used in the event of a principal's temporary or permanent illness or disability, or when they can't sign necessary documents.

9. A Bench of three learned Judges of the Supreme Court in *A.C. Narayanan versus State of Maharashtra, AIR 2014 SC 630*, observed thus :-

"The power of attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity."

10. A special power of attorney is a legal document outlining the scope of authority given to an agent, known as "an attorney in fact," by the principal. Under the special power of attorney, an agent is given the powers to act on behalf of the principal to make specific legal or financial decisions. It is also referred to as Limited Power of Attorney and is used as evidence of the principal's authority to the third person with whom the principal may be dealing with.

11. The Full Bench in *Syed Wasif Husain Rizvi (supra)* answering the reference that writ petition under Article 226 of the Constitution of India can be filed

through a power of attorney holder but cautioned that the institution of the petition may be filed observing adequate safeguards which include:-

(1) The power of attorney by which the donor authorises the donee, must be brought on the record and must be filed together with the petition/application;

(2) The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and

(3) The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

12. The safeguard noted herein above would generally apply to power of attorney filed in court proceedings on behalf of the principal/donor or on behalf of a party to a lis.

13. The trial Court committed an error in rejecting the application of the appellant bringing on record the power of attorney herself. The power of attorney holder (father of the appellant) has been duly authorized by the appellant to appear in the proceedings on her behalf. The appellant can appear through video conference in the event her appearance is required for cross examination, or for any other purposes as directed by the Court. The power of attorney holder has been conferred limited right to file affidavits and to do pairvi on behalf of the appellant, hence, in the absence of the appellant the power of attorney holder has been duly authorised to appear on her behalf.

14. Accordingly, **the impugned order dated 17.11.2022 passed on Application**

8-Ga is set aside. The proceedings of the suit shall be conducted on behalf of appellant through the special power of attorney holder. In the event, the trial Court requires oral evidence of the appellant, that can be ensured through video conference.

15. The appeal is, accordingly, **allowed.**

(2023) 5 ILRA 1521
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.05.2023

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Public Interest Litigation (PIL) No. 415 of 2023

Sadaram **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:
 Vinay Kumar Tiwari

Counsel for the Respondents:
 C.S.C., Pankaj Gupta

Public Interest Litigation - Removal of illegal encroachment over public utility land - The Court directed the Principal Secretary, Department of Revenue, Civil Secretariat, U.P., Lucknow, to issue necessary directions/directives/circulars to ensure that the public utility land of Gaon Sabha is free from encroachment and that such public utility land is utilized only for the purpose for which it has been recorded in the revenue records.

Allowed. (E-5)

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Vinay Kumar Tiwari, learned counsel for the petitioner and Sri

Yogesh Kumar Awasthi, learned Standing Counsel for the State-respondents no.1, 2 & 3. Notice for opposite party no.4/Gaon Sabha has been accepted by Sri Pankaj Gupta.

2. Sri Ganesh Nath Mishra, learned Advocate, has filed Vakalatnama on behalf of opposite party no.5, the same is taken on record.

3. By means of this petition, the petitioner has prayed following main reliefs:-

"(i) Issue a writ, order or direction in the nature of Mandamus thereby commanding the opposite parties/ Authorities concern to ensure release of Gaon Sabha Land i.e. Gata No. 653/0.1980 hectare, recorded as Rasta in the revenue record situated in Village - Veshahupur, Motiganj, Seeha Gaon, Gonda, which are recorded as public utility land in the revenue record, from illegal encroachment of the land grabbers and restore it to its original shape.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 1 to initiate inquiry against inaction on the part of the authorities concern in not removing encroachment from Gaon Sabha Land i.e. Gata No. 653/0.1980 hectare, recorded as Rasta in the revenue record situated in Village -Veshahupur, Motiganj, Seeha Gaon, Gonda which are recorded as public utility land in the revenue record, from illegal encroachment of the land grabbers, in order to punish the guilty persons/authorities."

4. At the very outset, Sri Ganesh Nath Mishra, learned counsel for opposite party no.5 has raised objection to the effect that