

**IN A SUIT FOR SPECIFIC PERFORMANCE A POWER OF ATTORNEY HOLDER OF THE PLAINTIFF  
CANNOT GIVE EVIDENCE ON THE READINESS AND WILLINGNESS OF THE PLAINTIFF TO  
PERFORM THE CONTRACT**

**INTRODUCTION:**

*The Apex Court in its decision in **Rajesh Kumar v. Anand Kumar & Ors**<sup>1</sup> observed that a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him.*

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**FACTS:**

The Appellant is the original Plaintiff who entered into an agreement to sell dated 26<sup>th</sup> September, 1995 ("**Agreement**") with the Respondent No. 1 (acting as the Power of Attorney holder for Defendant/Respondent Nos. 2 to 11) for the purchase of land situated in the state of Madhya Pradesh ("**the said Land**"). On the date of the Agreement the Appellant paid the earnest money and the balance consideration was agreed to be paid on the date of registration of the sale deed which was to be done within 6 (six) months.

Thereafter, the Plaintiff paid additional part payments for which the endorsements were made at the back side of the Agreement. The date of execution of the sale deed was further extended twice by the parties and finally an entry was made that by 31<sup>st</sup> May, 1997 the parties were to execute the sale deed failing which the Agreement would come to an end.

However, the Power of Attorney holder of the Respondent Nos. 2 to 11 executed a sale deed on 14<sup>th</sup> May, 1997 for the said Land in favour of the Respondent Nos. 1 to 3 (being original

Defendant Nos. 12 to 14 to the Suit) even though the Respondents were aware of the earlier sale agreement and the extensions. The sale deed was executed without the knowledge of the Appellant which came to his notice subsequently, pursuant to which a legal notice was addressed on 30<sup>th</sup> May, 1997 calling upon the Respondent Nos. 1 to 11 to be present in the Sub Registrar's office on 31<sup>st</sup> May, 1997 for registration and execution of the sale deed. Despite receipt of the legal notice, the Respondent Nos. 1 to 11 did not attend the Sub Registrar's office. The Plaintiff was informed by the Sub Registrar that the said Land was sold in favour of the Respondent Nos. 1 to 3. As it was the Appellant's case that he was in possession of the said Land, he objected to the application by the Respondent Nos. 1 to 3 for mutation of their names.

The Gram Panchayat in its meeting assured the Appellant that the Respondent Nos. 1 to 3 would execute a sale deed in Appellant's favour and hence, no legal action was taken. Subsequently on 19<sup>th</sup> June, 2000, the present suit was filed by the Appellant before the Trial Court ("**Suit**") seeking specific performance of the Agreement.

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<sup>1</sup> 2024 INSC 444

The Trial Court decreed the Suit upon finding that the Agreement had been executed between the Appellant and the Respondent No. 1 as a Power of Attorney Holder of the Respondent Nos. 2 to 11. The Trial Court observed that the non-examination of the Appellant (Plaintiff) as a witness did not have any adverse impact on the Appellant's (Plaintiff's) case and that the Appellant (Plaintiff) was ready and willing to perform his part of the contract. In relation to limitation period, the Trial Court held that the suit was not barred by limitation.

Aggrieved by the order of the Trial Court, the Respondent Nos. 1 to 3 filed an appeal before the High Court of Madhya Pradesh. The High Court passed the impugned judgement allowing the appeal and setting aside the judgement and decree of the Trial Court.

The High Court had non-suited the Appellant on two counts. Firstly, that the Respondent No. 1 was not the sole owner of the said Land which was the coparcenary property and the other coparceners did not sign the Agreement and secondly, that the Appellant (Plaintiff) having failed to appear in the witness box, the testimony of his Power of Attorney holder cannot be read as statement of the plaintiff in a civil suit of this nature.

Being aggrieved by the Impugned Order, the Appellant preferred the present Appeal.

### **ISSUE FOR CONSIDERATION:**

One of the issues for consideration before the Apex Court was whether the Power of Attorney Holder of the Appellant can depose in a civil suit on behalf of the plaintiff.

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<sup>2</sup> (2005) 2 SCC 217

<sup>3</sup> 2010 (10) SCC 512

### **SUBMISSIONS ON BEHALF OF THE APPELLANT:**

It was *inter alia* submitted on behalf of the Appellant that the non-appearance of the plaintiff as a witness would not have any adverse impact in a suit of this nature and that the readiness and willingness can be provided by the Attorney holder and accordingly, the decision of the Trial Court ought not have been set aside by the High Court.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

It was submitted on behalf of the Respondents as follows:

- (a) The Agreement was *void ab initio* because it was not signed by all the owners of the said Land;
- (b) The failure of plaintiff to appear and give evidence as a witness in a suit for specific performance is fatal to his case because it is he who has to plead and prove the readiness and willingness.

### **JUDGMENT:**

On the aspect of whether a Power of Attorney holder can lead evidence in a suit for specific performance, the Apex Court relied on and referred to its decisions in ***Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors.***<sup>2</sup>, ***Man Kaur vs. Hartar Singh Sangha***<sup>3</sup> and ***A.C. Narayanan vs. State of Maharashtra & Anr***<sup>4</sup>.

<sup>4</sup> (2014) 11 SCC 790

The Apex Court observed that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him.

Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place, his

attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. The term 'readiness and willingness' refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness.

In the light of above settled legal position, the Apex Court of the view that in the instant case, as the Appellant had failed to enter into the witness box and subject himself to cross-examination, he has not been able to prove the prerequisites of Section 12 of the Specific Relief Act, 1963.

The judgment of the High Court was upheld and the Appeal was dismissed.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*