S. Ramachandra Rao vs S. Nagabhushana Rao on 19 October, 2022

Author: Dinesh Maheshwari

Bench: Aniruddha Bose, Dinesh Maheshwari

REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7691 - 7694 OF 2022
[Arising out of SLP (C) Nos. 21187-21190 of 2019]

S. RAMACHANDRA RAO ……. APPELLANT(S)

VERSUS

S. NAGABHUSHANA RAO & ORS. ….…. RESPONDENT(S)

JUDGMENT

DINESH MAHESHWARI, J.

Leave granted.

2. These appeals are directed against the common order dated 28.06.2019 in Civil Revision Petition Nos. 758, 759, 760 & 761 of 2019, as passed by the High Court of Andhra Pradesh at Amaravathi, whereby the High Court has not approved the similar orders dated 07.02.2019, as passed by the Court of III Additional Senior Civil Judge at Vijayawada in four separate civil proceedings between the same contesting parties.

3. Put in a nutshell, the issue involved in the matter is concerning the capacity in which the plaintiff-appellant's wife, who is the General Power of Attorney1 holder of the appellant and is also an enrolled advocate, 1 'GPA', for short.

could appear and act on his behalf in the said civil proceedings. Even before passing of the orders which form the subject-matter of present appeals, this issue had led to various orders by the Trial Court at different stages of proceedings as also to a couple of orders by the High Court in challenge to the orders so passed by the Trial Court. Therein, the Trial Court and the High Court essentially held that merely for the wife of the appellant being an advocate, there was no prohibition in law for

her to act on behalf of her husband as a GPA holder but, it was made clear that she would appear in-person as a power agent of her husband and not in her professional capacity as an advocate. The same proposition was iterated by the Trial Court in its orders dated 07.02.2019 in these very proceedings, while rejecting the objection against examination of the witnesses by the wife of the appellant in her capacity as GPA holder. However, in the impugned order dated 28.06.2019, the High Court has held that in view of a Division Bench decision of the same High Court, it was not permissible for a GPA holder to participate in the proceedings and, therefore, while disapproving the orders under challenge, the wife of the appellant has been given liberty to act as an advocate on behalf of her husband, the plaintiff, in these cases.

4. With the outline as aforesaid, we may take note of the relevant background aspects as follows:

> 4.1. A civil suit for partition of certain properties, being O.S. No. 368 of 1995, came to be filed before the said Trial Court, wherein the appellant was arrayed as the 3rd plaintiff. The appellant would submit that on 20.04.1987, he had executed a GPA in favour of his brother, the 1 st respondent herein (the contesting respondent), who had prosecuted the said civil suit for partition. A decree was passed in the said suit on the basis of a compromise memo filed on 17.09.1995. The appellant would allege that he was not aware of filing of the said civil suit; that the decree was detrimental to his interest and was fraudulently obtained; and therefore, he revoked the GPA in favour of the 1 st respondent on 26.01.1996. Later on, the appellant executed another General Power of Attorney dated 25.01.1997 in favour of his wife. Thereafter, on behalf of the appellant, I.A. No. 634 of 1997 was filed in the said O.S. No. 368 of 1995 by his new GPA holder (his wife) for recalling the judgment and decree passed in the suit. This apart, the appellant instituted three more civil suits, being (i) O.S. No. 388 of 1997, for declaration of title, possession, partition, and mesne profits; (ii) O.S. No. 104 of 1998, for rendition of accounts in relation to actions and bank transactions by the contesting respondent in his erstwhile capacity as agent of the appellant;

and (iii) O.S. No. 445 of 1998, for partition and mesne profits. 4.2. While the said four civil proceedings remained pending, the GPA holder of the appellant, i.e., his wife, graduated in law and she was enrolled as an advocate in the year 2011.

4.3. On 27.09.2011, an application, being I.A. No. 1308 of 2011, was filed in said I.A. No. 634 of 1997 in O.S. No. 368 of 1995 under Order III Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 2 read with Section 32 of the Advocates Act, 1961 3 read with Rules 32 and 33 of the Civil Rules of Practice in Andhra Pradesh read with Section 120 of the Evidence Act, 1872 with the prayer that the GPA holder of the appellant be permitted to appear in person; and to plead, argue and do all necessary acts for conduct of proceedings. Similar applications were filed in two of the aforesaid civil suits, being I.A No. 1307 of 2011 in O.S. No. 104 of 1998 and I.A. No. 1306 of 2011 in O.S. No. 388 of 1997. The Trial Court, by its similar orders dated 19.02.2018, allowed the applications so moved and granted the prayer so made while rejecting the contentions urged on behalf of contesting respondent with reference to Order III Rule 2 CPC. The said order 19.02.2018, as passed in relation to O.S. No. 368 of 1995 reads as under: -

"1. This petition is filed under Order 3 Rule 2 Section 151 CPC and Section 32 of Advocates Act, 1961 & Rule 32 and 33 of Civil Rules of practice in A.P. and Evidence Act Sect.120 praying to allow the petitioner to represent her husband the plaintiff in the above suit, before the Hon'ble Court to appear in person, to plead and to all acts necessary in the conduct of above proceedings.

2. The Petitioner who is the authorized GPA holder of the plaintiff in the suit, seeks permission of this Court, to permit her to represent the plaintiff in person. The Petitioner says that, as she is the wife of plaintiff she can protect the best interest of her husband, and as her husband is staying in a far away place and as he cannot attend the court in person she may be permitted to represent her husband in person to conduct the suit and she in support of her contentions relied upon a judgment reported in AIR 2003 A.P. 317, Sundar Raj Jaiswal and others vs. Smt.Vijaywa Jaiswal.

2 'CPC', for short.

3 'the Act of 1961', for short.

3. Wherein it was held that, under Section 32 of the Advocate Act the court may permit appearance in a particular case permitting any person other than the Advocate and that, under the said provision a discretionary power was given to the court to permit appearance to any non-advocate for party. it was further held in the judgment that, the trial court granted permission for the Power of Attorney holder of the respondent and the said Power of Attorney has been helping the court by appearing for the respondent and there is no remark noticed by the court below. It is always open for the Court to withdraw or cancel permission if the Power of Attorney holder is 'unworthy or reprehensible. Hence sought permission to allow her to represent her husband/plaintiff in the suit.

4. The objection of respondent was that as per Order 3 Rule 2 appearance may be in person or by recognized agent or by pleader, which is once again subject to the person knowledge of the transactions, but never empowers to argue on behalf of the executant, as such the above provisions are not correct for asking to plead in the court on behalf of plaintiff. He further opposed the petition stating that, the petitioner is not resident of Vijaywada, as such, it would be difficult for them to serve notice on the petitioner in case of any applications filed in the suit. Hence, opposed the petition.

5. However this court having considered the petition and counter averments opines that, when the petitioner was permitted by this court at the inception of the suit itself, to represent as GPA, now the permission is sought by her to represent her husband in person, instead of by a pleader. Moreover, she states to be the wife of the original plaintiff, who in the opinion of this court can protect the best interest of her spouse and as held by his lordship, in the above reported judgment that, the permission cannot be withdrawn at the instance of petitioners. More so, when there is nothing on record to show that, the GPA holder has created an unhealthy atmosphere on indiscipline situation or exchanged words.

6. So when the Hon'ble High Court held that, when once the permission so granted can be withdrawn, if the acts of GPA representing the party in person is in derogative to the interest of the original party, the petitioner herein being the wife of plaintiff, in the opinion of this court can be permitted to represent in person on behalf of her husband. With regard to the other objection of respondent that, service of notice on the petitioner in case of any applications filed, would be difficult as she does not reside at Vijayawada, as the petitioner at the time of arguments submitted that she will stay at Vijayawada, till the suit is disposed off, this court does not find any grounds to disallow her plea.

7. Accordingly petition is allowed." (emphasis supplied) 4.4. The aforesaid orders dated 19.02.2018 were challenged by the contesting respondent in the High Court. The High Court by its common order dated 20.04.2018 in CRP Nos. 1784, 2221 & 2366 of 2018, confirmed the orders of the Trial Court, but while clarifying that the wife of the appellant will appear in person as power agent of the appellant but not in her professional capacity as a lawyer. This order dated 20.04.2018 by the High Court reads as under: -

> "These three revisions arise out of the orders passed by the III Additional Senior Civil Judge, Vijayawada, allowing the applications filed by the 1st respondent herein under Order III Rule 2 of the Code of Civil Procedure read with Section 32 of the Advocates Act, 1961.
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> 2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner and Smt. Hemalatha Suryadevara, the General Power Agent of the 1st respondent herein, who was the plaintiff in all the three suits.
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> 3. The 1st respondent, who was the plaintiff in three different suits namely O.S.Nos.368 of 1995, 389 (sic) of 1997 and 104 of 1998, is the principal and his wife Smt. Suryadevara Hemalatha, is his power agent. It appears that the 1st respondent and the plaintiff was all along represented by the counsel before the Court below. One of the suits already got disposed of. The other two suits are now pending. Even in the disposed of suit, some applications have been filed.
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> 4. In the meantime, the wife of the 1st respondent filed applications in all the three suits, under Order III Rule 2 of CPC for representing her husband and to appear in person, to plead and to conduct the above proceedings. These applications were allowed by the Court below, forcing the 1st defendant in two suits and the sole defendant in the third suit to come up with the above revisions.
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> 5. The objections of the learned counsel for the petitioner to the orders impugned in these revisions are two fold namely (i) that the wife-cum-General Power Agent of the 1st respondent also happens to be a lawyer, but she can either appear as a counsel or as a power agent and not as both and (ii) that the address for service should be intimated by the 1st respondent in Vijayawada to enable the petitioners to serve notices and summons.

> 6. The power agent of the 1st respondent, who appeared in person before me, stated that she is not seeking to appear as an advocate for the 1st respondent but she is seeking to appear only as the power agent of the 1st respondent. There can be no objection to a party to a proceeding to appear through the power agent. Order III Rule 2 of CPC provides for the same and to that extent the order of the trial Court allowing the applications cannot be found fault with. Once an application under Order III Rule 2 CPC is allowed, the power agent has two options, first option is to appear in person as a power agent and the second option is to engage an advocate herself. Both cannot be combined in a single order and that is the objection of the learned counsel for the petitioner. That objection is sustainable in law.
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> 8. But in so far as the second objection is concerned, if the 1st respondent is appearing only as a power agent of a party, the question of informing the local address for service does not arise.

It is only when a lawyer is engaged, the question of furnishing a local address for service would arise.

Therefore, all the Civil Revision Petitions are disposed of confirming the orders of the trial Court and clarifying that Smt. Suryadevara Hemalatha, will appear in person as a power agent of the 1st respondent and will not appear in her professional capacity as a lawyer.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed." (emphasis supplied)
4.5. Thereafter, another application of similar nature in relation to O.S. No. 445 of 1998 was considered and allowed by the Trial Court by its order dated 24.09.2018, while rejecting similar objection of the respondent and while observing as under: -

> "The respondent opposed the petition stating that, as per Order 3 rule 2 CPC appearance maybe in person or by recognized agent or by a pleader, which is once again is subject to the personal knowledge of the transactions and it never empowers to argue on behalf of the executants, as such the provisions under which this petition is filed is not correct to seek permission to represent and plead on behalf of the plaintiff in the suit.

However, this court considering the petition and counter averments opines that, when GPA is executed in favour of the petitioner authorizing her to represent the plaintiff in the suit, and she as GPA also intends to plead on behalf of the plaintiff in the suit as she can protect the best interest of her husband, and when as per Sec.32 of Advocate Act any court or authority or person may permit any person, not enrolled as to advocate under Act, to appear before it, in any particular case, petitioner being the authorized agent of plaintiff in the suit, seeking permission to appear in person and conduct the suit on behalf of her husband seems reasonable.

Moreover, when the permission granted can be withdrawn by the Court, if the acts of GPA representing the party, in person in derogative to the interest of the original party. So, the petitioner being the wife of plaintiff in the suit seeking permission to represent in person on behalf of her

husband seems justice and necessary. Hence, for the reasons stated above, I am inclined to allow the application. Accordingly, the petition in allowed." (emphasis supplied) 4.6. The aforesaid order dated 24.09.2018 was challenged by the contesting respondent in the High Court in CRP No. 6924 of 2018. This petition was also dismissed by the High Court by its order dated 14.12.2018, which may also be usefully reproduced as under: -

> "Aggrieved by an order passed by the trial Court permitting the 1st respondent to be represented by his wife as the General Power of Attorney holder, to act, to appear and to plead, the defendant in the suit has come up with the above revision.
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> 2. Heard Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner. The G.P.A. holder of the 1st respondent takes notice.
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> 3. The 1st respondent herein has filed a suit in O.S.No.445 of 1998 for partition. It appears that the 1st respondent is a retired I.A.S. Officer and his wife who is General Power of Attorney holder is an Advocate enrolled in the Bar Council of Andhra Pradesh.
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> 4. Therefore, the 1st respondent has appointed his own wife as General Power agent. This fact is not disputed.
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> 5. When an attempt was made by the G.P.A. holder to act in dual capacity, both as a General Power of Attorney and as an advocate for her husband, this Court directed that she can only opt for one.
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> 6. Therefore, the 1st respondent filed I.A.No.556 of 2018 seeking permission for the G.P.A. holder to plead, present and argue his case in person. This application has been allowed by the trial Court by an order dated 24-09-2018. It is against the said order that the revision has been filed.
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> 7. The contention of Mr. V.S.R. Anjaneyulu, learned counsel for the petitioner is that G.P.A. holder, having a personal interest, cannot plead on behalf of the party. Reliance is placed upon the clause contained in the deed of a General Power of Attorney.
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> 8. But clauses 2 and 3 of the deed of General Power of Attorney authorises the G.P.A. holder to sign and verify plaints, written statements, affidavits etc., and also to appear in all courts.

Therefore, the General Power of Attorney certainly authorises the holder to plead on behalf of the 1st respondent.

9. Merely because the wife happens to be a lawyer, there is no prohibition in law for her to plead the case of her husband by holding a general power. The bar for a lawyer to take a dual role, is in the

context of conflict of interests, which correlate to ethical principles in respect of the profession. But when a lawyer's spouse is involved in litigation, there can be no bar for the lawyer to act as the power agent of the spouse, for doing whatever is authorised by the deed of General Power of Attorney to do.

10. Moreover, I do not know in what way the petitioner is aggrieved by such an act. If at all there are certain things only within the exclusive knowledge of the principal that can certainly be raised as a point. Therefore, I find no merits in the revision. Hence, the Civil Revision Petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed." (emphasis supplied) 4.7. On the other hand, when the said proceedings were to progress further, the contesting respondent filed separate applications, this time contending that the wife of the appellant, who was representing him as GPA holder, was not entitled to examine the witnesses. The Trial Court, yet again, rejected the objection of the contesting respondent by its separate but substantially similar orders dated 07.02.2019. The order so passed by the Trial Court in relation to O.S. No. 368 of 1995 reads as under: -

> "1. This petition is filed under Sec.151 CPC by the petitioner seeking the court to prevent the wife of the plaintiff who is representing the plaintiff in person, as his GPA from examining the witnesses.
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> 2. The Petitioner says that, the 1st plaintiff in the suit is being represented by his wife as GPA holder from 1998 onwards, and as on the said date the suit was being represented by different counsel. The 1st respondent who came on record as GPA, of the plaintiff filed an application under Order 3 Rule 2 CPC seeking permission to represent the 1st plaintiff in person and the said application was allowed, against which this petitioner preferred CRP 1784/2018, which was disposed of on 20-4-2018, directing the GPA holder not to conduct the suit proceedings both in the capacity of an advocate as she is enrolled in bar, and as GPA. The petitioner says that, when the 1st respondent nowhere stated that, the GPA in her name was cancelled, and she was authorized to make personal appearance on behalf of the plaintiff, the respondent has to only engaged a counsel represent in her personal capacity. Hence, the 1st respondent cross examining the witnesses in person is against the orders of Hon'ble High Court in CRP 1784/2018. Hence, this petition to declare that the 1st respondent who is GPA holder is not authorized to participate in the cross examination of the witnesses.
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> 3. The 1st respondent opposed the petition stating that, she as a GPA of her husband/plaintiff is appearing in person, after obtaining permission from this Court, and though she is enrolled in bar council, she is not appearing in her professional capacity, in this matter and thus she is appearing in person, as such, she is entitled to cross examine the witnesses and that petitioner cannot direct the plaintiff, as to how she has to conduct the case i.e., either through a counsel or in person. The Hon'ble High Court in CRP No.1784/2018 stated that the GPA holder cannot represent the court both as a GPA and in her professional capacity, but did not say that she cannot

in her personal capacity conduct the suit proceedings. Hence, she being the GPA of her husband is competent to do the suit in person that includes the cross examination of witnesses.

4. Heard both sides.

5. Both the parties did not adduce any oral or documentary evidence.

"Whether the respondent cannot be permitted to participate in the examination of witnesses as prayed by the petitioner?"

POINT:

6. The Petitioner's objection for the 1st respondent to cross examine the witnesses herself is that, she being the GPA of the plaintiff can only engage a counsel but cannot participate in the trial and examine the witnesses or argue the matter. Though she was permitted to represent the suit proceedings in person, it does not confer her with the authority of doing any such acts, which a legal practitioner would do. But, the respondent says that, when she was permitted by this Court to conduct the suit proceedings as GPA of her husband- 1st plaintiff in person, it is for her to decided, whether she would continue the suit in person or engage any counsel to represent the suit proceedings and that this petitioner has no business to direct the respondent as to adopt to which course in the conduct of the suit proceedings.

7. The 1st respondent in support of her arguments has relied upon the following two judgments 1) Surender Raj Jaiswal and others vs. Vijaya Jaiswal, AIR 2003 AP 317; 2) Prabha P.Shenai vs. Ispat Industries Limited 2016 Law Suit (Bombay) 271. In the said judgment referred (1) above at paragraph No.13 his Lordship opined that I do not see any bonafides on the part of the petitioners to insist the respondent to prosecute either personally or appoint an Advocate. The respondent herself no doubt is empowered to prosecute the particular case but due to the relationship of herself with her husband and the acquaintance of the case, she reposed confidence fully in her husband and appointed him as her Power of Attorney to appear on her behalf in a particular case and, therefore, the application filed by the petitioners herein was rightly dismissed by the Court below. The Trial Court granted permission for the Power of Attorney Holder of the respondent and the said Power of Attorney has been helping the Court by appearing for the respondent and there is no remark noticed by the Court below. It is always open for the Court to withdraw or cancel permission if the Power of Attorney Holder is unworthy or reprehensible.

8. This Court considering the arguments submitted by either side and the principle held in the above referred judgments opines that, when once the respondent was permitted to represent the 1st plaintiff who is no other than her husband, in person opining that no person can protect the Interest of the spouse, and act in the best

> Interest of the spouse other than the wife/husband, herself/himself, permitted the respondent, who is the wife of 1st plaintiff, and also GPA to represent the suit proceedings in person and because she was permitted and representing the suit in person, now she wants to cross examine the witnesses also, by herself, as rightly put forth by the respondent what locus standi does the petitioner have in objecting the respondent, in cross examining the witnesses on behalf of the plaintiff, and her husband? when there is no bar for a party to cross examine the witnesses, the respondent who is representing the plaintiff as a GPA and permitted to represent in person intending to cross examine the witnesses by herself be curtailed? In fact the principle held under ref.(1) above judgment aptly applies to the case on hand, because in this case also, like in the above referred case, the GPA holder and the plaintiff are husband and wife, as such this court opines that, unless the court opines to withdraw or cancel the permission, if the power of attorney holder is found unworthy there can be no hindrance for the respondent to continue to represent the plaintiff in person.
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> 9. As held in judgment in reference No.2 that-

In the present case, considering the fact that the constituted attorney in the present case is not only the husband of the plaintiff but her predecessor in title, who actually carried out the work in question and to whom the amounts claimed in the suit were due before he assigned his entitlement to the plaintiff, there is a preeminent case for permitting him to represent the plaintiff and argue her case in this suit. I have according, permitted him to advance arguments for the plaintiff.

10. The said principle also is apt to the case on hand, as in this suit also the 1st respondent was permitted to represent the 1st plaintiff in person, so she can very well represent the 1st plaintiff and argue the case in this matter, and the petitioner cannot raise any objection with regard to the entitlement of the respondent, who was permitted to represent in person; with regard to the bar enshrined by his lordship in CRP 1784/18 that, the respondent being GPA holder cannot represent the matter in her professional capacity, when certainly the respondent is not representing the Court as an advocate, and she is representing the Court, as the wife of plaintiff who was permitted to represent the 1st plaintiff in person being his GPA holder and not as an advocate, she cannot be curtailed from cross examining the witnesses. Accordingly, this point is answered against the petitioner.

11. In the result, the petition is dismissed." (emphasis supplied) 4.8. The aforesaid orders dated 07.02.2019 were challenged before the High Court in Civil Revision Petition Nos. 758, 759, 760 and 761 of 2019, which have been considered and decided by the impugned common order dated 28.06.2019.

4.8.1. In the impugned order dated 28.06.2019, the High Court, after taking note of the background aspects and stand of the respective parties, stated the point for determination in the following terms: -

"9. The short point that arises for consideration is "Whether the G.P.A. holder of the plaintiff can be permitted to act like a counsel and cross-examine the witnesses?" 4.8.2. Thereafter, the High Court took note of the previous applications moved in these matters and the orders passed thereupon, while stating its construction of such previous orders, inter alia, in the following terms: -

"12. The said order came to be passed in the month of December, 2018. As stated above, earlier to this order, a common order was passed in C.R.P.Nos.1784, 2221 and 2366 of 2018, wherein, the applications filed under Order III Rule 2 of C.P.C., read with Section 32 of the Advocates Act were disposed of clarifying that Smt.S.Hemalatha will appear in-person as a power of agent to the first respondent and will not appear in her professional capacity. The said applications came to be filed under Order III Rule 2 of C.P.C., for the following relief, to represent her husband; to appear in person to plead and conduct the above proceedings.

13. The said applications were allowed by the Court below, forcing the first defendant to come up with the above three revisions. The objections of the learned counsel for the petitioner therein, were two fold, namely (i) that the wife-cum-General Power agent of first respondent also happens to be a lawyer, but she can either appear as a counsel or as a power agent and not as both and (ii) that the address for service should be intimated by the first respondent in Vijayawada to enable the petitioners to serve notices and summons. The Hon'ble High Court held that once an application under Order III Rule 2 CPC is allowed, the power agent has two options; the first option is to appear in person as a power agent and second option is to act as an Advocate herself. Both cannot be combined in a single order." 4.8.3. Thereafter, the High Court took note of the reasons that prevailed with the Trial Court in passing the impugned orders dated 07.02.2019, and proceeded to allow the revision petitions, essentially with reference to decision of the Division Bench of the High Court in the case of Madupu Harinarayana @ Haribabu rep. by his G.P.A., T. D. Dayal v. 1 st Additional District Judge, Kadapa and Ors. : 2011 (2) ALT 405 (D.B.) and Section 32 of the Act of 1961. The High Court expressed its views against participation of the wife of the appellant in the proceedings as GPA holder, while giving her liberty to conduct the case as an advocate and while observing as under: -

"16. The Hon'ble Division Bench in the Judgment referred to above observed that any person approaching the court seeking some legal redressal has to scrupulously, and without exception, follow the procedural rules and regulations framed by the High Court. The rules made by the High Court, Civil Rules of Practice and Circular Orders and Criminal Rules of Practice and Circular Orders as well as various other procedural rules made under various statutes supplant the two codes. A party to the proceeding can either himself appear as a party in person to ventilate his grievance or engage an advocate enrolled on the rolls of the Bar Council of Andhra Pradesh (a statutory professional body constituted under the Advocates Act, 1961). A party to the proceedings may authorize another by giving a Power of Attorney to appear in the

case, file affidavits, instruct lawyers and act on his behalf. It was held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an advocate enrolled on the rolls of the Bar council, appears in court, it is an offence punishable under law. Power of Attorney Act defines "power-of- Attorney" to include any instrument empowering a specified person to act for and in the name of the person executing it. If so empowered, the donor may execute any instrument or do anything in his own name and signature by the authority of the donor of the power. Section 4 of the POA Act casts an obligation on the POA to verify the affidavit, give a declaration or other sufficient proof of the POA, and to deposit the same in the High Court or the District Court within the local limits of whose jurisdiction the instrument may be. Order III C.P.C., deals with recognized agents and pleaders. Rule 1 thereof enables the recognized agent to make appearance, application or act in any court. Rule 2 explains recognized agents as "agents of parties by whom such appearances, applications and acts may be made or done". These are the persons holding POA authorizing them to make an application and act on behalf of such parties. Section 2(a) of the Advocates Act defines, "Advocate" to mean an advocate entered in any roll under the provisions of the said Act. Section 2(15) of the CPC defines "Pleader" to mean any person entitled to appear and plead for another in court.

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18. After referring to the provisions of Advocates Act and the Rules made by the High Court and the circulars issued, this Court in Madupu Harinarayana's case (supra) held that all the pleadings in the proceedings should be made by party in person as recognized agents. A party in person, and a recognized agent, have to make an appointment in writing (vakalatnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the party, or his recognized agent, who engaged the advocate. Section 32 of the Advocates Act empowers the Advocate to permit any non-advocate to appear in a particular case. This means that any person has to seek prior permission of the Court to argue the case if he is not Advocate enrolled under the Advocates Act.

19. From the above observations made, it is clear that Section 32 of the Advocates Act empowers the court to permit any non-

advocate to appear in a particular case after seeking prior permission of the court to argue a case if he is not an Advocate. It would be appropriate to extract Section 32 of the Act which is as under:

"32. Power of Court to permit appearances in particular cases.—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any

particular case."

20. Prima-facie, a reading of the above provision vis-à-vis the law laid down by the Division Bench show that it is only the Advocate, who has enrolled under the provisions of the Advocates Act, has the right of practice in any court. Any violation of the same would amount to committing the offence under Section 35 of the Evidence Act.

21. In the instant case, the wife of the plaintiff, who is representing her husband, intends to examine the witness as a G.P.A. holder.

She is not arguing the matter as an Advocate for the plaintiff nor she is cross-examining the witness as a lawyer for the first plaintiff, though she is a lawyer practicing in the said court.

22. Though the judgment in C.R.P.No.6924 of 2018 between the same parties held that there is no bar for the petitioner to participate in the trial, but the Division Bench judgment of this Court prohibits participation by the G.P.A. Holder. The same was not brought to the notice of the learned Judge. As observed by me earlier, the Division Bench of this Court categorically held that the G.P.A. holder cannot plead and/or argue for his principal. If a person, other than an Advocate enrolled on the rolls of the Bar Council, appears in the Court it is an offence punishable under law.

23. It may be true that the respondent herein, who is also an Advocate, is doing the case of her husband as a General Power of Attorney holder. It may also be true that the same may not cause much prejudice to the petitioners. But, in view of the judgment of the Division Bench of the combined High Court, C.R.Ps. are allowed, however, giving liberty to the respondent to conduct the case as an Advocate since she is a practicing Advocate as well.

24. There shall be no order as to costs. Miscellaneous Petitions pending if any in these revisions shall stand closed." (emphasis supplied)

5. A long deal of arguments has been advanced before us in these appeals preferred against the order so passed by the High Court. It has been contended on behalf of the appellant that the High Court has totally misdirected itself and has failed to consider that the issue in question relating to the appearance of wife of the appellant as his GPA holder stood concluded in these proceedings by virtue of the previous orders of the High Court dated 20.04.2018 and 14.12.2018; and such an issue could not have been re-opened at all, for operation of the doctrine of res judicata. In the other limb of submissions, it has been argued on behalf of the appellant that the wife of the appellant has a right to conduct the legal proceedings as his GPA holder; and there is no explicit bar under any law which prevents the wife of the appellant to act as his GPA holder merely for her being an enrolled advocate. On the other hand, it has been contended on behalf of the contesting respondent that the previous orders between the parties granting permission to the wife of the appellant to conduct the cases do not attract the doctrine of res judicata, for having been passed in ignorance of the statutory directions in Section 32 of the Act of 1961. In the other segment, it has been argued on behalf of the contesting respondent that as an officer of the Court, an advocate cannot plead or cross-examine

without filing a vakalatnama and the jurisprudence of this Court as also of the High Courts does not allow an advocate to appear as a power of attorney holder. Various authorities have been cited by the learned counsel for the parties in support of their respective contentions; we shall deal with the relevant of them at the appropriate juncture hereafter.

6. Having regard to the background aspects and the rival contentions, we may, first of all, take up the issue of res judicata before moving to any other issue raised in these appeals.

7. Learned counsel for the appellant has contended, with reference to various decisions including that in the case of Y.B. Patil & Ors. v. Y.L. Patil: (1976) 4 SCC 66, that the doctrine of res judicata is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings and hence, the concluded orders passed earlier in these proceedings are binding on the parties. The learned counsel has argued that the issue as regards conduct of the case by the wife of the appellant on his behalf and in her capacity as GPA holder has attained finality in these proceedings with the concluded orders dated 20.04.2018 and 14.12.2018 as passed by the High Court and such an issue cannot be reopened at the subsequent stage of these very proceedings. It has been contended, with reference to the several decisions, including that in the case of Gorie Gouri Naidu (Minor) v. Thandrothu Bodemma:

> (1997) 2 SCC 552, that even an erroneous decision, if rendered between the same parties, binds them if the same had been decided by a Court of competent jurisdiction. The learned counsel has also referred to the decision in Makhija Construction & Engg. (P) Ltd. v. Indore Development Authority: (2005) 6 SCC 304 as regards the distinction between a precedent and the operation of the doctrine of res judicata;

and to the decision in S. Nagaraj (Dead) by Lrs. & Ors. v. B.R. Vasudeva Murthy & Ors.: (2010) 3 SCC 353 to submit that the orders as passed in this matter by the High Court on 20.04.2018 and 14.12.2018 cannot be ignored even on the principles of per incuriam because those principles have relevance to the doctrine of precedents but have no application to the doctrine of res judicata.

8. It has, however, been strenuously argued by the learned senior counsel for the contesting respondent that the said orders dated 20.04.2018 and 14.12.2018 cannot operate as res judicata because therein, the Court had misapplied the procedural law and had not taken into consideration the impact of Section 32 of the Act of 1961. In this regard, a 3-Judge Bench decision of this Court in the case of Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N. B. Jeejeebhoy: (1970) 1 SCC 613 has been strongly relied upon. It has been contended that the principles in Mathura Prasad (supra) would apply to both the questions of jurisdiction as well as the situations where a decision of the Court sanctions something which is illegal. The learned counsel would submit that Section 32 of the Act of 1961 entitles only the non-advocates to seek permission of the Court to plead on behalf of any party and the same permission cannot be sought by an advocate. The contention has been that the previous orders of the High Court, having ignored the import and effect of Section 32 of the Act of 1961, do not operate as res judicata in the current proceedings. Another decision of this Court in the case of Allahabad Development Authority v. Nasiruzzaman & Ors.: (1996) 6 SCC 424, has also been

cited to contend that this Court has clarified the law that where the consequence of giving effect to res judicata would be of enforcing an order standing contrary to statutory direction or prohibition, the doctrine of res judicata has no applicability.

9. The basic principles of res judicata are generally specified in the principal part of Section 11 of the Code of Civil Procedure, 1908 which reads as under:-

> "11. Res judicata. —No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court." 9.1. The doctrine of res judicata, having a very ancient history, embodies a rule of universal law and is a sum total of public policy reflected in various maxims like 'res judicata pro veritate occipitur', which means that a judicial decision must be accepted as correct; and 'nemo debet bis vexari pro una et eadem causa', which means that no man should be vexed twice for the same cause. The ancient history of this doctrine and its consistent recognition could well be underscored with reference to the following statement of law in the case of Sheoparsan Singh and Ors. v. Ramnandan Prasad Narayan Singh and Ors.:
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> A.I.R. 1916 Privy Council 78: -
>
> "...But in view of the arguments addressed to them, their Lordships desire to emphasise that the rule of res judicata, while founded on ancient precedent, is dictated by a wisdom which is for all time.
>
> " 'It has been well said,' declared Lord Coke, 'interest reipublicoe ut sit finis litium, otherwise great oppression might be done under colour and pretence of law' ".-(6 Coke, 9 A.) Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who escribes the plea thus: "If a person though defeated at law sue again he should be answered, 'You were defeated formerly.

This is called the plea of former judgment." [See "The Mitakshara(Vyavahara)," Bk. II, ch. I, edited by J. R. Gharpure, p. 14, and "The Mayuka," Ch. I, sec. 1, p. 11 of Mandlik's edition.] And so the application of the rule by the Courts in India should be influenced by no technical consideration of form, but by matter of substance within the limits allowed by law." (emphasis supplied) 9.2. The contours of this doctrine of res judicata and its application could be taken into comprehension by a reference to the Constitution Bench decision of this Court in the case of Daryao and Ors. v. State of U.P. and Ors.: AIR 1961 SC 1457. In that case, after the writ petitions filed before the High Court of Allahabad under Article 226 of the Constitution of India were dismissed, the petitioners filed

substantive petitions in this Court under Article 32 of the Constitution of India for the same relief and on the same grounds. In such petitions, this Court upheld the objection that the decision of the High Court would operate as res judicata while observing, inter alia, as under: -

> "(9) But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in S. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art. 32. (10) In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading Duchess of Kingston's case, 2 Smith Lead Cas. 13th Ed.

pp. 644, 645. Said Sir William B. Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose." As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation", Halsbury's Laws of England, 3rd Ed., Vol. 15, Paragraph 357, p.

185. Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p. 187, paragraph 362). "Res judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation — interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause — nemo debet bis vexari pro eadem causa", Corpus Juris, Vol. 34, p. 743.....

(11) The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is

reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences" Halsbury's Laws of England, 3rd Ed., Vol. 22, p. 780 paragraph 1660.

(emphasis supplied) 9.3. It is also equally relevant to reiterate that Section 11 CPC is not the foundation of the doctrine of res judicata but is merely the statutory recognition thereof and, hence, is not considered exhaustive of the general principles of law. This doctrine, it is recognised, is conceived in larger public interest and is founded on equity, justice and good conscience. These aspects were tersely put by this Court in the case of Lal Chand (dead) by L.Rs. and Ors. v. Radha Krishan: (1977) 2 SCC 88 in the following words: -

> "19. ... The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue...." (emphasis supplied) 9.4. It hardly needs any over-emphasis that but for this doctrine of res judicata, the rights of the persons would remain entangled in endless confusion and the very foundation of maintaining the rule of law would be in jeopardy. Even if this doctrine carries some technical aspects, as explained by this Court in Daryao (supra), it is in the interest of public at large that a finality should attached to the binding decisions of the Courts of competent jurisdiction; and it is also in public interest that individual should not be vexed twice with the same kind of litigation. As noticed, the Constitution Bench has placed this doctrine on a high pedestal, treating it to be a part of rule of law.
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> 9.5. Having taken into comprehension the object and framework of doctrine of res judicata, a few ancillary principles, relevant to the case at hand, may also be usefully

noticed.

9.5.1. The principle that the doctrine of res judicata is attracted not only in separate subsequent proceedings but also at subsequent stage of the same proceedings is hardly of any doubt or dispute. A 3-Judge Bench of this Court in the case of Y.B. Patil (supra), has tersely underscored this principle of law in the following terms: -

"4. ...It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding...." 9.5.2. It is also well-settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. In the case of Gorie Gouri Naidu (supra), this Court, inter alia, said, "4.....The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis...." 9.5.3. In Makhija Construction & Engg. (P) Ltd. (supra), this Court also clarified the distinction between a precedent and the operation of the doctrine of res judicata in the following terms: -

"19. ...A precedent operates to bind in similar situations in a distinct case. Res judicata operates to bind parties to proceedings for no other reason, but that there should be an end to litigation." 9.5.4. In S. Nagaraj (supra), it was also made clear by this Court that binding decisions cannot be ignored even on the principles of per incuriam because those principles have relevance to the doctrine of precedents but have no application to the doctrine of res judicata.

10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.

10.1. In true application of these principles, it would appear that the orders passed in these matters by the High Court on 20.04.2018 and 14.12.2018, as regards the issue of participation of the wife of the appellant in these proceedings as a GPA holder of the appellant, remain binding on the parties and cannot be ignored. In other words,

> this issue concerning the capacity of the wife of the appellant to participate in these proceedings as his GPA holder cannot be agitated over again in these very proceedings, even if the earlier orders granting such permission to her are suggested to be erroneous.
>
> 11. However, learned senior counsel for the contesting respondent has strenuously argued, with reference to the decisions in Mathura Prasad and Allahabad Development Authority (supra), that the said orders dated 20.04.2018 and 14.12.2018 do not operate as res judicata.

In view of the submissions made on behalf of the contesting respondent, we may examine the relevant features of the said cited cases in necessary details.

11.1. In the case of Mathura Prasad (supra), the appellant constructed buildings for commercial or residential purposes on open land in pursuance of lease granted by the respondent. His application to the Civil Judge for determination of standard rent was, however, dismissed on the ground that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 did not apply to open land leased for the construction of such buildings. A Single Judge of the Bombay High Court confirmed this order in a group of revision applications. However, in the case of Vinayak Gopal Limaye v. Laxman Kashinath Athavale: ILR (1956) Bom 827, the Bombay High Court decided that a building lease in an open plot was not excluded from Section 6(1) of the said Act of 1947. The view so taken by the Bombay High Court in Vinayak Gopal Limaye (supra) was affirmed by this Court in the case of Mrs. Dossibai N. B. Jeejeebhoy v. Hingoo Manohar Missa: (1962) 3 SCR 928. Relying upon this judgment, the appellant filed a fresh petition in the Court of Small Causes, Bombay for an order determining the standard rent since the area was located within the limits of Greater Bombay. The Trial Judge rejected this application essentially on the consideration that the matter had already been decided between the same parties in the earlier proceedings for fixation of rent. The High Court affirmed the order so passed and hence, the matter was in appeal before this Court.

11.1.1. In the aforesaid context, various features of the doctrine of res judicata were explained by this Court in the relied upon passage as follows: -

> “11. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that

issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land." (emphasis supplied)
11.1.2. This Court held that in the given case, the earlier decision of the Civil Judge that he had no jurisdiction to entertain the application for determination of standard rent was plainly erroneous; and if such a decision was regarded as conclusive, 'it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the Legislature'. Therefore, the operation of doctrine of res judicata was ruled out in that case.

11.2. In the case of Allahabad Development Authority (supra), the relevant aspects were that after a notification under Section 4(1) of the Land Acquisition Act, 1894 ('the Act of 1894') for acquiring a large extent of land for Transport Nagar Scheme, the enquiry under Section 5-A was dispensed with in exercise of power under Section 17(1-A), as amended by the Legislature of the State; and possession of land in question was taken on 02.11.1977, whereby the land stood vested in the State under Section 16 of the Act of 1894. However, the High Court passed an order declaring that the acquisition proceedings stood lapsed by operation of Section 11-A, which requires that after acquisition, an award must be made within a period of two years from the date of publication of declaration and if no award is made within that period, the entire proceeding for acquisition of land would lapse. The same question was examined by this Court in Satendra Prasad Jain v. State of U.P.: (1993) 4 SCC 369 and Awadh Bihari Yadav v. State of Bihar: (1995) 6 SCC 31, where it was held that Section 11-A of the Act of 1894 would not apply to the cases of land acquisition under Section 17 where possession had already been taken and the land stood vested in the State. In the given context and while referring to a decision in the case of Municipal Committee v. State of Punjab: (1969) 1 SCC 475, this Court held as under: -

"6. In view of the above ratio, it is seen that when the legislature has directed to act in a particular manner and the failure to act results in a consequence, the question is whether the previous order operates as res judicata or estoppel as against the persons in dispute. When the previous decision was found to be erroneous on its face, this Court held in the above judgment that it does not operate as res judicata. We respectfully follow the ratio therein. The principle of estoppel or res judicata does not apply where to give effect to them would be to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be overridden or defeated by a previous judgment between the parties. In view of the fact that land had already stood vested in the State free from all encumbrances, the question of divesting does not arise. After the vesting has taken place, the question of lapse of notification under Section 4(1) and the declaration under Section 6 would not arise. Considered from this perspective, original direction itself was erroneous and the later direction with regard to delivery of possession of the land, in consequence, was not valid in law....."

(emphasis supplied) 11.3. Thus, in the case of Mathura Prasad (supra), this Court observed that when the earlier decision on the question of jurisdiction was erroneous, it could not be treated as conclusive, else it would assume a special status to rule of law applicable to the parties relating to the jurisdiction, in derogation of the rule declared by the legislature. In Allahabad Development Authority (supra), this Court was concerned with operation of the statutory direction and inapplicability of the provisions of lapsing of acquisition where possession was already taken and the land stood vested in the State. Simply put, in these cases, the doctrine of res judicata has been held inapplicable in relation to the question of jurisdiction and in relation to the question of statutory direction/prohibition.

12. The question in these appeals, therefore, is as to whether the previous orders in relation to these proceedings, as passed by the High Court on 20.04.2018 and 14.12.2018 between the same parties and dealing with the same issues relating to the capacity of the wife of the appellant in the present matters, could be said to be not conclusive and not operating as res judicata because of any question of jurisdiction or of statutory direction or prohibition.

13. What has been argued in this Court on behalf of the respondents is that Section 32 of the Act of 1961 bars the advocates from seeking permission of the Court and this provision entitles only the non-advocates to seek such permission to plead on behalf of any party. According to learned counsel of the respondents, this provision has been ignored in the previous decisions.

13.1. Section 32 of the Act of 1961 reads as under: -

“32. Power of Court to permit appearances in particular cases. —Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.”

14. We are unable to appreciate the contention which suggests that the said Section 32 creates a bar for the wife of the appellant to seek permission of the Court to appear on behalf of her husband in her capacity as GPA holder because of she being an enrolled advocate. The enabling provision of Section 32 of the Act of 1961, whereby any Court, authority or person may permit any non-advocate to appear before it or him in any particular case is difficult to be read as creating a corresponding bar in giving permission to a GPA holder of a party to represent that party as such, if the said GPA holder, during pendency of the proceedings in the Court, gets enrolled as an advocate. In other words, there does not appear any statutory prohibition operating in the situation like that of present case, for which the existing GPA holder of a party cannot be given permission to appear only as the GPA holder, even if he/she has been enrolled as an advocate.

14.1. As noticed, the meaning, purport and effect of the previous concluded orders of the High Court dated 20.04.2018 and 14.12.2018 had been clear and unambiguous that in these cases, wife of the appellant would be entitled to appear only as the GPA holder and not as an advocate. We are unable to accept the submissions made on behalf of the contesting respondent that the said orders by the High Court stand at conflict with any statutory bar or prohibition or they relate to any such mandatory provision of law which is going to be violated.

14.2. Apart from the above, we are clearly of the view that even if it be assumed for the sake of arguments that there had been any error in the previous orders dated 20.04.2018 and 14.12.2018, those orders, having been rendered between the same parties and on the same issue of appearance of the GPA holder in the same proceedings, indeed operate as res judicata.

14.3. In the peculiar facts and circumstances of the present case, where the only fortuitous event had been that wife of the appellant, who was already acting as his General Power of Attorney holder, later on took the degree in law and got herself enrolled as an advocate, the High Court had, in the previous rounds of proceedings, cautiously balanced the requirements of law, particularly the requirements of CPC, the Civil Rules of Practice in the State, and the Act of 1961 as also the rules made under the Act of 1961 by specifically providing that wife of the appellant shall appear only as his GPA holder and not as an advocate. No such question like that of jurisdiction or statutory prohibition arises from the said orders dated 20.04.2018 and 14.12.2018 for which, the issue concluded thereby could be reagitated at the subsequent stage of these very proceedings by suggesting different interpretations.

15. At this juncture, we may also deal with the reason that has prevailed with the High Court in the order impugned.

15.1. As noticed, the High Court has chosen to brush aside the said previous orders dated 20.04.2018 and 14.12.2018 by reproducing a couple of paragraphs of the Division Bench decision of that High Court in the case of Madupu Harinarayana (supra) and by holding that by virtue of the said decision, the GPA holder cannot plead or argue for his principal. The High Court has reproduced the following two passages of the said decision in Madupu Harinarayana:

“28. A conspectus of Rules 1 and 2 of Order III of Code of Civil Procedure, Section 2(a) and Sections 29, 30, 33, 34 of the Advocates Act, Rule 2 of Section 34 Rules and Code of Criminal Procedure would show that all the pleadings in a proceeding shall be made by the party in person, or by his recognized agent. A party in person, and a recognized agent, have to make an appointment in writing (vakaltnama) duly authorizing the advocate to appear and argue the case. Only an advocate entered on the rolls of the Bar Council of Andhra Pradesh, who has been given vakalat and which has been accepted by such advocate, can have the right of audience on behalf of the

party, or his recognized agnet, who engaged the advocate. Sections 29 and 30 of the Advocates Act make it clear that advocates are the only recognized class of persons entitled to pract5ise law, and such an advocate should have been enrolled as such under the Advocates Act. Section 32 of the Advocates Act empowers the court to permit any non-advocate to appear in a particular case. This only means that any person has to seek prior permission of the Court to argue a case if he is not an advocate enrolled under the Advocates Act. Further, it is an offence for a non-advocate to practice under the provisions of the Advocates Act. Section 45 prescribes a sentence of six months imprisonment.

31. The statutes and precedents are clear on the point. It is only advocates, whose names are entered on the rolls of the state Bar Council, who have the right to practice in any Court. If a person practices in any Court without any such authority, and without such an enrolment, it would be committing an offence under Section 45 of the Advocates Act punishable with imprisonment for a term which may extend to six months. Therefore the GPA Sri T.D.Dayal is not entitled to appear and argue for the Appellant. He has no right of audience in this case or any other case." 15.2. With respect, we are unable to endorse the approach of the High Court in this matter, particularly when reliance has been placed on the decision in the case of Madupu Harinarayana (supra) without taking note of the basic facts and the background aspects in which the said decision was rendered by the Court. The appellant of the said matter had filed a suit for specific performance which was dismissed by the Trial Court. The decree of the Trial Court was affirmed by the High Court and then, even the petitions seeking leave to appeal were dismissed by this Court. Until that juncture, the appellant was being represented by a duly instructed counsel, an enrolled advocate. Thereafter, the appellant filed a writ petition under Article 32 of the Constitution of India in this Court. It was lodged under Order XVIII Rule 5 of the Supreme Court Rules, 1966 because no reasonable cause was made out justifying the receipt of the writ petition. Then, IAs were filed by way of appeal against the Registrar's order, which were also dismissed. In these cases, before this Court, one Mr. T.D. Dayal represented the appellant as his alleged GPA holder, who also addressed certain communications to the Registry of the Court that were also duly replied. Thereafter, a writ petition was filed in the High Court and an affidavit in support thereof was filed by the alleged GPA holder wherein, apart from the criticism of the judgment of the Trial Court, even unfounded and unsubstantiated aspersions were sought to be cast on the High Court and on this Court. The said writ petition was dismissed by the Single Judge of the High Court and then, the matter was before the Division Bench in appeal. The appeal was also conducted by the said alleged GPA holder. The Division Bench noticed several features of the questionable dealings of the alleged GPA holder and it was also noticed that even the copy of GPA was not annexed to the writ petition or the writ appeal. The High Court found it to be a vexatious litigation by an interloper and being a gross abuse of the process of Court while observing at the very beginning of the judgment as follows: -

"2. After giving a very patient hearing to Mr. T.D. Dayal, and perusing various provisions of the Advocates Act, 1961 as well as the decisions of the Supreme Court and of this Court in which he himself figured either as a social activist or a GPA for parties to the proceedings in the writ petitions, we are convinced that this is vexatious litigation. This is yet another instance of busybodies and meddlesome interlopers resorting to filing frivolous cases before the highest Court of the State due to perceived injustice to the community, or to the cause of a few gullible individuals whom they represent……." 15.3. The High Court also issued a slew of directions, including that of debarring the said alleged GPA holder from taking up any proceedings in the Court and also registering Suo Motu Contempt case for making unfounded and scurrilous remarks. We need not go into all those details for the purpose of the present case; suffice it to observe that the said decision proceeded on its own peculiar facts and there had been a marked distinction of the points arising in the said case from the point arising before the High Court in the present case. In Madupu Harinarayana (supra), the point for determination was as to whether a GPA holder, who was not enrolled as an advocate, was having a right to appear and plead before the Court, particularly when he has been found to be involved in filing frivolous cases and making reckless remarks against the entire justice delivery system. In contrast, the point for determination in the present case before the High Court was as to whether the wife of the appellant, being his GPA holder and having been permitted to appear as such despite having been enrolled as an advocate during the pendency of proceedings, was not entitled to cross-examine the witnesses. The said decision in Madupu Harinarayana, in any case, could not have been pressed into service to override the concluded and binding decisions between the same parties in the same proceedings at a previous stage.

16. For what has been discussed hereinabove, we are of the view that the aforesaid orders dated 20.04.2018 and 14.12.2018 operate as res judicata and create a bar in raising of the issue again as regards capacity of the wife of the appellant in these matters. The High Court has fallen in grave error in ignoring the said previous inter partes binding decisions.

17. In continuity with what has been observed hereinabove, we are impelled to observe, as has rightly been contended on behalf of the appellant, that in the order impugned, the High Court has mischaracterised the issue before it. As noticed, the High Court has proceeded to observe that the point for determination in the matter was as to 'whether the GPA holder of the plaintiff can be permitted to act like a counsel and cross-examine witnesses'. It has been pointed out on behalf of the plaintiff-appellant that his GPA holder (wife) never attempted to act like an advocate and to cross-examine the witnesses in that capacity. In the earlier rounds of proceedings, the High Court had specifically ordered that the wife of the appellant would only act as power agent of appellant and not in her professional capacity as an advocate. In view of the above and in view of the objections thereafter raised by the contesting respondent, the point for determination, in essence, before the Court was

> as to whether the wife of the appellant, being his GPA holder, was not entitled to cross-examine the witnesses, as captured by the Trial Court in paragraph 5 of its order dated 07.02.2019. The Trial Court had also noticed the objections of the contesting respondent that the wife of the appellant, being a GPA holder, could only engage a lawyer but could not participate in the Trial Court and examine the witnesses or argue the matter. It was contended that though she was permitted to attend the suit proceedings in-person, it did not confer her with the authority of doing any such act which only a legal practitioner would do. The Trial Court had rightly overruled such objections, particularly with reference to the previous orders passed by the High Court.
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> 17.1. Moreover, the errors on the part of the High Court in this case are not confined to the erroneous framing of the point for determination and erroneous application of the decision in Madupu Harinarayana (supra).

In fact, reference to the previous orders dated 20.04.2018 and 14.12.2018 by the High Court in the background narrative had also been incomplete and rather incorrect. It is noticed that in paragraph 13 of the order impugned, the High Court read as if the previous orders dated 20.04.2018 and 14.12.2018 stopped at observing that the two capacities, of GPA holder and advocate, cannot be combined. However, further to that, in the said orders dated 20.04.2018 and 14.12.2018, the High Court had precisely noticed that the wife of the appellant was appearing only as a power agent and the orders of the Trial Court were confirmed while clarifying that she would appear in-person as a power agent and will not appear in her professional capacity. This later part of the substance of the both the orders dated 20.04.2018 and 14.12.2018 appears to have not gone into the requisite consideration of the High Court.

18. Thus, it is apparent that the High Court has viewed the entire case from an altogether wrong angle, i.e., by misdirecting itself on the real point for determination; by not taking into comprehension the meaning, purport and effect of the previous binding orders dated 20.04.2018 and 14.12.2018 between the same parties in the same proceedings; and by misapplication of the Division Bench decision of the same High Court. This misdirected approach has resulted in the High Court ignoring the doctrine of res judicata and issuing such directions which are squarely opposite to the directions contained in the previous binding orders.

19. For what has been discussed and held hereinabove, the impugned order dated 28.06.2019 cannot sustain itself and is required to be set aside.

20. The discussion until this juncture is itself sufficient to conclude this matter. However, before closing, we may refer to a few other features of the case.

20.1. A long deal of arguments has been made on behalf of the respondents in this case on the point that as an officer of the Court, an advocate cannot plead or cross-examine without vakalatnama; and as regards the impact of Bar Council Rules, particularly on the standards of professional conduct and etiquettes. Several decisions have been cited to submit that the jurisprudence of this Court and

the High Court does not allow advocates to appear as Power of Attorney holders. In our view, all such contentions remain entirely inapposite to the facts of the present case for the simple reason that the matter in issue stands concluded by the previous decisions by the Trial Court and then by the High Court. We are unable to find the said decisions operating in any manner against statutory mandate. Various contentions that the wife of the appellant being an advocate is likely to face the position of conflict of interest and her disability to act as an advocate in the matter in which she is likely to have direct pecuniary interest, are all rather unnecessary when viewed in the light of facts that as per the binding orders passed in these cases, wife of the appellant would be appearing only as GPA holder and not as an advocate.

20.2. In view of the above, we need not dilate on the other contentions urged on behalf of the contesting respondent and counter thereto by the learned counsel for the appellant. However, we may take note of an apprehension suggested in the submissions made on behalf of the respondent that if the operation of Section 32 of the Act of 1961 is not confined to non-advocates, it may additionally create scope for unscrupulous advocates, who might have been suspended from practice or might be engaged in other malpractices as per the Bar Council of India Rules, to circumvent the legal consequences by appearing as power of attorney holders. This line of submissions is rather unnecessary and overexpansive; and it does not correlate with the real matter in issue before us. However, we may observe that the permission under Section 32 of the Act of 1961, by its very nature, is to be granted on case-to-case basis and could also be refused with reference to the given set of facts and circumstances referable to a particular case and any particular person. In any case, for all the features and factors of the present case, this line of submissions carries no relevance and does not require any further comment.

21. For what has been discussed hereinabove, these appeals succeed and are allowed; the impugned common order dated 28.06.2019 is set aside; and the orders passed by the Trial Court dated 07.02.2019 are restored.

21.1. The costs of this litigation in this Court shall follow the decision in the main proceedings by the Trial Court.

.....J. (DINESH MAHESHWARI) .....J. (ANIRUDDHA BOSE)
NEW DELHI;

OCTOBER 19, 2022.