
(2016) 03 GUJ CK 0193

In the Gujarat High Court

Case No : Appeal From Order No. 241 of 2014.

**Dhirajlal Bechardas Dhamelia and Others - Appellants @HASH
Pramodchandra Ratilal Gajjar and Others**

Date of Decision : 30-03-2016

Acts Referred:

Powers of Attorney Act, 1882 — Section 1A, Section 2
Registration Act, 1908 — Section 32, Section 33

Citation : (2017) 170 AIC 588 : (2017) 1 CivCC 831 : (2016) 4 GLR 2973 :
(2017) 1 RCRCivil 345

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mihir Thakore for P.P. Majmudar, Advocate, for the Appellant; S.P. Majmudar, Advocate, for the Appellant No. 1 - 2; Dhaval D. Vyas, Advocate, for the Respondents No. 3 - 9, 12 - 15; Mrs. Ketty Mehta for Manan A. Shah, Advocate, for the Respondent No. 1 -

Final Decision : Partly Allowed

Judgement

Bela M. Trivedi, J. - With the consent of the learned advocates for the parties, the matter is decided finally at the admission stage.

2. The present Appeal has been filed by the appellants who are the defendant Nos. 14 and 15, challenging the impugned order dated 29.4.2014 passed by the Thirteenth Additional Senior Civil Judge and Additional CJM, Surat (hereinafter referred to as the "trial Court") below Exhibit 5 in Special Civil Suit No.386 of 2008, whereby the trial Court has partly allowed the said application by directing the appellants to maintain status-quo in respect of the title, ownership, position and possession of the disputed property till the final disposal of the suit.

3. The undisputed facts, which have emerged during the course of arguments are that late Shri Maganlal was the common ancestor of the respondent Nos.1 to 15 (who are the plaintiffs and the defendant Nos.1 to 13 in the suit). The said Maganlal had four sons named Nanalal Maganlal, Ratilal Maganlal, Jayantilal Maganlal and Mohanlal Maganlal. The family members of Nanalal Maganlal,

Ratilal Maganlal and Jayantilal Maganlal, who are the respondents herein, had purchased the plot Nos.1 to 94 bearing Revenue Block No.402, situated at village : Kholvad, Ta. Choryasi, Dist. Surat, by executing five separate registered sale deeds in July-August, 1989 as stated in the plaint. The respondent No.1 (plaintiff No.1) had purchased the plot Nos.14 to 26 along with three others and the respondent No.2 (plaintiff No.2) had purchased plot Nos.46 to 73 along with three others as per the sale deeds dated 19.7.1989 and dated 5.8.1989 respectively. On 20.6.2003, a Power of Attorney came to be executed in favour of Mukeshchandra Nanalal (i.e. respondent No.6 - defendant No.4), Nitin Jayantilal (i.e. respondent No.11 - defendant No.9) and Yogesh Chandrakant (i.e. respondent No.15 - defendant No.13) by the said purchasers of the plots in question, for carrying out the acts and deeds as mentioned therein. Now, out of the said purchasers, Shri Nanalal Maganlal expired on 6.8.2004 and Smt. Fulkorben expired on 23.12.2004. Thereafter, on 14.10.2005, one more Power of Attorney came to be executed by the heirs of Nanalal Maganlal and Fulkorben, and by other family members, who are the respondent Nos.3 to 15 (defendant Nos.1 to 13) except the respondent Nos.1 and 2 (the plaintiffs), again in favour of the said respondent Nos.6,11 and 15 for carrying out the acts and deeds mentioned therein. On 4.3.2006, the respondent Nos.1 and 2 (the plaintiffs) revoked the Power of Attorney of Yogesh Chandrakant i.e. respondent No.15 by issuing a public notice. On the same day, the said respondent Nos.6, 11 and 15 executed five separate sale deeds in favour of the appellants (defendant Nos. 14 and 15), in respect of the plot Nos.1 to 94 in question, for their own behalf and as the Power of Attorney Holders of all the respondents. The respondent Nos.1 and 2 (the plaintiffs) therefore, have filed the suit challenging the said sale deeds executed in favour of the appellants and claiming their ?th share in said plots. The respondent Nos.1 and 2 had also filed an application at Exhibit 5 seeking temporary injunction, which is partly allowed by the trial Court vide impugned order as stated herein above.

4. The learned senior counsel Mr. Mihir Thakore for learned advocate Mr. S.P. Majmudar for the appellants has submitted that the appellants have been dragged into litigation by the respondent Nos.1 and 2 because of their inter-se family dispute with the other respondents and that the appellants are the bona fide purchasers for value without notice. According to him, the appellants have made full payment of the entire consideration to the respondents as mentioned in the sale deeds, however, the respondent Nos.1 and 2 had refused to accept their share of consideration, which the appellants are ready and willing to deposit in the Court. He submitted that the appellants are also ready to keep open the ? th portion of the plots in question, which the respondent Nos.1 and 2 might get, if the suit is decreed in their favour. Learned senior counsel Mr. Thakore has also submitted that the respondent Nos.6,11 and 15 had executed the sale deeds on their own behalf and as the Power of Attorney Holders of the respondents, and had also parted with the possession in favour of the appellants and therefore, the appellants are entitled to develop the plots in question. According to him, the

Power of Attorney executed by the respondent Nos.1 and 2 along with others on 20.6.2003 could not be said to have terminated on the death of Nanalal and Fulkorben, in view of the decision of the Calcutta High Court in case of *Re Sital Prosad and Ors. v. Raja Brijnarain Roy and Anr.* reported in AIR 1917 Cal 436 and in case of *Monindra Lal Chatterjee v. Hari Pada Ghose and Others* reported in AIR 1936 Cal 650. As regards the non-registration of the Power of Attorney, he has placed reliance on the decision of Supreme Court in the case of *Rajni Tadon v. Dulal Ranjan Ghosh Dastidar and Another* reported in (2009) 14 SCC 782 and submitted that the registration of the document i.e. Power of Attorney is required only when the Power of Attorney Holder presenting the document, is not the executant of the document, however, in the instant case, the Power of Attorney Holders themselves having executed the sale deeds in question and thereafter, having presented the same for registration, the provisions Sections 32 and 33 of the Registration Act, would not be applicable.

5. However, learned advocate Mrs. Ketty Mehta for learned advocate Mr. Manan Shah for the respondent Nos.1 and 2 (the plaintiffs) has vehemently submitted that the said respondents had not received any consideration towards the sale deeds in question though they were the co-owners having 7th share in the suit plots. She also submitted that the Power of Attorney executed on 20.6.2003 had stood terminated on the death of Nanalal and Fulkorben, and in the second Power of Attorney executed on 14.10.2005, admittedly, the respondent Nos.1 and 2 - the plaintiffs were not the parties, and therefore, the said Power of Attorney Holders could not have executed the sale deeds on behalf of the plaintiffs. She has relied upon the decision of Madras High Court in the case of *Garapati Venkanna v. Mullapudi Atchutaramanna and Ors.* reported in AIR 1938 Madras 542 to submit that where the Power of Attorney has been executed by several principals in favour of a person and one of the principals having distinct interest in the subject matter of the Power of Attorney dies, the death terminates the Power of Attorney. She also relied upon the decision in the case of *S. Abdul Khader v. Abdul Wajid (Dead) by LRS. and Ors.* reported in (2008)9 SCC 522 in support of her submission that Power of Attorney Holder would not have the legal authority to enter into an agreement for sale, when he was not vested with the authority to do so. Reliance has also been sought on the decision of this Court in the case of *Harshadkumar Kantilal Bhalodwala and Anr. v. Ishwarbhai Chandubhai Patel and Ors.* reported 2010(1) GLH 151, to submit that the burden was on the appellants to prove that the respondent Nos.1 and 2 were paid the consideration towards the sale deeds in question. According to her, if the appellants are not restrained from transferring, alienating or developing the plots in question, it would lead to multiplicity of proceedings.

6. Having regard to the submissions made by the learned advocates for the parties and to the documents on record, it appears that the main question that arise for consideration before the Court is whether the trial Court was justified in directing the appellants to maintain status-quo as regards the possession, position, title and ownership in respect of all the plots in question when the

respondent Nos.1 and 2 have claimed only 2/3rd share in said plots on the basis of their respective sale deeds executed in 1989. In this regard, if the averments made in the plaint are seen, then it appears that out of 94 plots, the respondent No.1 - plaintiff No.1 had purchased the plot Nos.14 to 26 along with 3 others i.e. Mukeshchandra Nanalal, Rajviben Mukeshchandra and Harshaben Rajeshbhai vide the sale deed dated 19.7.1989 and the respondent No.2 - the plaintiff No.2 had purchased the plot Nos.46 to 73 along with three others i.e. Fulkorben Maganlal, Mukeshchandra Nanalal and Hinaben Nitinchandra vide sale deed dated 5.8.1989. Rest of the plots were purchased by the other respondents. The said respondent Nos.1 and 2 therefore, have claimed 2/3rd share accordingly in the suit. It is also pertinent to note that the said respondent Nos.1 and 2 are conveniently silent in the plaint as to how they became the co-owners of all the plots No.1 to 94, though they were not the parties to the other sale deeds in respect of the other plots. It is not disputed that the first Power of Attorney dated 20.6.2003 was executed by them and other purchasers, who were their family members in favour of the respondent Nos.6, 11 and 15. In the said Power of Attorney, it was stated by the executants that they had already sold out all the plots and had also received the full consideration, and that the Power of Attorney was being executed authorising the respondent Nos.6, 11 and 15 to execute the documents for sale etc. After the death of two executants i.e. Nanalal and Fulkorben, their heirs along with other respondents except the respondent Nos.1 and 2 executed another Power of Attorney on 14.10.2005 with similar statements. The said respondent Nos.6,11 and 15 thereafter, executed the sale deeds in question in favour of the appellants which have been challenged by the respondent Nos.1 and 2 on the ground that they had not signed the second Power of Attorney dated 14.10.2005.

7. At this juncture, it is required to be noted that an agency or authority would stand terminated on the death of the principal in view of Section 201 of the Contract Act. In the instant case, therefore, on the death of Nanalal and Fulkorben, who were the executants of the Power of Attorney dated 20.6.2003 along with the other executants including the respondent Nos.1 and 2, the said Power of Attorney had stood terminated qua the said deceased executants. However, the question is whether the said Power of Attorney had also stood terminated qua the other executants? In this regard, it may be noted that the second Power of Attorney dated 14.10.2005 was executed by the legal heirs of the said deceased executants and the other respondents except the respondent Nos.1 and 2 in favour of the respondent Nos.6,11 and 15, which Power of Attorney contained identical statements to the effect that the same was executed to authorise the respondent Nos.6,11 and 15 to execute the documents for transfer and sale in respect of the plots in question, as the said plots were already sold out and the executants had already got the consideration. It is also pertinent to note that the respondent Nos.1 and 2 had also treated the earlier Power of Attorney dated 20.6.2003 as valid till they gave notice on 4.3.2006 revoking the authority of the respondent No.15 only. If the earlier Power of

Attorney had stood terminated qua all the executants after the death of two executants, there was no need for the respondent Nos.1 and 2 to give public notice and terminate the authority of the respondent No.15. The said public notice also implies that the respondent Nos.1 and 2 had continued the authority of the respondent Nos.6 and 11 to do the acts contained in the Power of Attorney dated 20.6.2003.

8. So far as legal position is concerned, the Calcutta High Court and Madras High Court have dealt with the question that where the agency was created by more than one principal, does the death of one or some of them terminate the agency? The Calcutta High Court in the case of *Re Sital* (Supra) had observed thus:

"Where, however, the principals are joint and several, and the power given to the agent is both joint and several, the death of one of the principals does not terminate his authority [*Milson v. Stewart*]. The dividing line between the two classes of cases is well-illustrated by the decision in *Marlett v. Jackman* and *Martin v. Hunt* [see also *Long v. Phayer*, *Weaver v. Richards*, *Grapel v. Hodges* and *Grahman v. Jackson*]. We cannot consequently hold, as an inflexible rule of law, that whenever two principals appoint an agent to take charge of some matter in which they are jointly interested, the death of one of them terminates the authority of the agent, not merely as regards the deceased but also as regard the surviving principal. We have, in each case, to determine the true intention of the parties to the contract, from the terms thereof and from the surrounding circumstances. This view is in accord with the decision in *Budh Singh Dudhuria v. Denendranath*. We must accordingly examine from this point of view the power-of-attorney in the case before us."

9. The Calcutta High Court again in case of *Monindra Lal Chhaterjee* (Supra) followed the said ratio and held inter alia that there could not be an inflexible rule that death of one of the principals, where there are more than one principals, would terminate the authority of the agent not merely as regards the deceased but also as regards the remaining principals. In each case, the true intention of the parties has to be determined from the terms of the contract and from the surrounding circumstances. Of Course, the Madras High Court in case of *Garapati Venkanna* (Supra) has distinguished the said ratio of Calcutta High Court by holding that where a Power of Attorney has been executed by several principals in favour of a person, and one of the principals having distinct interest in the subject matter of the Power of Attorney dies, the death terminates the Power of Attorney.

10. In the instant case, learned advocate Mrs. Mehta has failed to point out that the deceased Nanalal and Fulkorben had a distinct interest in the subject matter of the Power of Attorney and therefore, on their death, the Power of Attorney had stood terminated qua all the principals or the executants of the Power of Attorney. On the contrary, from the Power of Attorney dated 20.6.2003, it clearly emerges that all the executants including the respondent Nos.1 and 2 had stated that they had already sold out the plots in question and also received the

consideration and that the said Power of Attorney was being executed in favour of the respondent No.6, 11 and 15 to enable them or any of them to execute the sale deeds in respect of the said plots. There was no distinct interest of the respondent Nos.1 and 2 or of the deceased stated in the said Power of Attorney. The Court has, therefore, no hesitation in holding that on the death of Nanalal and Fulkorben, the said Power of Attorney has stood terminated qua them only and not qua all the remaining principals or the executants.

11. It was also sought to be submitted by the learned advocate Mrs. Mehta for the respondent Nos. 1 and 2 that the Power of Attorney was required to be registered in view of Section 32 read with Section 33 of the Registration Act as the sale deeds in question dated 4.3.2006 were sought to be presented for the registration by the Power of Attorney Holders i.e. the respondent Nos.6,11 and 15. The said submission cannot be accepted in view of the legal position made clear by the Supreme Court in the case of Rajni Tandon (Supra) in which it has been observed as under:

"Where a deed is executed by an agent for a principal and the same agent signs, appears and presents the deed or admits execution before the registering officer, that is not a case of presentation under Section 32 (c) of the Act. As mentioned earlier the provisions of Section 33 will come into play only in cases where presentation is in terms of Section 32(c) of the Act. In other words, only in cases where the person(s) signing the document cannot present the document before the registering officer and gives a power of attorney to another to present the document that the provisions of Section 33 get attracted. It is only in such a case, that the said power of attorney has to be necessarily executed and authenticated in the manner provided under Section 33(1)(a) of the Act."

12. In the instant case, the Power of Attorney holders having executed sale deeds in question on their own behalf and on behalf of their principals and they themselves having presented the said sale deeds for registration, the case would not fall under Section 32(c) and therefore, the provisions of Section 33(1)(a) of the Act would not get attracted.

13. In that view of the matter, the Court is of the opinion that the respondent Nos. 1 and 2 having failed to prove any prima facie case in their favour and the balance of convenience also being in favour of the appellants, the trial Court had committed an error in directing the appellants to maintain status-quo in respect of all plots in question. However, since the learned senior counsel Mr. Thakore has submitted that the appellants are ready to keep open the ?th portion of the plots in question, it is directed that the appellants shall keep open ?th portion of the plots, and that they shall be at liberty to develop and transfer or alienate the remaining part of the plots, as may be permissible under the law, pending the suit. However, it is clarified that the appellants shall not claim any equity and that the appellants in the event of any transfer or sale to any third party, shall mention in the deed of conveyance about the pendency of the suit.

14. Subject to the aforesaid directions, the appeal stands allowed. The order dated 29.4.2014 passed by Thirteenth Additional Senior Civil Judge and Additional CJM, Surat, below Exhibit 5 in Special Civil Suit No.386 of 2008 is set aside.

15. At this juncture, learned advocate Ms. Mehta requests to stay the operation of this order. The request is rejected for the reasons stated above.