
(1977) 09 DEL CK 0012

In the Delhi High Court

Case No : Regular First Appeal No. 264 of 1973

Harbas Singh

APPELLANT

Vs

Shanti Devi

RESPONDENT

Date of Decision : 15-09-1977

Acts Referred:

Citation : (1977) 13 DLT 369 : (1977) 2 ILR Delhi 649 : (1977) RLR 487

Hon'ble Judges : V.S. Deshpande, J;B.C. Misra, J

Bench : Division Bench

Advocate : G.S. Vohra, M.S. Vohra and B.I. Singh, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The only question argued by the learned counsel for the appellant in support of the appeal is whether both the general and the special powers of attorney or either of them which had been executed by the appellant in favor of Shri H. K. Gulati, husband of the respondent on 11th January 1964 were or was cancelled validly by the appellant by his lawyer's letter dated 8th February 1965. The answer to this question in its turn depends on the construction of section 202 of the Contract Act and particularly on the meaning of the word "interest" used therein.

(2) The appellant Harbas Singh was an allottee of shop No. 90, Bhagat Singh Market by the Government of India, Ministry of Rehabilitation, for a consideration of Rs. 5890-60. As he was not in a position to pay the aforesaid dues to the Government, he agreed to sell his right, title and interest in the said shop to the respondent for Rs. 18,000.00 by the agreement dated 11-1-1964 Exhibit P-3. Ra. 3200.00 were paid in cash as earnest money. The seller was to pay four Installments of the Government dues while the rest of the Government dues were to be paid by the buyer. The balance of the consideration was to be paid by the buyer to the seller at the time of the registration of the sale deed. The important part of the agreement contained in para 3 stated that "in order to

facilitate the transaction" the seller has appointed Shri Gulati "a nominee and husband of" the buyer as his general as well as special attorney who will perform all acts, deeds and things which are stated to be done by the seller "in connection with the management and payment to the said dues of the Government in respect of the said property". And the seller shall not be responsible for any negligence of the said attorney "who is the nominee of the second party (buyer)". On the same day, the general and the special powers of attorney mentioned above were executed by the seller in favor of Shri Gulati. The special power of attorney Exhibit P-7 enabled the attorney to make payment of the Government dues. The general power of attorney Exhibit P-8 authorised the attorney to sell the appellant's shop to any purchaser and to get the sale deed executed and registered and to receive and acknowledge the receipt of the consideration and to give a receipt for the same and to get the property mutated in favor of the purchaser and to do all other things in connection with the management and sale of the said shop as fully as could be done by the seller himself. The general power of attorney stated that it was to be irrevocable while the special power of attorney did not have any such stipulation.

(3) Due to differences between the parties, the appellant's lawyer sent to the respondent a notice Exhibit D-1 on 8-2-1965 cancelling the agreement to sell dated 11-1-1964 and all other documents executed by the appellant in favor of the respondent and in favor of the husband of the respondent. The appellant's lawyer also wrote on 8-2-1965 Exhibit D-2 to Shri Gulati stating as follows :--

"THAT Power of attorney dated 11-1-1964 executed in your favor is hereby revoked and cancelled with effect from the date of issue of this letter and you are no longer entitled to work or do any act on the basis of the said power of attorney. That anything done on the basis of the said power of attorney shall be illegal and shall not be binding on my client."

The respondent sent a reply to the appellant that he could not escape the obligation under the agreement. Shri Gulati sent a reply to the appellant referring to the two powers of attorney dated 11-1-1964 and stating that they were irrevocable. The respondent paid the Government dues, obtained permission from the Government and on failure of the appellant to honour the agreement of sale obtained a sale deed of the shop on 16-6-1967 (Exhibit F-20) from Shri Gulati acting as the agent of the appellant. She then filed a suit for possession against the appellant. The suit was defended by the appellant on the ground that he had cancelled the power of attorney of Shri Gulati and, Therefore, Shri Gulati could not validly execute a sale deed in favor of" the respondent. The trial Court, however, decreed the suit holding that the general power of attorney (Exhibit P-8) was irrevocable and Shri Gulati was entitled to execute a sale deed in favor of the respondent. The appellant was ordered to deliver possession of the shop to the respondent. Hence this appeal against the said decree.

(4) To succeed in the appeal, the appellant has prove two things, namely, (1) that he actually cancelled the general and the special powers of attorney which

had been given by him to Shri Gulati, and (2) that he had the power to cancel them. It is only if he succeeds in proving both these points that the sale of the shop by Shri Gulati to the respondent would be shown to be without authority and the decree of the trial Court would be shown to be wrong. Let us consider these two points separately. Point NO. 1

(5) Two separate powers of attorney for two distinct purposes had been executed by the appellant in favor of Shri Gulati on 11-1-1964. The special power of attorney enabled Shri Gulati to make payment of the Government dues on behalf of the appellant in respect of the shop in question. The general power of attorney enabled Shri Gulati to sell the shop to the respondent. The notice of cancellation addressed to Shri Gulati purported to cancel "power of attorney dated 11-1-1964" and twice again referred to "the said power of attorney". To what power of attorney does this notice refer ? There was not one power of attorney simpliciter executed by the appellant in favor of Shri Gulati. There were two powers of attorney executed by him in Shri Gulati's favor, a special power, of attorney for one purpose and a general power of attorney for another purpose. The language of the notice Exhibit D-2 is on the face of it ambiguous and defective. In view of section 93 of the Evidence Act, evidence cannot be given of facts which would show its meaning or supply its defects. The illustrations to section 93 bear out its meaning. It is impossible to know from a mere perusal of the notice dated 8-2-1965 (Exhibit D-2) as to which of the two powers of attorney it intended to cancel. Since the two powers of attorney were different in their nature and served two different purposes it cannot be said that both of them were cancelled by this notice since the notice referred to a power of attorney not once but three times. It did not refer to either any special power of attorney or to any general power of attorney. It did not also refer to two powers of attorney but only to one power of attorney.

(6) Shri G. S. Vohra, learned counsel for the appellant, argued that in the context of the circumstances, Shri Gulati fully understood the meaning of the notice that it was intended to cancel both the powers of attorney held by him. He referred to the reply dated 1-3-1965 given by Shri Gulati to the appellant stating that the appellant had executed the power of attorney, general and special, and that the same were irrevocable. Learned counsel also referred to the letter written by the appellant's lawyer to the respondent in which it was stated that all documents in favor of the respondent and her husband were cancelled by the appellant. In our view, the meaning of the notice Exhibit D-2 has to be understood only by reading that document. The said document cannot be read in the light of the letter sent to the respondent or the reply given by Shri Gulati. As the notice is ambiguous and defective, it was not effective in cancelling the two different powers of attorney held by Shri Gulati from the appellant. Even if it is assumed that the ambiguous or defective language of the notice could be understood in the context of the other circumstances and the other documents to mean that both the powers of attorney were cancelled, the consideration of the second point would show that in view of section 202 of the Contract Act, the

appellant had no power to cancel the same. Section 202 of the Contract Act is as follows:-

"WHERE the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

If the agent himself had an interest in the property which formed the subject-matter of the agency, then in the absence of an express contract to the contrary these powers of attorney could not be terminated by the appellant to the prejudice of such interest. Firstly, let us consider the meaning of the expression "interest" in section 202. The word has not been defined in the Contract Act. It has, Therefore, to be construed in the light of the situations which arise under the various provisions of the Contract Act. The Act deals with all kinds of property, movable and immovable, corporeal and incorporeal. It also deals with all kinds of rights, proprietary, non-proprietary personal and corporate. The word "interest" is to be applied to a wide variety of cases under the Contract Act and must, Therefore, be given a wide meaning to serve these wide purposes of the Act. It is not a term of art or a technical word. In jurisprudence, the word "interest" simply means an advantage or a benefit. "Interests are things which are to a man's advantage : he has an interest in his freedom or his reputation. His rights to these, if he has such rights, protect the interests, which accordingly form the subject of his rights but are different from them. To say he has an interest in his reputation means that it is to his advantage to enjoy a good name. "However, every interest of a person may not become a right. It is only those interests which are legally recognised and/or are legally protected or enforced which amount to legal rights. (Salmond on Jurisprudence, 12th Edition, pages 217-218). The German jurist Jhering viewed law as a reconciler of conflicting interests. Roscoe Pound regards human disorders and claims as interests which exist independently of the law and which are constantly "pressing for recognition and security." (Philosophy of Law, Revised " Edition, 1954). In the American Restatement of the Law of Torts (Second Edition, 1965) the word "interest" is used to denote the object of any human desire.

(7) For the purposes of the Law of Contract, Therefore, it would not be useful to restrict the meaning of the word "interest" by the narrow compass in which this word is used at times in relation to immovable property. For instance, the last sentence of section 54 of the Transfer of Property Act states that a contract for sale of itself does not create any interest in or charge on immovable property. Similarly, section 17(1)(b) of the Registration Act makes only those documents compulsorily registerable which create, declare, assign, limit or extinguish any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property. Since an agreement for sale does not create such a right, title or interest, it may not be compulsorily registerable. But in the context of the Contract Act, it cannot be said that a person who is the beneficiary of an agreement of sale has no right or interest in

the subject-matter of the sale. He has a legally enforceable right and interest in enforcing the contract of sale by the execution of a sale deed and in getting possession of the property agreed to be sold under the provisions of the Specific Relief Act. In the English Common Law, the specific performance of contracts was a part of the law of contract. This is why Chapter IV of the Contract Act deals with the performance of contracts which includes the performance of contracts relating to immovable property also. In fact, section 4 of the Transfer of Property Act says that the chapters and sections of that Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. Therefore, the respondent in whose favor the appellant had executed an agreement for the sale of an immovable property had an interest in the subject-matter of the contract, namely, the shop, turn the purposes of section 202 of the Contract Act if not for the purposes of the Transfer of Property and the Registration Acts.

(8) In Seth Loon Karan Sethiya Vs. Ivan E. John and Others, , the respondent bank was given an irrevocable power of attorney by the appellant. For, the appellant had borrowed money from the bank. He had empowered the bank to recover money due to him from his debtor by executing a decree in which he was the decree- holder. The word "interest" u/s 202 of the Contract Act was construed as follows at page 126 of the report :- .

"THERE is hardly any doubt that the power given by the appellant in favor of the Bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms.. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked."

This statement of law reproduces the English Common Law as would be evident from a reference to Article 135 in Bowstead on Agency, Fourteenth Edition, the relevant part of which is as follows :-

"WHERE the authority of an agent is given by deed, or for valuable consideration, for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest. But it is not irrevocable merely because the agent has an interest in the exercise of it, or has a special property in, or lien for advances upon, the subject-matter of it, the authority not being given expressly for the purpose of securing such interest or advances.

(2) Where a power of attorney, whenever created is expressed to be irrevocable and is given to secure a proprietary interest of the donee of the power, or the performance of an obligation owed to the donee, then, so long as the donee has that interest, or the obligation remains undischarged, the power is irrevocable."

All the conditions of irrevocability are satisfied in the present case. The authority to the agent was given for valuable consideration which proceeded from the respondent. It was given for the purpose of effectuating security or protecting or securing the interest of the agent. For, the only purpose of the

agency was to ensure and secure the performance of the contract by the appellant in favor of the respondent for whom Shri Gulati was acting as the husband and the nominee and, Therefore, a representative or an agent. Where the performance of the agency is not to secure the interest or the benefit of the agent then the agency is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in or lien for advances upon the subject-matter of it.

(9) In *Palani Vannan and Others Vs. Krishnaswami Konar and Others*, , the primary object of the power of attorney was to recover the money on behalf of the principal by the execution of a decree. The, incidental provision for the employment of an agent and enabling the agent to recover his out-of-pocket expenses from the decretal amount did not make the object of the power of attorney to be the benefit of the agent. Section 202 of the Contract Act, Therefore, did not apply. For the same reason, section 202 was not attracted to the facts in AIR 1932 34 (Nagpur) because the agent was merely entitled to retain a part of the price of the cloth sold by him as his remuneration but he had no interest in the cloth itself -within the meaning of section 202. The same distinction is maintained in *Mutharasu Thevar Vs. Mayandi Thevar and Others*, . But the facts of the case before us are different. They are analogous to the facts of the Supreme Court decision referred to above and, Therefore, the agent in our case had an interest in the property which was the subject-matter of the agency within the meaning of section 202.

(10) The matter may be looked at from another point of view. Legally protected interest or a benefit of one party casts a corresponding obligation on the other party to the contract. If the contract of agency confers an interest or a benefit on the agent, it casts an obligation on the principal. In the present case, the appellant, as a principal, was under an obligation to perform the contract of sale by the execution of a conveyance. In the words of Bowstead, "authority is normally only irrevocable when it is the security or other proprietary interest, or part of the security, or where its conferring constitutes the performance of the obligation". Such a power is referred to as a "power coupled with an interest" and should be regarded as a property disposition rather than as the conferring of authority. The Restatement (the American Restatement of the Law on Agency, section 138) uses the phrase "power given as security" defined as "a power to affect the legal relations of another, created in the form of an agency authority, but held for the benefit of the power holder or a third person, and given to secure the performance of a duty or to protect a title, either legal or equitable, such power being given when the duty or title is created or given for consideration." (OP cit, page 424). Since the power of agency has been conferred not for the benefit of the principal but for the benefit of the agent representing a third party and not as representing the principal, the power becomes irrevocable. ,

(11) The next question is whether this interest was only that of the respondent

or that of Shri Gulati also. Paragraph 3 of the agreement of sale executed by the appellant itself describes Shri Gulati as "a nominee and husband" of the respondent. It also says that the appointment of Shri Gulati as the appellant's attorney was made "in order to facilitate the transaction" of sale by the appellant to the respondent. Why had the appellant to appoint as his agent Shri Gulati who was really the nominee and the husband of the respondent ? The reason obviously was that Shri Gulati was regarded really as a person who is really interested in his wife, namely, the respondent rather than in the appellant whose interests were opposed to those of the respondent. By his relationship with the respondent and also by his nomination by the respondent Shri Gulati was in the position of a representative or an agent of the respondent in fact. It is only in law that he became an agent of the appellant. But this agency was only with a view to serve the purpose of the respondent. This is why the last sentence in paragraph 3 of the said agreement states that the appellant shall not be liable for any negligence of Shri Gulati "who is the nominee" of his own wife. Since Indian ladies are traditionally not transacting business activities, it is well known that their husbands figure as their representatives or agents in these activities. This is why Shri Gulati has acted for the respondent in these transactions. His interest in this transaction was the same as that of his wife. It was, Therefore, the interest of Shri Gulati that the property which was the subject-matter of the agency should be conveyed by the appellant to the respondent. The interest in such conveyance was not only of the respondent but also of Shri Gulati. The powers of attorney in favor of Shri Gulati were executed by the appellant on the same date on which he executed the agreement of sale in favor of the respondent. Since Shri Gulati acted for his wife, all these documents, Therefore, constitute one transaction. The powers of attorney are granted to Shri Gulati only because an agreement of sale is entered in favor of his wife. Shri Gulati no less than his wife is, Therefore, interested in the subject-matter of the agency, namely, the shop. If the agency were to be terminated, prejudice would have been caused to the interest not only of the respondent but also of Shri Gulati. Section 202 of the Contract Act, Therefore, prohibited the appellant from terminating the agency of Shri Gulati before the shop was duly conveyed by the appellant to the respondent.

(12) There is no difference between the general and the special powers of attorney in this respect. Both of them are for the benefit of the respondent and her nominee Shri Gulati. Neither of them is for the benefit of the principal, the appellant. Shri Vohra argued that the respondent and her husband Shri Gulati are two different persons in the eye of law. This may be so. But their interests are identical. It cannot be said that Shri Gulati had no interest in the property which is the subject-matter of the agency. We have already stated that interest does not mean ownership or title in the immovable property. It means an advantage or a benefit or a legally enforceable right. Shri Gulati had the right to legally enforce the obligation cast on the appellant to convey the property to the respondent. This interest and right was of Shri Gulati himself though it may be

for the benefit of the respondent namely, his wife. It is immaterial, Therefore, that only the general power of attorney was expressly made irrevocable while the special power of attorney was not so made. It is section 202 of the Contract Act which makes them both irrevocable.

(13) For the above reasons, the appeal is dismissed with costs.

(14) In the cross-objections the only point urged by the respondent was that the trial Court was not justified in ordering the plaintiff- respondent to pay to the defendant-appellant interest on the unpaid amount of the purchase money which is still to be paid by the plaintiff- respondent to the defendant-appellant. Section 55(4)(b) of the Transfer of Property Act governs the matter. It is only if the plaintiff- respondent had been given the possession of the property that he would have been required to pay interest on the unpaid amount of the purchase money. Since possession has not been delivered to him by the appellant-defendant, the interest was not payable by the respondent to the appellant. No other ground to support the payment of interest by the respondent to the appellant is available. There was no term for payment of interest in the agreement for the purchase of the property. Nor has notice of demand of interest been given to make interest payable under the Interest Act. The cross-objection is, Therefore, allowed with costs and the judgment of the trial Court is modified by the deletion of the direction for the payment of interest by the respondent to the appellant there from.