

(2000) 07 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1987 of 1985

Kashi Ram and Another

APPELLANT

Vs

Raj Kumar and Others

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Contract Act, 1872 — Section 208

Citation : AIR 2000 Raj 405

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Sudhir Sharma, for the Appellant; S.G. Ojha, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—Instant writ petition has been filed against the judgment and order dated 21st Jun, 1985 (Annex. 3) whereby learned Board of Revenue accepted second appeal of the contesting respondents and reversed the judgment and order of the Revenue Appellate Authority dated 13-12-1983 (Annex. 2) by which it has affirmed the judgment and decree of dismissal of suit passed by the trial Court dated 30-5-1983 (Anex. 1).

2. The facts and circumstances giving rise to this case are that petitioners filed a suit for declaration and possession in the Civil court against contesting respondents but the Civil Court rejected the said plaint, holding that it had no jurisdiction and plaint was presented subsequently in the Court of Assistant Collector Hanumangarh. Petitioners had alleged in the plaint that after purchasing land in dispute, they had appointed one Roop Ram (respondent No. 6) as Special Power-of-Authority for the purpose of managing the land and depositing of instalments etc. on 16-8-1967. in spite of the fact that said power-of-attorney was terminated vide registered notice dated 22-12-1969, respondent No. 6 executed the said deed of the land in dispute in favour of contesting respondents Duli Chand etc. on 12-2-1970. Thus, it was prayed that the sale-deed was ineffective, inoperative and inconsequential and petitioners may be put

back in possession of the land in dispute.

3. The contesting respondents/defendants denied allegations made in the plaint. Rather they contended that the petitioners/ plaintiffs were indebted and the land in dispute had been mortgaged. To get the said land released, contesting respondents paid a sum of Rs. 14,500/- and petitioners executed a registered document in favour of Duli Chand that they would pay the said money by 25th June, 1968 and in case said money was not paid they would execute a sale-deed in respect of land in dispute in their favour. They also executed a Special Power-of-Attorney in favour of Roop Ram to execute the said sale-deed.

4. As the money was not paid up to prescribed date i.e. 25-6-1968, Roop Rain, power-of-attorney-holder, extended the date by 6-12-1969 and said extension was duly endorsed by petitioners on 6-7-1968 (Ex. DI). Money was not repaid, therefore, time was further extended and said extension was also endorsed by petitioners and they had agreed to execute the sale-deed up to 10th January, 1970. The said endorsement specifically revealed that Duli Chand had been put in actual physical possession of (he land in dispute. As the sale-deed was not executed by the petitioners in favour of Duli Chand, it was done by their power-of-attorney-holder. The contesting respondents have no notice of termination of power-of-attorney, therefore, even though termination was there, it could not adversely affect the contesting respondents.

5. The learned trial Court, after considering entire material on record, decreed the suit vide judgment and decree dated 30-5-1983 (Annex. 1). Being aggrieved and dissatisfied, appeal was preferred by the contesting respondents, which was dismissed by the Revenue Appellate Authority vide judgment and order dated 13-12-1983 (Annex. 2), Against the said judgment of the Appellate Authority, a further appeal was preferred before the Board of Revenue, which has been allowed by the impugned judgment and order dated 21-5-1985 (Annex. 3). Hence this petition.

6. Heard Shri Sudhir Sharma, learned Counsel for the petitioner and Shri Section G. Ojha for respondents.

7. Learned Counsel for the petitioners has not disputed the fact that contesting respondents had been put in actual physical possession of the land in lieu of money taken from them to the tune of Rs. 14,500/- in 1968 and petitioners had executed a registered document in favour of the contesting respondents that in case money is not repaid, they would execute a sale-deed in their favour of the land in dispute and for that purpose, a power-of-attorney was also executed in favour of Roopa Ram. Time had been extended by said power-of-attorney Roopa Ram for execution of the sale-deed and extension had duly been endorsed by petitioners. Whether sale-deed could be executed without prior permission of the District Collector in view of provisions of Section 13 of the Rajasthan Colonisation Act, on the ground on which trial Court and learned first appellate Court had allowed the case of petitioners, the said provision lost its sanctity after

amendment to the Act in 1982, enacting provisions of Section 13-A of the Act and it has been considered by learned Board of Revenue, categorically holding that subsequent developments during pendency of appeal could also be taken into consideration and relief could be moulded for that purpose, placing reliance upon judgments of Hon''ble Supreme Court in *The State of Uttar Pradesh and Others Vs. Raja Syed Mohammad Saadat Ali Khan*, wherein it was ruled that Court can take into consideration amended law and mould relief accordingly and also take note of subsequent developments. *Laxmi and Co. Vs. Dr. Anant R. Deshpande and Another*, and *Rameshwar and Others Vs. Jot Ram and Another*, The learned Board thus held that after the said amendment has come, Section 13 of the Colonisation Act had been diluted and thus, even now contesling respondent can get (he sale-deed regularised in view of provisions of Section 13-A. This aspect, however, has also not been assailed by Shri Sharma, learned Counsel appearing for petitioners.

8. The sole question raised by Shri Sharma has been that as power-of-attorney in favour of Roopa Ram (respondent No. 6) had been cancelled prior to date of execution of sale-deed in favour of Duli Chand etc., the said Sale-deed is inconsequential for the reason that power-of-attorney-holder had lost right to execute any such sale-deed. The same contention has been agitated before Board of Revenue which stood repelled by the Board, placing reliance upon provisions of Chapter X of the Contracts Act, 1872. The law relating to revocation of authority as adumbrated in provisions of Section 201 to 210 under this Chapter, which deals specifically with the concept of revocation of authority of agency. Section 208 of the Act reads as under :

. "208. When termination of agent's authority takes effect as to agent and as to third person.-- The termination of authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them."

Explanation (b)

A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter revokes his authority to sell, and directs B to send the cotton to Madras, B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton, C pays B the money, with which B absconds. C's payment is good as against A."

9. In the instant case", admittedly, respondent Duli Chand had been put in actual physical possession and Roopa Ram had extended the period of execution of sale-deed twice, which had duly been endorsed by the present petitioners. The petitioners were fully aware of all these facts, knowing it well that third party interest i.e. of Duli Chand etc. had been created and they were in possession of the land in dispute, despite, while terminating the agency of Roopa Ram by registered notice, admittedly no notice of such termination had ever been served

upon contesting respondents Duli Chand etc. nor there is any document on record to show that even by any other means they can be aware of the factum of revocation of agency. in view of the above, the case of contesting respondents squarely falls within illustration (b) under provisions of Section 208. of the Contracts Act.

10. In Janardan v. Ganga Ram AIR 1951 Nag 313 , it has categorically been held that -- "insofar as third parties are concerned, the termination of a contract or agency will take effect only from the time the third party obtains knowledge of it". While deciding the said case, under provisions of Section 208 of the Contracts Act, the Court placed reliance upon judgment in Dasrath v. Brojo Mohan, 22 IC 90. A similar view has been reiterated by Division Bench of Patna High Court in Union of India(UOI) Vs. Motilal Kamalia and Others,

11. In Kathoom Bivi Ammal and Another Vs. Arulappa Nadar and Another, the Court held as under (Para 2) ;

"....Policy of the law, apparently in the interest of trade and commerce, is that agent's action should bind the principal even though principal might have cancelled agent's authority, unless the third person with whom the agent enters into contract, knew of the termination of the agency....."

12. While deciding the said case, the Court placed reliance upon judgment in Trueman v. Loder. (1840) 11 A& E 589, wherein A traded as B's agent. With the authority of B, all parties with whom A made contracts in that business, were held to have a right to hold B liable to them until B gives notice to the world that As authority is revoked and it makes no difference if in a particular case the agent intended to keep the contract on his own account. The Court repelled the contention that it was very unreasonable to expect that the principal should inform the whole world that he has cancelled power-of-attorney given to his agent and that she cannot be expected to approach everybody with whom the agent was likely to enter into contract and inform them of the cancellation.

13. In Kulsekarapatnam Hand Match Workers" Co-operative Cottage Industrial Society Ltd., Madras State Vs. Radhelal Lalloolal and Others, the Court while interpreting the provisions of Section 208 of the Act held that so far as third parties are concerned, law is that termination of contract of agency takes effect only from the time the third party obtains knowledge of it. The principle of law is now well-settled that third party is not affected unless he has knowledge of such termination.

14. In view of admitted facts that third party Duli Chand etc. had no notice of termination of agency, the judgment and order of learned Board of Revenue does not warrant any interference. The force of argument on behalf of contesting respondent cannot be gainsaid. Shri Ojha, while placing reliance upon Section 208 of the Act, in my opinion, appears to be on terra firma.

15. No other point has been raised. Petition is devoid of any merit and

accordingly it is dismissed, with costs, which is quantified at Rs. 2000/-, which shall be paid to contesting respondents. Interim order, if any, stands vacated.