
(1985) 09 BOM CK 0054

In the Bombay High Court

Case No : Civil Revision Application No. 638 of 1982

Laxman Sadashiv Pandre

APPELLANT

Vs

Janabai Rajaramji Ambagade

RESPONDENT

Date of Decision : 25-09-1985

Acts Referred:

Contract Act, 1872 — Section 183, 185, 186, 187, 192
Transfer of Property Act, 1882 — Section 106

Citation : (1986) MhLj 75

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : V.C. Daga, R.C. Madkholkar and V.G. Wankhede, for the Appellant;
P.T. Trivedi and C.V. Jagdale, for the Respondent

Final Decision : Dismissed

Judgement

S.W. Puranik, J.—This is the original defendant's revision application challenging the concurrent judgments and decrees passed by the trial court and the lower appellate Court, decreeing the suit of the respondent-plaintiff for ejectment, arrears of rent and damages.

2. The respondent-plaintiff filed a Civil Suit No. 94 of 1978 which was decreed in her favour on 7-10-1980 by the Civil Judge, Junior Division, Ramtek. The lower appellate Court of the Extra Assistant Judge, Nagpur in Civil Appeal No. 234 of 1980 confirmed the said decree by its judgment dated 14-10-1981.

3. The suit house belongs to Janabai wife of Rajaramji Ambagade, the plaintiff-respondent. The applicant-defendant was her tenant. The plaintiff- (sic)nabai is illiterate. Her husband Rajaram was looking after the management of property. He instructed the counsel on behalf of Janabai to issue notice u/s 106 of the Transfer of Property Act for determination of the monthly by of the defendant. Notice for termination was issued by the counsel on behalf of Janabai, the plaintiff. The defendant did not reply to the notice. Thereafter, Janabai filed the present suit in her own name and under her own thumb impression. She,

however, did not enter the witness box, but her husband Rajaram entered the witness box on her behalf as her agent. He also produced on record Exhibit 15, power of attorney, executed by the wife in his favour.

4. In the written statement, the defendant had raised a very broad contention that the notice of termination of lease issued u/s 106 of the Transfer of Property Act is not legal and proper. Both the courts below found that by the notice issued by the counsel on behalf of Janabai, the tenancy of the defendant was legally terminated.

5. During the course of evidence, the husband of the plaintiff was cross-examined at length and he had stated that his wife Janabai executed the document of Power of Attorney Exhibit 15 at Kanhan by putting her thumb impression. He further admitted that the signatures of the attesting witnesses were taken at Ramtek, where his wife had not accompanied him because of illness. He further admitted that when he had given instructions to the counsel, his wife had not come to Ramtek to the counsel's office. He further admitted that at the time of issuing notice through the counsel, his wife Janabai had not executed power of attorney in his favour. The Power of Attorney was executed after the plaint was filed in the Court.

6. it was contended on behalf of the applicant-defendant by Shri V. C. Daga, Advocate, that both the courts below have erred in finding that the notice u/s 106 is legal and proper and has validly terminated the tenancy. He urged that the notice u/s 106 has to be issued by the owner of the property, the lessor, either under his signature or on his behalf. He also pointed out that in view of the admission of Rajaram, the instructions were given to the counsel not by the lessor, but by her husband. As such, it could not be termed to be a notice given on behalf of Janabai. Moreover, the power of attorney Exhibit 15 was not properly executed because admittedly, Janabai put her thumb mark at Kanhan while the attesting witnesses have put their signatures at Ramtek. He also relied upon the ruling in AIR 1917 Cal 621 (Cassim Ahmed Molla v. Eusuf Haji Ajam Popardi and another).

7. Shri P. T. Trivedi, Advocate, appearing for the respondent-plaintiff supported the impugned Judgment.

8. The only question for determination is whether in the peculiar facts and circumstances of the case, the notice issued for determination of lease was legal and proper.

9. Relevant part of section 106 of the Transfer of Property Act provides that :

Every such notice must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Thus, what is required for a legal and proper notice to be issued u/s 106 of the Transfer of Property Act is that it must be in writing, that it must be signed by the lessor or on behalf of the lessor. In the instant case, the notice or termination of tenancy is in fact issued on behalf of plaintiff-Janabai by her counsel. The validity of the notice has not been challenged on the ground that Janabai did not issue such a notice or did not get such notice issued through her counsel. In the matters of legal notices issued through counsel, it must be presumed that the statement of the counsel in the notice that it is being issued under the instructions of his client, in this case Janabai, is correct and proper unless repudiated.

10. The original plaint is also filed under the thumb impression of Janabai herself. The other contention of the applicant-defendant is that the husband was not the duly constituted agent of the wife Janabai inasmuch as the power of attorney exhibit 15 was executed at Kanhan while the attestation by other witnesses is executed at Ramtek. Apparently, the argument sounds logical and reasonable. But this is a peculiar case of relationship between husband and wife and the husband acting for and on behalf of his wife, not as a contractual agent, but as an implied agent.

11. Section 192 of the Indian Contract Act defines what is an "agent" and a "Principal". An "Agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal". u/s 183, any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. Section 185 provides that no consideration is necessary to create an agency. Now, the next two provisions of Contract Act viz. sections 186 and 187 are important for the purpose of the present case; section 186 says : "The authority of an agent may be expressed or implied" and section 187 states :

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

12. The relationship of Principal and Agent may be constituted by (a) express appointment, (b) by implication of law from the conductor situation of parties or from the necessity of the case, or (c) by subsequent ratification by the principal. Since no consideration is required to create an agency and since the authority of an agent could be expressed or implied and that authority could be expressed even by words "spoken" or "written" and it can be implied when it could be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing, then each case of an agent representing the principal, and his authority could be inferred from the circumstances as may be accruing in a given case. The husband and wife is a relationship which is special and important case of implied authority. Under law, the husband and wife are treated

as one person. More so in India and in Hindu societies where the wife is illiterate, it is the husband who has an implied authority to conduct all-property transactions for and on behalf of his illiterate wife and is a custom which broadly and generally accepted as the ordinary course of dealings. This presumption could be rebutted on behalf of the other party by specifically going that either husband and wife are living separate or are divorced or are on cordial terms. But for that purpose, specific pleadings and necessary proof required. In the matter of giving evidence in an ejectment suit on behalf of wife, stand need not have a special power of attorney to adduce evidence on her behalf unless it was challenged in the defence pleadings. In my opinion, therefore, the present case is such where the wife was duly represented by the husband and where the wife who is the real lessor, had got issued a notice on her behalf through a legal counsel for termination of lease and had also filed the plaint in her own name. For all these reasons, the contention of the applicant-defendant that notice issued u/s 106 of the Transfer of Property Act is invalid and has not determined the tenancy cannot be sustained. The revision, therefore, will have to be dismissed.

13. At this stage, the defendant-applicant's counsel requested time to vacate the suit premises. I feel that in the interest of justice and the ensuing festival season, it would be reasonable and proper to grant him time to vacate the premises by 31st December, 1985. In the result, therefore, the revision application is dismissed. However, the execution in so far as the decree of ejectment part is concerned, will be suspended upto 31st December 1985. On default of the defendant, the entire decree shall become executable on or after 1st January 1986. There shall be no order as to costs.