

(1993) 07 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 12365 of 1987

Mohammed @ Podiya

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 55, 61

Citation : (1993) ILR (Kar) 2306 : (1993) 3 KarLJ 331

Hon'ble Judges : Rajendra Babu, J;Mirdhe, J

Bench : Division Bench

Advocate : P.V. Shetty, for the Appellant; Shimoga Subbanna, HCGP for R-1 to R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—The petitioner executed a power-of-attorney in favour of the fourth respondent as per Annexure-C. The Tahsildar initiated action in terms of Section 61 of the Karnataka Land Reforms Act 1961 (hereinafter referred to as the Act) by making a report that occupancy rights in respect of the lands in question had been registered by the Land Tribunal at Puttur in favour of the petitioner and that by the said Power-of-Attorney executed on 15.10.1980 the petitioner had made over the possession of the lands and the transaction involved in the said registered power-of-attorney is a contravention of the provisions of Section 61 of the Act. On the basis of this report made by the Tahsildar, the Assistant Commissioner made an enquiry after issue of notice to the concerned parties. The petitioner stated before the Assistant Commissioner that for the last two years he was a heart patient; that the fourth respondent is his maternal uncle's son and on account of his illness he was not able to cultivate the lands and therefore requested the fourth respondent to help him and in consequence thereof executed the power-of-attorney and that he had not sold the lands involved in the transaction. The fourth respondent remained ex parte. It was contended before the Assistant Commissioner, that the transaction

involved in the power-of-attorney is not a sale; that the transfer of possession of lands is not a transfer of interest in the lands and that a power-of-attorney does not constitute a transfer of right. The Assistant Commissioner noticed that the power-of-attorney had been executed on a stamp paper of the value of Rs.4,900 and therefore the transaction involved in the power-of-attorney might be treated as a sale of the lands in question for Rs. 65,000 which was the amount stated to have been paid under the power-of-attorney by the fourth respondent to the petitioner; that the power-of-attorney fixes the price at which the lands should be sold and the fourth respondent agreed to pay the said sum of Rs. 65,000 to the petitioner at the time of registration before the Sub-Registrar and that was the consideration offered and accepted; that though the form of the document is power-of-attorney, in substance it is an exchange and therefore it falls within the scope of Section 61 of the Act and held that the same is hit by Section 61 of the Act. Consequently, he ordered forfeiture of the lands in favour of the Government.

Against this order the matter was carried in appeal to the Karnataka Appellate Tribunal. The Appellate Tribunal raised a question whether the power-of-attorney amounted to a transfer as contemplated u/s 61 of the Act and whether it contravenes the said provision. After reiterating the facts already stated the Tribunal considering certain recitals in the document holding that the power-of-attorney is in the nature of a mortgage and it is given for enjoyment on security of the amount of Rs. 65,000 and in that view of the matter it upheld the ultimate order made by the Assistant Commissioner and dismissed the appeal. Aggrieved by these two orders the petitioner has approached this Court

2. In order to appreciate the contentions advanced on behalf of the parties it is necessary to set out the recitals in the power-of-attorney.

"1. To manage the properties described hereunder, to effect improvements therein and receive profits of the said property.

2. To institute and defend all suits, petitions, applications, appeals or other proceedings relating to the said property in any Court, Tribunal, Authority or office.

3. To engage lawyers.

4. To compromise or refer to arbitration all suits, appeals, petition, applications, proceedings or disputes relating to the said property.

5. To construct buildings in the said property and effect under improvements.

6. To apply for permission for construction or alteration of buildings.

7. To apply for supply of electricity.

8. To apply for conversion of land for non-agricultural purposes.

9. To apply for permission for cutting or transporting any trees or tree.

10. To occupy for himself or let upon lease any building now existing or hereafter

to come into existence in the said property.

11. To mortgage the said property in the manner permitted by law.

12. To sell the said property for a price of not less than Rs. 70,000 (Rupees Seventy thousand only) after expiry of the period prescribed by Karnataka Land Reforms Act and put the purchaser in possession of the said property and for that purposes to execute necessary deed of sale or other document, present the same for registration and do all other acts, deeds and things necessary and incidental to the execution and registration of the said document.

13. The aforesaid attorney has agreed to pay me a sum of Rs. 65,000 (Rupees Sixty Five thousand only) as deposit which shall be paid to me by the attorney at the time of registration before the Sub-Registrar. In the event of my attorney selling the said property he shall be entitled to deduct the said amount of Rs. 65,000 from the sale price and the balance shall be paid to me. The said amount of deposit shall carry no interest.

14. My attorney shall pay the amount of compensation due in respect of the said property. In the event of my attorney selling the said property he shall be entitled to deduct the same from the amount due to me.

15. I shall have no power to revoke this power of attorney or to demand any accounts from the aforesaid attorney,

16. Any act, deed or thing which my aforesaid attorney shall do by virtue of this deed shall bind me and my heirs and legal representatives.

17. I hereby agree to ratify, and confirm all and whatsoever my aforesaid attorney shall do by virtue hereof as fully and effectually in all respects as I myself could do."

2.1. u/s 61 of the Act when occupancy in respect of a land had been granted under Chapter IV, the grantee shall not, within 15 years from the date of certificate u/s 55 of the Act, transfer the land by sale, gift, exchange, mortgage, lease or assignment. It is made clear that land may be partitioned.

3. It is urged on behalf of the petitioner that the document in question is neither an exchange nor a mortgage as held by the Assistant Commissioner and the Appellate Tribunal and therefore those orders are plainly invalid. It is also submitted that the document is a power-of-attorney creating a simple agency, that is to say, while the petitioner is the principal the fourth respondent is the agent appointed to take care of the land for and on behalf of the petitioner and therefore the same is not hit by Section 61 of the Act.

4. A power-of-attorney is an authority whereby one is authorised to act for another. Power-of-attorney is ordinarily construed strictly and general powers are interpreted in the light of the special powers, although they may include incidental powers necessary for carrying out the authority granted. Where a general power is given followed by specific powers, the generality of powers will

have to be read in the light of the specific powers granted. In the present case, the first four clauses in the power-of-attorney appear to be ordinary clauses of agency. The fifth clause enables the fourth respondent to construct buildings in the property in question and effect other improvements. Clause 8 empowers the fourth respondent to apply for conversion of land for non-agricultural purposes. Clause 10 empowers the fourth respondent to occupy for himself or let on lease any building in existence or thereafter to come into existence in the said property. Clause 11 empowers the fourth respondent to mortgage the said property and Clause 12 permits the fourth respondent to sell the property for a price not less than of Rs. 75,000 mentioned in the certificate issued u/s 55 of the Act. The fourth respondent paid a sum of Rs.65,000 as deposit and on sale of the property in question he would be entitled to deduct the said sum of Rs.65,000 already paid towards the sale price and the balance thereof shall be paid. This power-of-attorney is an irrevocable one and also contains a provision or clause that petitioner would not demand for any accounts. Thus, the fourth respondent has not only been empowered to do certain acts as an agent, he has also been conferred with power to occupy the lands himself or lease any building already existing in the lands or thereafter come into existence and to construct buildings on the property and make other improvements with the power of sale subject to certain conditions. All said and done this power-of-attorney can by no stretch of imagination be stated to be a simple case of creating agency.

5. Section 202 of the Contract Act provides that 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 any express condition be terminated to the prejudice of such interest. The principle is that when an agreement is entered into on a sufficient authorisation whereby an authority is given for the purpose of giving some benefit to the donee of the authority such an authority is irrevocable. An authority coupled with interest is not determined by death, insanity or bankruptcy of the principal where the agent made advances to the principal and is authorised to sell at best price and recoup advances made by him, the agency is one coupled with interest and is irrevocable. Where all the rights and liabilities under a contract were made over by a power-of-attorney, such power is an agency coupled with interest.

6. In the instant case, the authority is not only irrevocable, it is a security with other proprietary interests or part of security conferring powers on the fourth respondent towards performance of obligations. The fourth respondent is empowered to put up constructions on the property or lease the property as he thinks fit. Nothing is stated as to the consideration that may pass to him in the event of leasing that property or cost of construction or other obligations or rights the petitioner would have in that regard. Further, when the property is liable to be sold at an upset price of Rs. 75,000 or more, a substantial sum of Rs. 65,000 which is almost equivalent to the consideration thereof is stated to be deposited with the petitioner and the power-of-attorney not being revocable, question of refund thereof may not arise in which event the said sum of Rs.

65,000 will remain with the petitioner and the property with the fourth respondent. In that event there is definite transfer of proprietary interest in the property. Indeed, in *BOWSTEAD ON AGENCY* this position is considered and such power is referred to as "power coupled with interest" and is regarded as a property disposition rather than as the conferring of authority. The clause relating to irrevocability is introduced in the power-of-attorney as an authority which is conferred on him as a protection of agency coupled with interest. In that event, the power-of-attorney in question must be construed as one assigning the rights of the petitioner arising out of the certificate issued u/s 55 of the Act to the fourth respondent. The learned Counsel for the petitioner, however, urged relying upon a Decision of the Andhra Pradesh High Court reported in AIR 1985 AP 13, that the power-of-attorney is not a document transferring any interest in the property. But a careful perusal of the Decision itself would make the observations made thereof non-applicable to the facts of the case on hand. In the present case, the interpretation of the recitals in the power-of-attorney turns on its own facts. It is further submitted that it is only a drafting error and creates no interest in the property as such and referred to certain Decisions reported in AIR 1938 Lah 712 : *Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another*, , *Rambaran Prosad Vs. Ram Mohit Hazra and Others*, and *Amulya Gopal Majumdar Vs. United Industrial Bank Ltd. and Others*, . But none of these Decisions have any application to the present facts of the case or the principles laid down therein can have any application to the present case. In the circumstances, we have no choice but to confirm the order made by the Tribunal, though for different reasons. In the result, this Petition is dismissed. Rule discharged.