

(2014) 09 OHC CK 0061
In the Orissa High Court
Case No : F.A.O. Nos. 161 and 370 of 2014

Rabikanta Singh

APPELLANT

Vs

Satya Prakash Mahana
 Satya Prakash Mahana Vs
Rabikanta Singh

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Contract Act, 1872 — Section 201, 208

Citation : (2014) 118 CLT 1162 : (2014) 2 OLR 1062

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghubir Dash, J.—Both the appeals arise out of order dated 15.3.2014 passed by the learned Civil Judge (Senior Division), Baripada in I.A. No. 19 of 2014 arising out of C.S. No. 72 of 2014 directing the parties to maintain status quo over the suit land till disposal of the Civil Suit. The appellants in F.A.O. No. 161 of 2014 are the Defendants-O.Ps. before the trial court. They have sought for setting aside the impugned order of status quo so that they can raise construction over the suit property for the development of which they have spent a huge amount. In F.A.O. No. 370 of 2014 the appellants are the plaintiffs-petitioners before the trial court. Being aggrieved by some observation made by the learned trial court on the factum of possession over the suit land made in favour of the Defendants, they have preferred the appeal to expunge/set aside such observation made in the impugned order.

2. The suit is for declaration of title and confirmation of possession and, in the alternative, for recovery of possession and to declare Registered Sale Deeds dated 28.1.2013 and 25.3.2013 as null and void. According to the Plaintiffs-appellants, on 11.3.2007 Jagananth Das and 5 others, the owners of the suit land, executed one irrevocable Power of Attorney in favour of one Raj Kishore Singh authorizing him, inter alia, to sell the properties mentioned in the schedule

of the Power of Attorney. Prior to execution of the Power of Attorney the Principals had received a sum of Rs. 8,00,000/- from said Raj Kishore Singh on 8.3.2007 and on the same day an agreement for sale of the land covered under the said Power of Attorney was also entered into between the Principals and said Raj Kishore Singh. On 16.10.2012 the Power of Attorney holder executed Registered Sale Deed No. 11261203773 dated 16.10.2012 alienating the suit land measuring Ac. 1.08 appertaining to Plot Nos. 155, 599 and 706 under Khata No. 185 of Mouza Raghunathpur, in the district of Mayurbhanj in favour of the plaintiffs (his own sons) receiving consideration of Rs. 10,00,000/- and delivered possession of the properties to the plaintiffs. Since then the plaintiffs have been in possession of the properties they have purchased under the Sale Deed. However, the Defendant Nos. 8 to 10 (the appellants in F.A.O. No. 161 of 2014 and respondents in F.A.O. No. 370 of 2014) are trying to enter into the land purchased by the Plaintiffs claiming to have purchased the same from Defendant Nos. 1 to 7 under three Registered Sale Deeds. They have also stacked building materials for making construction over the suit property. Therefore, the Plaintiffs made an application for ad interim injunction restraining Defendant Nos. 8 to 10 from alienating the suit properties as well as disturbing the plaintiffs' possession till disposal of the suit.

3. D.8 to 9 who are O.Ps. in the I.A. filed objection contending, inter alia, that on account of death of one of the Principals who had executed the Power of Attorney, the said power stood revoked by operation of law. Therefore, the Power of Attorney holder could not have transferred the suit properties in favour of his own sons who are the plaintiffs-petitioners before the learned trial court and such sale transaction is invalid. It is further contended that the true owners of the suit property have sold the suit land under Registered Sale Deeds executed in favour of D.8 to 10. According to these Defendants the plaintiffs' claim of right, title and interest on the basis of Sale Deed executed by the Power of Attorney holder is not sustainable in law.

4. Learned trial Court has observed that since both the parties claimed their respective title and possession over the suit land on the basis of registered sale deed(s) in their favour, it is not possible at this stage of the proceeding to answer the validity or otherwise of any of the sale deeds. At the same time it has rightly observed that the plaintiffs-petitioners have raised a substantial question, which needs investigation and decision on merit. The ingredient of prima facie case is in their favour. As regards possession over the suit land the learned trial Court has observed that since the plaintiff-petitioners have admitted in their plaint that the defendants-opposite parties have developed the suit land to raise construction of a building there can be a prima facie conclusion that the defendants-opposite parties are in possession of the suit land. However, being of the opinion that a serious disputed question relating to title is to be decided in the suit and further observing that since the defendants-opposite parties want to raise construction of a building over the suit land which will change its nature and character, it has considered it to be proper to maintain status quo in respect of the suit property.

Therefore, learned trial Court has allowed the interim application directing the parties to maintain status quo over the suit land till disposal of the suit.

5. Learned counsel for the appellants submits that in view of the admitted possession that the appellants are in possession of the suit land learned Court below ought not to have passed an order directing the parties to maintain status-quo. Further contention is that since one of the principals executing the power of attorney died and consequent upon his death the power of attorney stood revoked, the sale deeds executed by the power-of-attorney holder in favour of the respondents after the death of one of the principals is clearly void ab initio and incapable of conveying title in favour of the plaintiff-respondent which the learned trial Court has failed to appreciate. In this regard the provisions of Section 201 of the Indian Contract Act 1872 and Section 3 of the Power of Attorney Act are pressed into service. Section 201 of the Indian Contract Act lays down inter alia that an agency stands terminated on the occasion of the death of either the principal or the agent. But the section is not clear as to whether the agency jointly created by a number of principals stands terminated on the death of one of the principals and whether such termination affects the agency in its entirety or only in respect of the deceased. However, in *Badrinarain Agarwalla V. Brijnarayan Roy* and another reported in AIR 1917 Calcutta 436, it is held that where the paramount object of a power of attorney executed by three out of four brothers, living jointly in a Mitakshara family, in favour of the fourth was to facilitate the raising of joint loans by the latter on mortgages of the joint estate for their joint benefit, the death of some of the executants did not put an end to the power. The aforesaid decision is referred to here in this case only for the purpose of showing that under certain facts and circumstances the death of one or some of the executants of the power of attorney will not terminate the agency. It is to be decided in the suit in hand, while deciding it on merit, as to whether in the facts and circumstances of the case the agency stood terminated on the death of one of the executants. That apart, Section 208 of the Contract Act lays down that the termination of the 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. In the case in hand, the Appellants filed copy of a receipt showing that a notice was sent to the Agent through courier. But there is no material showing delivery of the notice to the Agent. Whether the Agent and, for that matter, the purchasers from the Agent had notice of the fact of death of one of the principals is to be decided at the trial. Same observation is applicable to the operation of Section 3 of the Power of Attorney Act, 1882.

6. Learned lower Court has observed that the appellants are prima facie in possession of the suit land. As against this observation the plaintiff-respondents have come in Appeal in F.A.O. No. 370 of 2014 seeking quashing of that observation. Since the learned trial Court has not recorded a definite finding that the defendants are in possession of the suit land and the prima facie observation on the factum of possession is based on the plaintiffs' averment that the

defendants have developed the land, such observation is quite reasonable and it is not liable to be expunged or quashed.

As regards the appellants' contention that the order of status-quo should not have been passed which operates against the party in actual possession of the suit land, it is to be held that if the status-quo of the suit property is required to be maintained during pendency of the lis such an interim order can be passed even though one of the party is in possession thereof. In this case the suit property is more than one acre in area. It is not clarified by the appellant as to the area of the portion of the suit land over which they want to make construction. It appears the suit land is fit for house site. At this stage, it cannot be said as to which of the parties has acquired title over the suit land. If any of the parties is permitted to raise construction over the suit land it would definitely cause great deal of inconvenience as well as irreparable injury to the other side, if the latter ultimately comes out successful in the legal battle. The construction has not yet started. At least there is no such assertion. It is not a case where the construction has achieved substantial progress and if the party making the construction is restrained in the midway, then it would not be beneficial to either of the parties. Since the construction work has not yet started neither of the parties would suffer prejudice. In the facts and circumstances of this case, the respondents will suffer irreparable injury and the balance of convenience would lean against them, if the appellants are given liberty to raise construction.

7. In view of the discussion made above, the impugned order is found to be quite appropriate and deserves no interference. Similarly, as already observed, the impugned observation of the learned trial Court on the factum of possession made in the impugned order need not be expunged or quashed.

8. In the result, both the Appeals stand dismissed on contest but, in the facts and circumstances, without any cost.

Before parting with, it is considered necessary to clarify that observations made in this judgment as well as the impugned order on the factum of possession shall not be deemed to have been made on the merits of the case.