

(1998) 07 DEL CK 0028

In the Delhi High Court

Case No : IA No. 4726/95 in Suit No. 1407/95

Shikha Properties(P) Limited

APPELLANT

Vs

S.Bhagwant Singh and Others

RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:

Citation : (1998) 5 AD 28 : (1998) 3 CivCC 532 : (1998) 74 DLT 113 : (1998) 46 DRJ 286 : (1998) 120 PLR 32 : (1998) 4 RCR(Civil) 389

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : Mr. J.R. Midha, for the Appellant; Mr. Sandeep Sethi, for the Respondent

Judgement

D.K. Jain, J.—This is plaintiff company's application under order 39 Rule 1 & 2 of the Code of Civil Procedure, filed in their suit for declaration and permanent prohibitory injunction, for ad interim orders : a) staying operation of the alleged cancellation of General Powers of Attorney dated 16 November 1983 and b) restraining them from interfering in or causing hindrance in the plaintiff's peaceful use and enjoyment of and their dealing with the suit properties being blocks no.A & C of the Regal Building, New Delhi.

2. The defendants owned the afore noted property. They entered into agreements to sell dated 2 November 1983 and 15 November 1983, registered respectively on 10 November 1983 and 17 November 1984, agreeing to sell and transfer all their rights, title and interest in blocks A & C of the said building to the plaintiff company for consideration as mentioned therein. As per the terms of the agreement to sell, all liabilities for damages/misuse of the property and other Government dues like municipal taxes etc., claimed by the authorities in respect of the demised blocks were to be discharged by the plaintiff company. It was also agreed that till such time the registration of the conveyance/sale deed was done, the plaintiff was free to deal with the property; manage the same in any manner they like, deal with the tenants and occupants of the property, create any lease

or sub lease in favor of any person or persons, company or companies and the defendants were to have no objection whatsoever in that behalf. It seems that the defendants had some dispute with the L&DO concerning the subject property, for which they had initiated certain legal proceedings and with a view to enable the plaintiff to pursue these matters and effectively exercise their rights under the two agreements to sell, they executed two general powers of attorney in favor of the Directors of the plaintiff company in terms of clause 15 of the agreements to sell. The plaintiff claims that full and final consideration for sale of the said properties has been received by the defendants, constructive possession thereof has been delivered to it; the defendants informed the tenants in the properties about the deal of the subject properties, who attorney in favor of the plaintiff, and have been paying rent to them since then and the defendants were left with no right, title or interest in the said properties or any part thereof. However, on account of appreciation in the value of the property, with a view to set up illegal demand and cause mischief and confusion, among the tenants, the defendants informed the plaintiff company that they have revoked the general power of attorney dated 16 November 1983 w.e.f 9 May 1995 in respect of block A and threatened to cancel the other power of attorney relating to block C as well, leading to the filing of the present suit by the plaintiff company seeking: (i) declaration declaring the alleged revocation/cancellation of the general power of attorney dated 16 November 1983 as null and void; (ii) restraining by way of perpetual injunction the defendants from revoking and/or cancelling the said power of attorneys, pending completion of sale transactions in terms of the aforesaid agreements to sell and (iii) restraining the defendants from in any manner interfering in and/or causing any obstruction to the peaceful use, enjoyment and dealing with the subject properties.

3. The defendants in their written statements and reply to the application admit execution of the two agreements to sell relating to blocks A and C and the two general powers of attorney, both dated 16 November 1983, authorising the plaintiff to deal, lease and manage the properties and for the sale deeds to be executed. However, without specifying the amounts still due from the plaintiff in terms of the two agreements to sell, they deny the receipt of the total sale consideration. The suit is contested, inter alia, on the pleas that: it is not maintainable as framed without the plaintiff seeking specific performance of the agreements; the power of attorneys having been cancelled the relief claimed in respect thereof has become infructuous; the plaintiff has failed to fulfill their obligations under the two agreements to sell in as much as they neither settled the disputes with the L& DO nor got compounded the breaches alleged by the said authority, entitling the defendants to revoke the power of attorneys, which they have done. On these and other pleas raised in resistance to the suit, issues have already been struck.

4. I have heard Mr.J.R. Midha for the plaintiff and Mr.Sandeep Sethi for the defendants.

5. It has been urged by Mr. Midha on behalf of the plaintiff that the defendants having executed the agreements to sell and/or irrevocable power of attorneys in favor of the plaintiff's nominees for valuable consideration, the defendants are left with no right, title or interest in the properties, the plaintiff has vital interest in the subject property; the power of attorneys are irrevocable and the authority coupled with interest created in effect tantamounts to transfer of interest in the property in favor of the plaintiff, and the same cannot be dislodged or done away with by the so called revocation of the power of attorneys, which is otiose and of no consequence but only a mischievous move to cause confusion among the tenants, to the detriment of the plaintiff and as such the so called revocation is null and void. For it the learned counsel relied on Section 202 of the Contract Act, 1872, which provides that where the agent has an interest in the property, which forms subject matter of the agency, the agency cannot, in the absence of express contract, be terminated to the prejudice of such interest. He asserts that the plaintiff has a foolproof case in their favor and, Therefore, operation of notice, revoking the power of attorneys, be stayed and the defendants be restrained from interfering in any manner in the plaintiff's user and peaceful enjoyment of the subject property. To support his contention that an irrevocable power of attorney cannot be revoked, reliance is placed on three decisions of this court in Harbans Singh Vs. Shanti Devi 1977 RLR 487 (DB), Prem Raj Vs. Babu Ram 1991 RLR 458 and H.L. Malhotra Vs. Nanak Jai Singhani 1986 RLR (N) 89.

6. On the contrary it has been strenuously urged on behalf of the defendants that a mere execution of the agreement to sell or general power of attorney in favor of the plaintiff's nominee does not confer any valid title in the properties in their favor and, Therefore, the power of attorneys could be revoked u/s 201 of the Contract Act. In support reliance has been placed on the decisions of the Supreme Court in Satyabrata Ghose Vs. Mugneeram Bangur and Company and Another, and Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad, .

7. The main thrust of Mr. Sethi's contention, however, is that the plaintiff has failed to discharge its obligations under the agreements to sell in that it had to obtain no objection certificates from various public authorities, which for all these years they have failed to do; the plaintiff company has thus defaulted, entitling the defendants to revoke the power of attorneys; the suit as framed is not maintainable and the power of attorney dated 16 November 1983 having been revoked, the same cannot be revived. It is also urged that due to the stalemate created by the plaintiff company's inaction in not settling the Government dues and getting the properties transferred all this while, the defendants have been placed in an awkward situation; claims for property tax are being laid against them and their accounts have been attached by the authorities concerned and if the operation of the revocation is stayed and a free hand is given to the plaintiff to deal with the properties, the plaintiff might create third party interest in the properties, thus depriving the defendants of their valuable property.

8. I have considered the whole matter. The agreements to sell and the irrevocable power of attorneys executed, for consideration for sale received by the defendants, in favor of the plaintiff company were meant not only to get the sale deeds executed, but also conferred rights on the plaintiff to manage the properties and deal with the tenants, create leases or sub-leases. Pursuant to their execution, the properties being in occupation of tenants/occupants, constructive possession of the properties appears as handed over to the plaintiff, since the plaintiff has been dealing with the tenants, recovering rent and virtually exercising ownership rights all this while. As noticed above, and as is evident from the pleas raised in support and resistance to the suit, briefly referred to above, serious questions requiring trial and decision, on the pleas set up by the parties and the issues struck, arise in the suit and it will neither be proper nor desirable to express any opinion on them at this stage. For the purpose of this application for temporary injunction, the court has to take only a prima facie view of the matter. Bearing in mind the view expressed by a division bench of this court in Harbans Singh's case (Supra) and followed in Prem Raj and H.L. Malhotra's cases (Supra) to the effect that if an irrevocable power of attorney is executed for consideration, the same cannot be cancelled, and having regard to the fact that the plaintiff company has been managing the suit properties all the while right from the year 1983, I feel that the plaintiff has a prima facie case and the balance of convenience lies in its favour. If the operation of the impugned notice, revoking the general power of attorneys, is not stayed and the defendants are given a free hand to deal with the subject properties the way they like, the plaintiff is likely to suffer irreparable injury. The decisions in Satyabrata Ghose's and Ram Gopal Reddy's cases (Supra), relied upon by learned counsel for the defendants, are clearly distinguishable on facts. None of the authorities cited by learned counsel for the defendants deals with the intent and scope of section 202 of the Contract Act. In Satyabrata's case (Supra), the Apex Court, while dealing with Section 54 of the Transfer of Property Act, merely held that doctrine of frustration is applicable to contracts for sale of land in India. Similarly in Ram Gopal Reddy's case (Supra), as is evident from the head note itself, the Hon'ble Court merely noticed the uncontested principle of law that where the immovable property sold is more than Rs.100/- title does not pass to a transferee unless sale deed is registered. These authorities do not advance defendants' case. The instant case, prima facie, is covered by Section 202 of the Contract Act as admittedly, having paid consideration for sale and having been dealing with the suit properties practically as owners, for fairly long, the plaintiff appears to have vital "interest" in it, requiring protection till it is held as washed away or nullified on the pleas raised by the defendants, which can be determined only after full trial.

9. For all these reasons and balancing the equities between the parties, I would direct that till the disposal of the suit, the parties shall maintain status quo regarding management and recovery of rent of the property from the tenants and further to secure the property, the plaintiff shall not sell, transfer, alienate or

otherwise make any substantial alterations in the subject properties except routine repairs. Since it is alleged by the defendants that substantial amount of property tax etc. is due to the Municipal Corporation against the suit properties, the rent to be realised by the plaintiff from the tenants, in future, shall be deposited in this Court. The plaintiff shall also file in this court quarterly returns for the rents realised from all the tenants in the said properties and deposited in Court as above.

The application stands disposed of in the above terms.