
(2011) 10 KAR CK 0093
In the Karnataka High Court
Case No : Regular First Appeal 1704 of 2010

Smt. Subhadra and Sri Muniraju	Vs	APPELLANT
Sri M Narasimha Murthy and Others		RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Contract Act, 1872 — Section 202, 205, 210
Easements Act, 1882 — Section 60

Citation : (2011) 10 KAR CK 0093

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Patel D. Karegouda, for the Appellant; Vishwanath N. Bentur, for R1, Sri Vishalaksha Kodiwal, for R4-5 and Sri Ramachandra Naik, GP for R2-3, for the Respondent

Judgement

Huluvadi G. Ramesh

1. Appeal is by the defendants challenging the judgment and decree passed by the XXVII Addl. City Civil Judge, Bangalore in OS 2074/2003 on 5.8.2010.
2. Suit property is a part and parcel of the site said to have been allotted to the plaintiff by the Bangalore Development Authority in No.77, III Block, I] Stage, RMV Extension, Bangalore. It is alleged by the plaintiff, having taken his signature and having created fraudulent documents by way of general power of attorney, the 1st defendant who is the wife of the 2nd defendant and sister in law of the plaintiff, got transferred the property in favour of the 2nd defendant. Though the transaction was not one for sale of immovable property nonetheless, the 1st defendant misusing the signatures, has got executed the sale deed in favour of the 2nd defendant. Stating that it is an illegal transaction and without knowledge of the plaintiff, and the power of attorney is illegal, plaintiff sought for a declaration to declare the sale deed executed by the 1st defendant in favour of the 2nd defendant on 25.4.2001 as illegal.

3. Matter was contested by the defendants. While admitting the relationship between the parties, it is stated, plaintiff was in a financial crisis, therefore he had offered to sell the northern portion of the suit property for a consideration of Rs.29,000/-. The 1st defendant having agreed for the same, paid the entire consideration and in lieu of the same, plaintiff executed a power of attorney based on which, the 1st defendant executed a sale deed in favour of the 2nd defendant, who put up construction. What is not in dispute is, it is a lease cum sale by the BDA in favour of the plaintiff for a period of ten years and only thereafter, the sale deed could be executed. The defendants have denied the putting up of construction by the plaintiff while also denying the stand of the plaintiff that he has only received the money and not agreed to sell the property.

4. Based on the pleadings, two issues and four additional issues have been raised by the trial court. After inquiry, while answering the relevant issues in favour of the plaintiff, while holding in favour of the plaintiff that the power of attorney has been revoked by him much prior to the execution of the sale deed by the 1st defendant in favour of the 2nd defendant, the trial court has held that the sale deed executed based on the power of attorney is null and void. While granting an order of permanent injunction, it has ordered for possession and also for a declaration. Hence, this appeal.

5. Heard the counsel representing the parties.

6. Learned Sr. counsel Sri Shankar representing the appellants/defendants submitted, as per the provisions of the Contract Act and also the Easements Act i.e., S.60, when it is an agency coupled with interest, cancellation of the power of attorney unilaterally without there being any compensation paid, is illegal. Also, there is a clear admission on the part of the plaintiff regarding due execution of power of attorney as is held by the trial court. The execution of the sale deed by the 1st defendant in favour of the 2nd defendant pursuant to the power of attorney, since it is an agency coupled with interest, the alleged revocation of the power of attorney is non-est and not binding on the appellants. The trial court without considering the legal provisions and the effect of irrevocable power of attorney, simply jumped to the conclusion accepting the version of the plaintiff that there is a fraud played on the plaintiff without there being details of fraud being pleaded or proved. Accordingly, he has referred to S. 202, 205 and 210 of the Contract Act and also referred to S.60 of the Easements Act. To stand by his contention, counsel has relied upon the judgment of the Apex Court in the case of Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, as regards irrevocability of the license as per S.60 of the Easements Act and also when license could be revoked.

7. Per contra, counsel for the respondent submitted, it is a clear case of fraud and it has been duly pleaded and proved. Details have been made out in the evidence. Though the signature is admitted on the power of attorney but the contents have not been admitted and also it is the case of the plaintiff, except the signature which is on the power of attorney, all other contents are filled up

by the defendants themselves. Plaintiff had not intended to alienate the property. The amount raised is only a loan and is already returned to the defendants. As such, trial court has rightly observed that before execution of the sale deed by the 1st defendant in favour of the 2nd defendant, the power of attorney executed had been revoked during 1996.

8. In the light of the arguments advanced, the points that arise for consideration are -

Whether the plaintiff had executed an irrevocable power of attorney in favour of the 1st defendant;

Whether the trial court is justified in holding that there was revocation of the power of attorney;

9. Whether the trial court is justified in allowing the suit filed by the plaintiff, declaring and issuing permanent injunction against the defendants, and What order.

10. Looking into the evidence on record, it transpires that the property had been purchased by the plaintiff during 1986 from the BDA on lease cum sale basis for a sum of Rs.32,000/- and the property measuring 40 x 57 ft. is situate in a prime locality. What is not in dispute is, plaintiff also has borrowed an amount of Rs.29,000/- which he contends, is a loan and he had not agreed to sell the property nor approached the defendants in this regard. Also, he has returned the amount as per the submission of the respondent's counsel. However, the finding of the trial court on this issue is in favour of the plaintiff and also that there is no power of attorney executed in favour of the defendant except the signature. Of course, from para 26 of the order, though it appears the plaintiff has admitted the execution of power of attorney but, on going through the evidence on record it appears, he admitted the signature on the alleged document but not due execution of power of attorney. In the circumstances, the plaintiff's stand has been affirmed by the trial court on the ground that he had revoked the power of attorney as the power of attorney came into existence under mysterious circumstance.

11. In the case on hand, what is not in dispute is, this amount of Rs.29,000/- received at the relevant point of time is almost 90% of the total consideration of the site value. However, in fiduciary relationship and also personal relationship, in the course of transaction there arose a dispute whether to treat it as a loan transaction or as amount lent towards selling half portion of the property in the background of Ex.D3 -agreement and Ex.D2 - power of attorney. It is the case of the plaintiff that he had only executed the signature on the alleged document of power of attorney. However, the signatures are also found on the alleged agreement at Ex.D3, It transpires, he has consciously put his signatures but the stand taken is, for a different transaction the 1st defendant had obtained his signatures. But, Ex.D2 and D3 have come into existence and these two documents bear the signature of the plaintiff. Might be the 2nd defendant being

an educated man, would have taken opportunity to create documents but the fact remains, it is not one or two signatures but, it is not less than five to six signatures found on those two documents and those signatures have been made consciously. In the circumstances, it cannot be ignored that the signatures were done at the relevant point of time. Might be the plaintiff would not be aware of the entire contents of the documents but, he would be knowing the consequence of the same when he put his signature on other documents. Further, it is seen allotment of site to plaintiff by BDA is during 1986 for Rs.32,000/-. The amount borrowed by him from the 1st defendant who is none other his brother's (2nd defendant) wife in 1989 is Rs.29,000/- According to the defendants, amount lent is for half of the site value and in this regard, GPA has been executed by the plaintiff in favour of the 1st defendant who in turn executed sale deed to the 2nd defendant who also invested an amount of more than Rs.2 lakhs and constructed the house.

12. At this juncture, it is relevant to extract the provisions of S.202, 205 and 210 of the Contract Act as also S.60 of the Easements Act:

S:202: Termination of agency, where agent has an interest in subject matter:

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 an express contract, be terminated to the prejudice of such interest.

S-205: Compensation for revocation by principal, or renunciation by agent:

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

S.210: Termination of sub-agent's authority:

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

S.60: License when revocable:

A license may be revoked by the grantor, unless -

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

13. As per S.205 of the Contract Act, when a power of attorney, which is in the form of authorisation authorising the 1st defendant as an agent after receiving the amount of Rs.29,000/-, has been executed, necessarily it has to be treated as an agency coupled with interest. In the factual background and circumstances of the case, even to revoke the power of attorney whether it is fraudulent or

otherwise, admittedly and consciously the signatures are found on several papers, but it has been cancelled by the plaintiff without discharging the obligation of paying compensation. Though it is orally contended that the amount of Rs.29,000/- has been returned, no iota of evidence has been produced to that effect. In the circumstances, it has to be held that the trial court has not taken into consideration the factual and legal aspect of the matter that while revoking the power of attorney, plaintiff had not discharged his part of the obligation i.e., to pay compensation. In the context of the cancellation of power of attorney without paying compensation and also the absence of proof as to returning Rs.29,000/- borrowed by the plaintiff from the 1st defendant, the alleged cancellation of power of attorney executed in favour of 1st defendant has to be treated as non-est.

14. The trial court ought to have visualised the monetary value of the amount borrowed in terms of real estate and that it would have fetched a equivalent or a better site to the defendants at that relevant point of time. In that context, in modification of the order of the trial court, appeal is allowed in part directing the plaintiff to pay compensation of Rs.20 lakhs towards site value/amount received and another Rs.20 lakhs towards cost of construction. In other words, if is for the plaintiff to pay Rs.40 lakhs to the defendants within two months, in lieu of cancellation of the sale deed / power of attorney or else it is held that the sale deed executed by the 1st defendant in favour of the 1st defendant is valid OR in the alternative, if the parties intend to settle the matter amicably outside the court, they are at liberty to do so. Parties to bear their own costs.