

(2013) 08 DEL CK 0297
In the Delhi High Court
Case No : CS (OS) 154 of 2004

Trend Setter Securities and Credits Pvt. Ltd.

APPELLANT

Vs

P. Dinakaran and Another

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0297

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Shruti Verma, for the Appellant;

Judgement

Jayant Nath, J.—Arguments have been heard in the suit. As per the order dated 28.03.2012, the defendants were served through publication and were proceeded ex parte. The plaintiff has filed the present suit seeking a decree declaring the General Power of Attorney dated 12.12.2003 executed by the Defendant No. 1 in favour of Defendant no. 2 null and void and seeking permanent injunction against the Defendant Nos. 1 & 2 restraining them from selling, alienating or in any manner whatsoever dealing with the suit property. It is the contention of the Plaintiff that it is a Company duly incorporated under the Companies Act, 1956. Defendant No. 1 is stated to be the former President of the Plaintiff Company and Defendant No. 2 is the alleged and purported power of attorney holder in whose favour the Defendant No. 1 has executed the impugned General Power of Attorney. It is the contention of the Plaintiff that it was incorporated on 26.03.1996 and at that point of time Defendant No. 1 was the President of the Plaintiff Company. It is further contended that during the tenure of Defendant No. 1 as the President of the Plaintiff company, the Plaintiff purchased the suit property being agriculture land measuring 4 Bigha 4 Biswas bearing Khasra No. 62/5 (2-0), 6 (1-0) and 4 (1-4), situated in the area of village Bijwasan, Delhi by virtue of sale deed dated 05.11.1996 signed by Defendant no. 1 on behalf of the plaintiff under the authority of a Board Resolution dated 09.08.1996 executed in his favour.

2. It is the contention of the plaintiff that on 28.10.1997, in view of the change in the management of the Plaintiff Company, all the powers and authority given to Defendant No. 1, including the authority given vide Board Resolution dated 09.08.1996 were withdrawn by the Plaintiff vide Board Resolution dated 28.10.1997.

3. The plaintiff further contended that Defendant No. 1 fraudulently executed General Power of Attorney registered at the office of the Sub-Registrar IX, New Delhi vide Serial No. 8685 in Book No. IV Volume No. 534 at Page 71 to 74 on 12.12.2003 in favour of Defendant No. 2 authorising him to sell the suit property. The plaintiff states that they are the absolute owners of the suit property since 05.11.1996 and are in continuous and uninterrupted possession of the said suit property till date and that the Defendant No. 1 had no authority to execute the said General Power of Attorney as he was removed from the post of the President of the plaintiff.

4. The plaintiff has filed affidavit of Sh. Ram Avtar Sharma PW-1. The said PW-1 has proved the resolution of Board of Directors dated 02.02.2004 which permits him to sign, verify and institute the present suit. He has also deposed that the plaintiff company is the absolute owner of the suit property and is in possession thereof since 05.11.1996. A copy of the registered sale deed dated 05.11.1996 has been placed on record. The sale deed is signed by the Defendant no. 1 on behalf of the plaintiff under an authority of the Board Resolution dated 09.08.1996 which is exhibited as Ex. PW-1/3. He has also placed on record the Resolution dated 28.10.1997 which is exhibited as Ex. PW-1/4 which shows that the authority of defendant no. 1 given by him on 09.08.1996 has been withdrawn.

5. In view of the averments made above, it is obvious that defendant No. 1 has ceased to be authorised to act on behalf of the plaintiff since 28.10.1997. Hence, the act of defendant No. 2 is an act which is illegal. As his power has ceased to exist, the power of attorney given by defendant No. 1 on 12.12.2003 in favour of defendant No. 1 is void.

6. In view of the above, the plaintiffs have proved their case. A decree is passed in favour of the plaintiff and against the defendant declaring the General Power of Attorney dated 12.12.2003 registered with the office of the Sub-Registrar-IX, New Delhi vide Serial No. 8685 in Book No. IV Volume No. 534 at Page 71 to 74 as null and void.

7. Permanent injunction is issued against defendant No. 1, his agents, employees, servants, assigns including defendant No. 2, restraining them from selling, alienating or in any manner whatsoever dealing with the suit property. The suit is decreed with costs. All pending applications are also disposed of.