

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS) NO. 423-29 OF 2006

% Date of Decision : January 18, 2008.

CHET RAM GUPTA THRU LR'S Appellant.

Through Mr. S.C. Anand & Mr. S.K. Chaturvedi,
Advocates.

VERSUS

MOTIAN DEVI LAMBA & ORS. Respondents.

Through Ms. Nandani Sahni & Mr. Ujjwal Kumar,
Advocates.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant Mr. Chet Ram Gupta, now represented by his legal heirs, has filed the present appeal impugning order dated 10th

May, 2006 dismissing IA No. 3245/1993. The said application was filed by the appellant under Order VIII, Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) for pronouncement of judgment against defendant No. 1, who is respondent No. 1 in the present appeal, viz. Ms. Motian Devi Lamba on the ground that the written statement filed on her behalf by Mr. V.P. Gupta as the attorney is not valid. In the application it was alleged that Mr. V.P. Gupta is not authorized to represent the respondent No. 1 as no power of attorney in his favour had been placed on record to show that he had been authorized to sign the written statement, make an application or engage an advocate.

2. The appellant has filed a suit for specific performance against the respondent No. 1. and others Respondent Nos. 2 to 4 are defendant Nos. 2 to 4 in the suit and claim that some documents of transfer have been executed in their favour by the respondent No. 1 herein. The suit property involved is located at Greater Kailash, Part-II, New Delhi being property No. W-73, measuring 1014 square

yards. Other facts are not relevant for adjudication and decision of the present appeal.

3. A perusal of the application IA No. 3245/1993 would reveal that written statement on behalf of the respondent No. 1 was filed on 25th May, 1990 and was signed by Mr. V.P. Gupta as her attorney. In the application reference has been made to Order III of the Code and the fact that no power of attorney had been placed on record to establish that Mr. V.P. Gupta had any right to sign the written statement, make an application or engage an advocate. The aforesaid application was filed on 18th March, 1993 i.e. almost three years after written statement had been filed by the respondent No. 1 herein. Replication to the written statement had also been filed by the appellant.

4. It may also be noted that Mr. V.P. Gupta has placed on record two power of attorneys purportedly executed by respondent No. 1 herein, who is a resident of England. Mr. V.P. Gupta has relied upon two power of attorneys dated 2nd February, 1987 and 9th June, 1988. Both of them are titled as Special Power of Attorney and authorize and appoint Mr. V.P. Gupta as special attorney in respect

of plot No. W-73, Greater Kailash, Part-II, New Delhi. The first power of attorney authorizes Mr. V.P. Gupta as under:-

“1. Whereas the said Attorney is fully empowered to represent me in the office of U.L.C.R. Deptt., Income Tax Deptt., Reserve Bank of India, for seeking necessary clearances in respect of my above plot.

2. He is fully empowered to deal with all the documents, submit applications, petitions and affidavits, to get the affidavits attested and submit the same before the authorities in respect of my above plot. He is also authorised to appear in person before the aforesaid departments for seeking necessary clearance in respect of my above plot No. W-73, Greater Kailash, Part-II, New Delhi.

3. All the acts lawfully done by the said Attorney, by virtue of these presents, shall be deemed to have been rectified by me.”

5. The second power of attorney dated 9th June, 1988 is more specific and is in respect of alleged declaration of gift made by the respondent No. 1 for the same plot in favour of respondent Nos. 3 and 4 herein.

6. Order III of the Code deals with appearance, application or acts in or to any court by a party. A party can appear, apply and act in or any court in person or by a recognized agent or by a pleader.

However, it has been held that appearance, application or act does not include right to plead. (See, in this regard observations of the Supreme Court in **Janki Vashdeo Bhojwani and Another versus Indusind Bank Limited and Others**, reported in AIR 2005 Supreme Court 439.)

7. It is also well settled that power of attorneys have to be strictly construed and are construed as giving only that much of authority as they expressly confer or by necessary implication are conferred.

(See, **P.M. Desappa Nayanim Varu and Others versus Ramabhaktula Ramiab and Others**, reported in AIR 1952 Madras 559, **Smt. G. Choudhrai versus J. Choudhary**, reported in 1969 B.L.J.R. 593 and **D.H.M. Framji and Others versus The Eastern Union Bank Limited**, reported in AIR (38) 1951 Punjab 371.)

However, at the same time, a court cannot decline to recognize an implied authority that every agent has, to do whatever is necessary, or ordinarily incidental for effective execution of the expressed authority conferred by the power of attorney. (Refer, **Ashok Kumar versus Gobinda Chandra**, reported in AIR 1984 Calcutta 337).

8. We have quoted the recital in the power of attorney dated 2nd February, 1987. The second paragraph of the recital clause is relied upon by the respondents herein. The said paragraph, if read in isolation, though no final opinion is expressed, is wide and empowers Mr. V.P Gupta to deal with all documents, to submit applications, petitions, etc. It may also be noticed that as per the case put up by respondent Nos. 2 to 4, the respondent No. 1 has already transferred the property by relinquishment deed/gift deed and does not have any interest in the same. These documents were executed much before filing of the suit.

9. What is the intention and purpose behind execution of attorney dated 2nd February, 1987 and the subsequent attorney dated 8th June, 1988 is a question of fact and law which has to be determined and decided by the court. Clauses of the Power of Attorneys will have to be read in light of evidence lead by the parties. The exact purpose of the clauses and their interpretation will depend on the nature of the evidence that might be produced and led. It may be noticed here that under Order III, Rule 1, a court is entitled to call upon a party to

appear in person, if required. Similarly, even if the objection of the appellant is accepted as correct, the court has to give an opportunity to the party concerned to rectify the defect. We may also refer here to the provisions of Order VI Rule 14 of the Code, which require that every pleading shall be signed by the party and his pleader and where a party has reason of absence or for any good cause is unable to sign the pleading, the same may be signed by any person authorized by him to sue and defend on his behalf. If there is any defect in signing of the pleading, the said defect can be rectified and defect as such is not treated as fatal.

10. Keeping in view the above position of law, the stage at which the objection was raised, the stand taken by the respondent Nos. 2 to 4 and the attorney relied upon by Mr. V.P. Gupta, we feel it will not be appropriate to allow the present appeal and hold that no written statement had been filed by the respondent No. 1 and a decree in terms of Order VIII, Rule 10 of the Code should be passed against her. The questions and issues raised by the parties with regard to authority of Mr. V.P. Gupta and power conferred on him, are left to be

decided after evidence is recorded at the stage of final judgment. The questions and issues raised cannot be decided at this stage before the parties have led evidence in support of their contentions. We add that any observation made in this order and the impugned order shall be treated as tentative and will not be binding on the learned Trial Court. The question and issue raised will be decided on merits on the basis of evidence. With these observations, the present appeal is disposed of. In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

JANUARY 18, 2008
VKR