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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5798 of 2012 (O&M)
Date of decision:10.03.2016

Yashpal and others ... Petitioners

versus

Kiraninder Singh and others .... Respondents

II. <u>Civil Revision No.4970 of 2015</u> (O&M)

Yashpal ... Petitioner

versus

Kiraninder Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rakesh Gupta, Advocate,
for the petitioners.

Mr. Alok Mittal, Advocate,
for the respondents.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ?**Yes.**

<u>K.Kannan, J.</u> *(Oral)*

<u>CM No.4768-CII of 2016</u>

The application allowed as prayed for. Annexures P5 and P6 are taken on record.

Civil Revision Nos.5798 of 2012 and 4970 of 2015

1. Both the civil revisions are connected and they address the same issue. They are disposed of by a common order.

2. The petitions are at the instance of the defendants who have objected to the valuation adopted by the plaintiffs in the suit for declaration in relation to the property that was said to have been transferred by defendants 4 and 5 purporting to act as power of attorney for the plaintiffs and selling the property to defendants 1 to 3. The plaintiffs have contended that the power of attorney executed on 02.11.2010 was cancelled through a registered deed of cancellation dated 12.02.2011 and that therefore the sale deed executed by the power of attorney to the defendants 1 to 3 on 14.10.2011 is not valid and binding. The suit has been instituted on 10.02.2012 for declaration that the plaintiffs are owners in possession of property.

3. Admittedly, on the date of the agreement of sale with defendants 1 to 3, the entire sale consideration had been received by the plaintiffs. The plaintiffs have, however, contended that the defendants 4 and 5 had no power to sell and, therefore, the sale being not valid, the plaintiffs must be construed to be still the owners of the property. There is no prayer for recovery of possession and, therefore, the plaintiffs are entitled to adopt a notional valuation and pay the fixed court fee. The defendants have

contended in their application for rejection of plaint that the power of attorney was itself coupled with interest and hence, irrevocable. The plaintiffs are to be therefore regarded as parties in the sale deed executed on 14.10.2011 and if a declaratory action is made, the suit has to be valued on the consideration set forth in the sale deed as market valuation and pay ad valorem court fee.

4. I had sought the assistance of Senior Advocate Shri Arun Jain as Amicus to explain to me the issue of court fee where there is merely a declaratory relief and no prayer for recovery of possession. After hearing the arguments on 10.02.2016, I had referred to a decision of Full Bench in ***Niranjan Kaur Versus Nirbigan Kaur-1982 PLR 127*** that when the plaintiff, who is a party to the document, seeks for relief of declaration, with or without a prayer for possession, the court fee will have to be paid on the market value of the property sold and ad valorem court fee have to be paid as per Article 1 Schedule 1 of the Court Fees Act and that Section 7(iv)(c) will not apply.

5. The only point that has to be examined is whether the plaintiffs could be treated as parties to the document dated 14.10.2011 on the basis of an averment in the plaint for the purpose of court fee. The counsel for the plaintiffs/respondents refers me a judgment in ***Rajiv Mahajan and others Versus Ajit Kaur and others-2014(1) PLR 393*** that when a power of attorney is cancelled,

the plaintiffs cannot be taken as parties to the sale deed and a registered document cancelling the power of attorney will constitute public notice. In my respectful view, it is stating the law too widely that registration will always constitute notice. This has to be read in the context of the nature of document and any statutory requirement impinging upon the manner of how the particular document could take effect. Registration as constituting notice has been applied invariably in situations where the document is required to be set aside as voidable and when the registration of a particular document which is required to be set aside might make possible such an inference of registration as constituting notice for the purpose of determining the starting point of limitation. As far as cancellation of agency is concerned, there is a specific legal requirement under Section 206 of the Indian Contract Act. The said Section reads as follows:-

> “206. Notice of revocation or renunciation.—Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.”

The Act requires a reasonable notice to be given and such revocation could be either expressed or implied under Section 207 of the Act. In this case, revocation purports to be express and such express revocation is required to be served with notice in the manner contemplated under Section 206. It is still a matter of evidence that will examine whether the power of attorney could be treated as one attached with interest and hence, irrevocable in the manner contended by the defendants.

6. Even while taking that the plaint averment alone will govern the issue, it has to be read in the context of how the law makes certain presumptions or casts preconditions and they will have to be applied to the pleadings and the court fee issue will be adjudged thereon. To my mind, if the plaintiffs state that the power of attorney was executed but would only contend that it was cancelled, which cancellation has taken place not in the manner referred to under Section 206, it must be taken that the sale executed by the power of attorney must be taken as a sale by the plaintiffs themselves and a suit for declaration would consequently require the court fee to be assessed in the manner ***Niranjan Kaur*** (supra) lays down. In the observation that I have made if I have made a deviation from the decision of this court in ***Rajiv Mahajan*** (supra), I would draw the distinction from the fact that the latter judgment does not make a reference to the effect of Section 206 of the Indian Contract Act and, therefore, cannot be said to make a comprehensive statement of law on the subject. It is perhaps a future dispensation will bring greater clarity but as of now, the plaintiff who has gained

the benefit of a crore of rupees and more as consideration received shall do well to part with the revenue due to the State by payment of appropriate court fee. The orders already passed are set aside and the revision petitions are allowed directing the plaintiff to pay ad valorem court fee on the consideration recited in the sale deeds within a period of 6 weeks from today. If the court fee is not paid, the plaint is ordered to be rejected in the manner contemplated under Order 7 Rule 11(c) of the Civil Procedure Code.

7. Civil revisions are allowed on the above terms.

(K.KANNAN)
JUDGE

10.03.2016
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