

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.946 OF 2016

Reshma Estates Private Limited	...	Petitioners
Vs.		
Shivangi Shanker and another	...	Respondents

Mr. Vaibhav Sugdare a/w. Mr. Ishwan Ahuja i/b. M/s.Thakordas & Madgavkar
for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 13, 2017

P.C. :

Not on Board. At the request of Mr. Sugdare, learned Counsel for petitioners, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 09.10.2015 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.2625 of 2015 in S.C.Suit No.7566 of 2003. By that order, the learned trial Judge rejected the Motion taken out by the defendants for issuing direction to the respondents-plaintiffs to deposit two original Power of Attorneys and to impound the same as also to sanction prosecution of the plaintiffs for fabrication of Power of Attorney.

3. In support of this Petition, Mr. Sugdare submitted that plaintiff No.1, Shivangi Shanker, wife of Ashwini Shanker (plaintiff No.2) had executed Power of Attorney in favour of - (i) Bhawani Shanker, son of late Shiv Shanker Lal and (ii) Usha Shanker wife of Bhawani Shanker to act in her name and on her behalf and to do all or any of the things or acts as the said attorney may deem fit and proper with respect to flat No.24, 7th floor, Krishna Mahal, 63, Marine Drive, Mumbai 400 020. He

submitted that plaintiff No.1, Shivangi Shanker had given joint Power of Attorney to Bhawani Shanker and his wife Usha Shanker. They cannot act individually. He invited my attention to verification made at the foot of the plaint by Bhawani Shanker. He submitted that as the verification is not made by both the attorneys, the Suit is not properly instituted and it is not mere irregularity but is illegality which goes to the root of the matter. He invited my attention to Section 1-A and 2 of the Powers of Attorney Act, 1882 as also meaning of the word 'and' given in Mitra's Legal & Commercial Dictionary, Sixth Edition. The meaning of the word 'and' is given as under:

“It is a particle denoting addition, emphasis, or union and used as a connective between words, phrases, clauses and sentences.

The word 'and' is generally used in cumulative sense, requiring fulfillment of all the conditions that it joins together. It is the antithesis of 'or'.”

4. I have considered the rival submissions advanced by Mr. Sugdare. I have also perused the material on record. It is evident from record that plaintiff No.1 Shivangi Shankar had given general Power of Attorney in favour of two persons namely, (i) Bhawani Shanker and (ii) Uma Shanker. Perusal of the Power of Attorney dated 06.11.2003 does not show that there is any recital to the effect that both the power of attorneys must act jointly together and then only their acts will bind the principal namely, plaintiff No.1, Shivangi Shanker. That apart, while rejecting the Motion, the learned trial Judge has observed that no provision was brought to the notice to indicate that if more than one agent is appointed, all should join together while doing any act on behalf of the principal grantor. It is not in dispute that the plaint is verified by Bhawani Shankar Shiv Shanker Lall as Constituted Attorney of the plaintiffs. Plaintiffs have no grievance about verification made by one of the power of attorneys.

5. Mr. Sugdare further submitted that defendants have also prayed for impounding of the Power of Attorney. The learned trial Judge did not accept that prayer on the ground that this is not the stage at which it can be impounded and it cannot be said that plaintiffs have committed any criminal offence or forgery by filing those documents or they are really forged documents and tendered as evidence. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the Motion. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab