

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4219 of 2016

ORDER:

The plaintiff maintained the revision against the defendant of O.S.No.942 of 2011 which is a suit filed in relation to the plaint schedule property of Ac-24-10 guntas with building therein known as Mount Pleasant house bearing Nos.8-2-249 to 267 at road No.3 Banjara Hills, Hyderabad, within boundaries described for the relief of declaration that action of defendant in cancelling irrevocable General Power of Attorney (for short 'GPA') document No.2119 of 1994 dated 16.09.1994 is illegal and arbitrary and further to declare the plaintiff would continue as GPA holder of the defendant in terms of the document supra and to cancel the cancellation of irrevocable GPA document No.210 of 2011 dated 30.04.2011 and for permanent injunction restraining defendant and persons claiming through him to give effect to said cancellation of GPA dated 30.04.2011 supra of Sub Registrar Khairatabad and such other just reliefs.

2. The averments in support of the plaint in claiming the reliefs are that the defendant is the absolute owner of the property described in the plaint schedule supra and he executed GPA in 1994 referred supra appointing the plaintiff as GPA holder to safe guard the property and to sell 6 acres out of it and plaintiff is taking steps to safe guard the property and protect the interest of defendant. One M/s. Sultan-Ul-Uloom Educational Society claiming the property filed O.S.No.297 of 2004 for specific performance and the defendant herein was the 1st defendant and as GPA holder of the defendant herein, the plaintiff contested that

suit and against dismissal decree and judgment of O.S.No.297 of 2004 supra, the plaintiff society maintained CCCA.No.196 of 2006 in High Court and the appeal was also ended in dismissal and the society filed SLP.No.27953 of 2009 in Supreme Court which is pending and plaintiff is as GPA holder pursuing the matter there through senior counsel. While stood thus, the defendant mischievously cancelled GPA of 1994 supra though it is irrevocable GPA. The cancellation in 2011 by registered document supra discloses no reasons for cancellation and the cancellation is unilateral and illegal and unsustainable for the same is protected by Section 202 of the Indian Contract Act which no way enables the defendant to cancel the GPA and plaintiff issued notice dated 20.05.2011 questioning the defendant of the cancellation and seeking to restore the original GPA of 1994 and as defendant failed to comply and failed to reply, plaintiff is constrained to file the suit for said reliefs. It is pending suit, the plaintiff filed I.A.No.317 of 2011 for temporary injunction, therein interim injunction was granted on 15.07.2011 and for the violation of which plaintiff filed I.A.No.858 of 2011 under Order 39 Rule 2(a) CPC.

3. The defendant contested the suit vis-à-vis the injunction petition with claim that the plaintiff being an agent as per the original GPA of 1994, cannot put restriction on the power of the defendant-principal to deal with the property as defendant is the absolute owner admittedly and once the defendant already cancelled the GPA in 2011 undisputedly, the question of not giving effect to the cancelled GPA does not arise and there is nothing remained to grant the suit reliefs and the suit reliefs have legal sanctity and with no maintainability. The principal does not loose

the powers to deal with his property merely because he executed a GPA much less to question the same powers of principal to maintain any suit by the agent and various averments of the plaintiff that plaintiff is protecting the interest of the defendant as his GPA holder in the litigation maintained by the Educational Society supra are not correct and for plaintiff acted several times without knowledge of defendant in a manner which he does not like to do with embarrassment and unhappiness to the defendant by defaming the defendant and plaintiff also did not bring to the notice of the defendant several issues. So far as legal notice concerned, before giving reply to the notice received from plaintiff, plaintiff filed the suit with no opportunity and the contentions are untenable and plaintiff not entitled to the suit reliefs to question the fiduciary relationship till it is cancelled including to question the cancellation and thereby there is no cause of action to the suit and plaintiff is not entitled to any of the suit reliefs.

4. The suit was originally filed in vacation Court as O.S.No.64 of 2011 and renumbered in the regular court as O.S.No.942 of 2011 and the exparte interim injunction obtained in vacation Court was in I.A.No.144 of 2011 and in regular court renumbered as I.A.No.317 of 2011 supra. The temporary injunction granted therein is to the extent of restraining the defendant from giving effect to the cancellation of the irrevocable GPA dated 30.04.2011 only in respect of Ac.6-00 guntas of land covered by 'B' schedule annexed to the GPA of 1994. Impugning the said contest injunction order dated 15.07.2011, the defendant maintained CMA.No.138 of 2011 before the XIV Additional Chief

Judge (FTC), City Civil Court, Hyderabad, where the learned Judge from the contest by order dated 31.12.2015 observed that the contents of GPA dated 16.09.1994 supra reads that same is irrevocable till final disposal of the property in an extent of 6 acres and the respondent/plaintiff sold 6 acres to others and the purpose of the GPA thereby completed and thereby there is no prima facie case in favour of the plaintiff and the defendant therefrom later cancelled the GPA of 1994 by cancellation dated 30.04.2011 and there is no balance of convenience in favour of the plaintiff to question the same. What he contends invoking Section 202 of the Indian Contract Act concerned, the Section has no application to the case because no financial benefit is given to the plaintiff under the GPA and plaintiff suffers no irreparable loss therefrom and as per Ex.R4 the GPA is revoked and thereby the petitioner is not entitled to the temporary injunction and the order dated 15.07.2011 granting temporary injunction in I.A.No.317 of 2011 passed by the lower Court is set aside by dismissing the temporary injunction with a direction to the trial Court for early disposal of the suit.

5. The present revision is maintained by the plaintiff impugning the said CMA No.138 of 2011 impugned order dated 31.12.2015 allowing the appeal dismissing the temporary injunction application and vacating the interim injunction even in relation to the 6 acres of land.

6. The grounds of revision vis-à-vis the submissions of the learned counsel for the revision petitioner/plaintiff are that once the GPA is mentioned as irrevocable from the contents the

cancellation is unsustainable and said unilateral cancellation has no sanctity, even plaintiff never acted detriment to the interest of the defendant pursuant to the GPA even to cancel. It is the plaintiff that contested as GPA holder in the suits maintained against the defendant in O.S.Nos.154 & 181 of 2003 that cannot be ignored which shows plaintiff protects pursuant to the GPA the interest of the principal and the lower appellate Court ought to have seen that GPA coupled with interest not capable of cancellation and justice, equity and good conscience should not have been allowed if applied for allowing the appeal setting aside the trial Court's injunction order, thereby the revision is to be allowed setting aside the lower appellate Court's order by restoring the injunction.

7. Heard both sides at length and perused the material on record.

8. The GPA which is covered by the material papers from pages 38 to 43 which were the registered document No.2119 of 1994 dated 16.09.1994 executed by defendant in favour of the plaintiff with the title as irrevocable GPA (no doubt nomenclature is not decisive but for to decide from the contents as to nature of document) speaks that the Nizam VII settled certain amount upon trust for benefit of 2nd son Prince Mouzzam Jah Bahadur in terms of the trust deed dated 08.10.1949 for utilizing a part of corpus for purchasing building for residence of prince without vesting in him any right or interest except lifetime residence and the trustees purchased the Mount Pleasant (described in the plaint schedule) with flower gardens, fruit gardens, passages, pathways, swimming

pools etc., in an extent of Ac.24-10 guntas surrounded by compound wall at road No.3 of the Banjara Hills from Sri Raja Ram Dev Rao and Sri Pingle Venkat Ram Reddy under registered sale deed 01.05.1954 after obtaining permission from I Judge, City Civil Court, Hyderabad in MC.No.237/2/1953-54 for residence of the prince. Prince Mouzzam Jah Bahadur on 14.09.1987 leaving behind his son Shahamat Ali Khan as the sole surviving issue (Mir Shahamat Ali Khan-defendant) and he became absolute owner of the said property in terms of the trust deed supra and the trust is the resolution dated 09.10.1989 declared him as absolute owner of the said land with house known as Mount Pleasant and possessed the property in the building and appurtenant land supra pursuant to the trust resolution dated 09.10.1989. The principal (defendant) in order to meet his necessities and to discharge of liabilities intended to sell dwelling units bearing Nos.8-10-254 to 267 including the appurtenant land with internal roads, passages and open land to various persons as the structures and land appurtenant thereto and meant for common use did not come within the purview of Urban Land (Ceiling and Regulations) Act 1976 and the principal already applied for grant of exemption or to approve scheme for developing the excess land. The principal is unable to attend the matters personally due to preoccupation and requested the GPA (plaintiff) to act for him and on his behalf and to do all acts, deeds and things necessary for the purpose and the GPA agreed to do so on behalf of the principal. The 15 clauses of the GPA therefrom reads enable the GPA to apply and obtain permission, relaxations, exemption, approval, lay out and clearances in respect of the property known as mount pleasant or

any part thereof from concerned Tribunals, Offices and Authorities including the Urban Land Ceiling Authority, to pay incur and deposit amounts, charges and expenses, collect and withdraw amount as far as Ac.6-00 guntas situated in the western side of mount pleasant covered by B schedule annexed to the GPA, formulate, prepare and submit plans and schemes for development of portion of property admeasuring said 6 acres only and to attend the work concerned to the development and incur expenses, to negotiate sale or sell property of the 6 acres or part thereof for such consideration as think proper and receive advances, deposits and consideration in full or part and enter into agreement of sale or other contract and pass receipt for the amounts received and give discharge of any amounts, to appear in Courts, Tribunals or other judicial or quasi judicial proceedings; to file, institute, initiate, conduct, prosecute and defend all suits, appeals, petitions etc., to sign and verify pleadings, affidavits, statements, declaration, plans and other papers to file before Courts or authorities and give evidence, summon document or witness, obtain certified copies and return documents entire steps for protection for the 6 acres, registration and admission of documents and receive documents after registration in relation to the said Ac.6-00 guntas of the property covered by western side of mount pleasant, appoint advocates or technical or professional persons give and take return of record and revoke the vakalat or authority in this regard. In case of authorities under Urban Land Ceiling Act ultimately finds for any person of the principal is holding excess land beyond ceiling limit, GPA should surrender by exercising choice of the owner vacant land lying on eastern side of mount

pleasant and not the B schedule referred supra and to do all acts, deeds or things necessary and ancillary in concerning the GPA and principal undertakes to ratify all deeds and acts etc., the GPA nowhere mentions the same is supported by consideration or with reciprocal remunerative obligation of anything incurred by the agent.

9. As held by this Court in **M. John Kotaiah Vs. A. Divakar And Others**¹ mere description of power of attorney irrevocable is immaterial. If the interest created in the agent in the result or the proceedings arisen after the exercise of powers then the agency is revocable and cannot be said to be an irrevocable agency. However if the interest in the subject matter, say a debt payable to the principal, is assigned to the agent as security simultaneously with the creation of the power and thereafter exercised the power to collect the debt for discharge of the obligation owned by the principal in favour of the agent or a third party then agency becomes irrevocable within the meaning of Section 202 of the Contract Act. Once the GPA is empowering to manage, control, supervise and develop the property of the principal or to let out, realize the rent, prevent encroachment, appear before the authority for the benefit of principal by fixing even any remuneration, there was no existing obligation in favour of the agent such as debt before execution of the GPA nor such an obligation created simultaneously with the execution of GPA nor had the principal assigned any interest simultaneously with the execution of GPA, the impugned GPA even contain any stipulation of any irrevocable for a certain period, it does not make as an irrevocable GPA since

¹ AIR 1985 AP 30

principal got power to revoke. For that conclusion the Court referred catena of expressions of the foreign Courts and the pre-independent expressions of the High Court including of the Madras High Court, Bombay High Court and 2 expressions of the Apex Court in 1969 in **Loon Karan Sethia Vs. I.E. John**² and **Bharat Nidhi Limited Vs. Takhatmal**³.

10. Further more, Sections 201 & 202 of the Indian Contract Act reads in this regard that:

“201. Termination of agency.—An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. —An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.”

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. —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." Illustrations

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death. (a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death."

² AIR 1969 SC 73

³ AIR 1969 SC 313

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death. (b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."

11. Interpreting Sections 201 & 202 of the Contract Act the Apex Court in **Suraj Lamp and Industries Private Limited Vs. State of Harayana⁴** and **Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chair Person⁵** held as to when GPA is irrevocable with reference to Section 202 of the Indian Contract Act.

12. This case on hand from the above facts comes only under Section 201 and not with any bar under Section 202 of the Act to revoke the GPA. It is thus rightly concluded by the lower appellate Court of the GPA given for Ac.6-00 guntas of land to sell, as already sold and the transaction is completed even with third party and for nothing remained thereunder and from any of the terms of the GPA there is nothing to show any consideration or obligation of the agent involved to be fulfilled by principal with any express contract therefrom to make it irrevocable till then and thereby even the nomenclature mentions as irrevocable including in the title as laid down in John Kotaiah supra that wording does not make the GPA irrevocable for the principal got always absolute

⁴ 2012 (1) SCC 656

⁵ Civil Appeal No.4841 of 2012 dated 03.07.2012

power to revoke. Thereby there is nothing to interfere by sitting in revision against the impugned order of the lower appellate Court.

13. Accordingly and in the result, the revision petition is dismissed. However, it is made clear that in deciding the suit lis on own merits these observations if able to show contra no way comes in the way.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.01.2017
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Note: LR copy to be marked.

