

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 1 of 2016

- Madhusudan Mishra S/o Rambharos Mishra, Aged About 54 Years
Occupation- Document Writer, R/o Prayag Kunj, Bajrang Chowk, Santoshi
Nagar, P.S. Tikrapara, Raipur, Dist.- Raipur, Chhattisgarh. Defendant No.1.

---- Applicant

Versus

1. Smt. Nisar Begum, Aged About 75 Years, W/o Gulam Rehbar, R/o Pandit
Dindyal Upadhyay Nagar, Raipur, Dist.- Raipur, Chhattisgarh.
2. Smt Razia Begum, Aged About 72 Years, W/o Late Habibullah Ahmed, R/o
Devendra Nagar Raipur, Dist.- Raipur, Chhattisgarh.
3. Wahid Sharif, Aged About 63 Years, S/o Late Daud Sharif, R/o Sector 1,
Devendra Nagar Raipur, District- Raipur, Chhattisgarh.
4. Smt. Abeda Begum, Aged About 59 Years, W/o Late Jiyaurrehman, R/o
Vallabh Nagar Raipur, District- Raipur, Chhattisgarh.
5. Smt. Jakiya Begum, Aged About 57 Years, W/o Saeed Khan, R/o
Priyadarshani Nagar Raipur, Dist.- Raipur, Chhattisgarh.
6. Iqbal Sharif, Aged About 53 Years, S/o Late Daud Sharif, R/o Amlidih
Raipur, Dist.- Raipur, Chhattisgarh.
7. Yusuf Sharif, Aged About 62 Years, S/o Late Daud Sharif, R/o Jivan Vihar,
P.S. Telibandha, Raipur, Dist.- Raipur, Chhattisgarh. Defendant No.2.
8. State Of Chhattisgarh, Through The Collector Raipur, Dist.- Raipur,
Chhattisgarh. Defendant No.3.

---- Respondents

For Applicant : Shri Rakesh Pandey, Advocate
For Respondent No.8/ State : Shri Dilman Rati Minj, Dy. GA.
For Respondent No. 1 to 7. : Shri K. K. Dewangan, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

11.07.2018

1. By the instant civil revision, the applicant is challenging the legality and validity of the impugned order dated 23.11.2015 passed by the 8th Civil Judge Class II, Raipur in Civil Suit No. 183- A/2015, whereby the Court below have dismissed the application under Order 7 Rule 11 of C.P.C., filed by the applicant/ Defendant No.1.
2. Brief facts of this case are that the plaintiffs/respondent Nos. 1 to 5 have executed one registered power of attorney in favour of Non-applicant No.7/ Defendant No.2. in which alongwith other powers and rights granted to respondent No.7, the powers/rights to execute the sale deed of the property in dispute was also given. On the basis of the deed executed by the donor of power of attorney, the donee has also been armed with the powers to get the records corrected in revenue records. The power of attorney executed by plaintiffs is with regard to the land situated at Village- Sarora, Patwari Halka No. 101/29, District- Raipur, C.G., Bearing Khasra No.217/22 measuring No. 2.023. hectares of land.
3. On 17.04.2014 defendant No.2 executed sale deed in favour of Defendant No.1 on the strength of registered power of attorney.

4. From perusal of the records it appears that plaintiffs have made some complaint to the police department with regard to execution of the sale deed in favour of applicant. Subsequently, a civil suit has been filed by the plaintiffs for declaration of the sale deed to be illegal, void and not binding on them.
5. Defendant No.1 have filed application U/o 7 Rule 11 of C.P.C for dismissal of suit on the ground that the plaintiffs have not paid the proper ad-valorem court fees as per value of the sale deed which has been assessed by the Collector of Stamps, Raipur to Rs.52,60,000/-, which was also the value of the registration of the sale deed, but the plaintiffs valued the suit at Rs.2,000/- and paid Court fee accordingly.
6. The learned trial Court while deciding the application U/o 7 Rule 11 of C.P.C have dismissed the application by arriving at the findings that as the plaintiffs have subsequently challenged the power of attorney and have stated that the donee of power of attorney was not having any right to execute sale deed as well as the plaintiffs are not the parties to the sale deed, therefore, the valuation made by the plaintiffs and Court fee affixed has been considered as proper.
7. Learned counsel appearing for the applicant submits that the plaintiffs have executed power of attorney in favour of defendant No.2 which was duly registered in the office of Dy. Registrar, Raipur on 06.07.1996. The sale deed have been executed in the year 2014. He further argued that the sale deed bears an endorsement by the Registering Authority that the power of attorney registered in the office of Dy. Registrar, Raipur, on 06.07.1996 was in force till the date of registration of the sale deed and therefore, the power of attorney holder was having all rights to execute the sale deed.

8. He further submits that as the donee of power of attorney acted on behalf of the doner of the power of attorney and for this reason the plaintiffs were parties to the sale deed, therefore, they are required to pay ad-valorem Court fee as provided in accordance with the provisions of Section 7 (iv) (c) of the Court fees Act to the value of the registered sale deed. He places his reliance on the decisions of Hon'ble Supreme Court passed in **State of Rajasthan and Ors Versus Basant Nahata** reported in **(2005) 12 SCC 77** and **Suraj Lamp & Industries Pvt Ltd Versus State of Haryana & Anr** reported in **2012 (1) SCC 656**.
9. On the other hand Learned counsel appearing for respondent No. 1 to 6 supports the impugned award and submits that they are not signatories to the sale deed and even they have withdrawn the power of attorney and, therefore, they are not required to pay ad-valorem Court fees in accordance with provisions of Section 7 (iv) (c) of Court fees Act.
10. I have heard the learned counsel for both the parties and perused the records.
11. From perusal of the contents of the plaint it is crystal clear that the plaintiffs have admitted the execution of the power of attorney on 06.07.1996 and further stated that defendant No.2 and donee of power of attorney was suffering with some mental ailment and taking benefits of the same, defendant No.1 got the sale deed executed in his favour from defendant No.2 and, therefore, he sought relief that the sale deed executed by defendant No2 in favour of defendant No.1 with respect to the land situated at Village- Sarora, Patwari Halka No. 101/29, District- Raipur, C.G., Khasra Bearing No.217/22 measuring No. 2.023. hectares be declared as illegal

void and not binding on them. But, defendant No.2 did not challenged the execution of sale deed nor any medical document of defendant No.2 was filed.

12.It is true that the plaintiffs are the owners of the property in dispute and subject matter of the sale deed and they have not signed and executed the sale deed in favour of defendant No.1, but at the same time it cannot be ignored the pleadings made in plaint that they have executed power of attorney in favour of defendant No.2 on 06.07.1996 with respect to land in dispute of which sale deed was executed in favour of defendant No.1.

13. Defendant No.2 executed sale deed in favour of defendant No.1 on the basis of the power of attorney executed by the plaintiffs in his favour, which was registered with the Registering Authority. The said documents i.e. power of attorney, bears signature of all the plaintiffs.

14. Section 2 of Power of Attorney Act, 1882 reads as under -:

“Execution under power-of-attorney.—The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force”

15.From bare reading of Section 2 of the power of attorney Act, it is clear that any Act done or works executed by the donee under the said instrument i.e., power of attorney shall be treated as if it had been executed or done

by the donee of power of attorney in the name, and with the signature and seal, of the donor thereof.

16. The Hon'ble Supreme Court in the matter of **State of Rajasthan and Ors** (supra) has held as under :-

“13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name all acts deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.”

17. The Hon'ble Supreme Court in the matter of **Suhrid Singh @ Sardool Singh Versus Randhir Singh & Ors** reported in **(2010) 12 SCC 112** has held as under :-

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed,

seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if B, a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act”

18. In another matter which has been decided by the Hon'ble Supreme Court in the matter of **Suraj Lamp and Industries Pvt Ltd** (supra) has held as under -:

“20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan V. Basant Nahata reported in **(2005) 12 SCC 77** this Court held : (SCC pp. 90 & 101, paras 13 & 52)

"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the

same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

19. In case in hand, the plaintiffs/ respondent Nos. 1 to 6 have not produced any material on record to show that the registered power of attorney executed on 06.07.1996 have been revoked by execution of any other document or by informing the Registering Authority where the said power of attorney was registered. In fact, on the date of execution of the sale deed the Registering Authority has enquired as to whether the power of attorney is in existence or not on the date of execution of the sale deed. After satisfying that the power of attorney registered on 6.07.1996 was in force and still existing made endorsement on sale deed. In case in hand, also the plaintiffs want annulment of the sale deed executed on power of attorney executed by them by defendant No. 2 in favour of defendant No. 1.

20. It is not disputed that the learned Court below has arrived at conclusion or finding that the suit is correctly valued, but came to that conclusion on the pretext that as the plaintiffs are not party to the sale deed, therefore, they

are not required to pay ad-valorem court fee, which in my opinion is an erroneous finding recorded by the Court below.

21. In view of the law laid down by the Hon'ble Supreme Court passed in **State of Rajasthan & Ors, Suraj Lamp and Industries Pvt Ltd & Suhrid Singh @ Sardool Singh (supra)** I am of the considered view that the learned Court below had committed jurisdictional illegality in rejecting the application U/o 7 Rule 11 of C.P.C by holding that the suit has been properly valued. The plaintiffs have not valued their suit in accordance with the provisions of Section 7(iv)(c) of the Court-fees Act, 1870.

22. In view of the above, the impugned order passed by learned Court below rejecting application under Order 7 Rule 11 is set aside. The application under Order 7 Rule 11 is allowed.

23. Looking to the peculiar facts and circumstances of this case, it is directed that the plaintiffs shall value their suit on the basis of the valuation of sale deed under challenge and shall affix required ad-valorem Court fee within a period of three months, failing which the suit will be liable to be dismissed under the provisions of order 7 Rule 11 of C.P.C

24. Accordingly, this civil revision is disposed off.

25. No order as to costs.

26. Records of the learned Court below be sent.

Sd /-

(Parth Prateem Sahu)
Judge

