

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No. 28402 OF 2013

ORDER:

The petitioner seeks writ of *mandamus* directing respondent No. 2 to entertain the petitioner's deed of cancellation of General Power of Attorney document bearing No. 4733 of 2012 dated 06-10-2012 executed by him in favour of respondent No. 3 to deal with his agricultural landed property admeasuring Ac. 0.27.5 guntas situated in Kondamadugu Village, Bibinagar Mandal, Nalgonda District, covered by different survey numbers.

2. The petitioner's case in brief is that he is owner of the property mentioned *supra* having acquired the same from his ancestors. The revenue authorities issued him pattadar passbook and title deed in respect of the aforesaid land and he is in peaceful possession and enjoyment of the said land. While so, respondent No. 3, who is purchaser of adjacent lands of the petitioner, got acquaintance with the petitioner. The petitioner, due to his old age, is not in a position to supervise and administer his agricultural properties and hence, he decided to alienate his properties in favour of third parties. Knowing the same, respondent No. 3 came before stating that he is having good circle and he can sell the schedule properties for valuable consideration. He thus lured the petitioner to sell his lands for higher sale consideration and advised him to execute a General Power of Attorney in his favour. Owing to his old age and

believing the words of respondent No. 3, the petitioner executed a General Power of Attorney in favour of respondent No. 3 and registered the same as document No. 4733 of 2012 on 06-10-2012. However, subsequently, the petitioner came to know that respondent No. 3 is acting against his interest in respect of the schedule properties to defeat the very purpose of execution of General Power of Attorney. Added to it, respondent No. 3 obtained signatures of the petitioner on revenue stamps affixed on blank whitepapers on the pretext of obtaining pahanis. Under those circumstances, the petitioner proposed to cancel the General Power of Attorney executed by him in favour of respondent No. 3. When the petitioner presented deed of cancellation of General Power of Attorney before respondent No. 2, he refused to register the same obviously for no valid reasons.

Hence, the Writ Petition.

3. Learned Assistant Government Pleader for Revenue appeared on behalf of respondent No. 2. Notice to respondent No. 3 is not served as he left the place mentioned in the notice.

4. No counter is filed by respondent No. 2.

5. Heard.

6. As can be seen from the copy of the General Power of Attorney filed along with the material papers, the petitioner executed General Power of Attorney in favour of respondent No.3 on 06-10-2012 and got registered the same, whereunder he authorized respondent No. 3 to maintain schedule mentioned

Ac.0.27.5 guntas of land and also authorized to transfer, convey and assign by way of absolute conveyance or by way of mortgage, lease or otherwise and deliver possession of the property to the purchaser or purchasers and authorized him to do all such and other incidental acts. While so, the petitioner's grievance is that respondent No. 3 is acting against his interest and once he obtained his signatures on revenue stamps affixed on blank whitepapers and therefore the petitioner thought it not fit to continue the General Power of Attorney earlier executed by him in favour of respondent No. 3. It is his case that he also got issued legal notice dated 18-12-2012 stating therein that respondent No. 3 is acting against the interest of the petitioner and therefore he is terminating the General Power of Attorney dated 06-10-2012.

7. Respondent No. 2 has not filed any counter showing reason for his not entertaining the deed of cancellation of General Power of Attorney. Of course, learned Assistant Government Pleader during the course of argument would submit that since the petitioner has not filed the cancellation deed along with the original General Power of Attorney, cancellation procedure could not be undertaken. In that view of the matter, this Court is of the view that the Writ Petition can be disposed of by giving suitable direction to both parties.

8. It is faintly argued by learned AGP that the GPA was not cancelled since it was not signed by all the parties concerned in the sense that the GPA holder has not signed and hence in view

of the violation of the Rule 26(i) (k) of the Andhra Pradesh Rules under the Registration Act, 1908 (for short “the Rules”) the GPA might not be cancelled by the 2nd respondent. This argument does not hold water in view of the decision of this High Court in *Mir Khader Ali Khan v. The District Registrar, Ranga Reddy*¹, wherein under the similar circumstances it was held as follows:

“Para 3: The question as to whether a deed of cancellation can be executed unilaterally by one of the parties, fell for consideration before this Court as well as the Supreme Court. Quite a good number of instances have emerged, wherein the sale deeds executed by vendors in favour of vendees on receiving consideration, were cancelled unilaterally by the vendors without participation or notice to the purchasers. A full bench of this Court took the view that the remedy for an aggrieved party in such cases could be to file a suit and that no illegality can be said to have taken place in the matter of registration of document. That, however, was reversed by the Supreme Court in the recent past. The State has also amended the Registration Rules by incorporating Rule 26 (i) (k) to the effect that whenever any deeds of transfer are sought to be cancelled in a separate document, registration thereof cannot be made unless the document is executed by both the parties. This is the law as it applies to the transactions of transfer of title.”

“Para 4: The execution of a Power of Attorney, would, under no circumstances, lead to a transaction of transfer of title. By its very nature, the document provides for the authorisation by the principal, enabling the Power of Attorney, to do certain acts on his behalf. It is always the prerogative of the principal to withdraw the authorisation and an agent cannot derive any independent rights under such arrangements. The right of the principal to”

¹ 2012(4) ALD 411 = 2012 (4) ALT 808

unilaterally cancel GPA, even if coupled with interest, is recognised in law. He is not under obligation to seek the participation of the agent for cancellation of such GPA. This Court held so, in T. Vishwanadham's case (supra). Further, Rule 26 (i)(k) of the Rules applies only in respect of transactions of transfer and not in respect of GPA's. Therefore, the endorsement made by the 2nd respondent on 17.07.2010 cannot be sustained in law."

Hence that argument is not available to the respondents.

9. In the result, this Writ Petition is disposed of directing the petitioner to approach respondent No.2 and file before him the registration extract of the General Power of Attorney document No.4733 of 2012 dated 06-10-2012 and a proper cancellation deed, in which case respondent No. 2 shall receive and process the same as per rules. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 22-11-2018
JSK

U.DURGA PRASAD RAO, J