

20 12.01.2021

Ct. No. 02

S.A.T. 340 of 2019
IA NO: CAN 1 of 2019 (Old No: CAN 10362 of 2019)
(Via Video Conference)

Sri Subhash Chandra Mondal
Vs.
Sunil Kumar Mondal and Others

Mr. Partha Pratim Roy.

..for the appellant.

This appeal has been directed against a judgment and order dated 26, 2018, passed by the learned Civil Judge (Senior Division), Kandi, Murshidabad in Title Appeal no. 72 of 2011 affirming the judgment and decree dated May 31, 2011 passed by the learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad in Title Suit no. 174 of 1995.

One Haripada Mondal, since deceased, as plaintiff filed a suit against his elder son, his daughter-in-law, and his grandson impleading them as defendant nos. 1, 2 and 3 respectively.

Haripada made out a case in the plaint that he became the owner of the suit property by way of inheritance and purchase. He and his elder daughter-in-law executed a registered general power of attorney in favour of his elder son, defendant no. 1, on February 21, 1983, for administering the suit

properties. Since the defendant no. 1 was misappropriating the property in respect of which the power of attorney was executed, Haripada cancelled the said power of attorney by executing the deed of cancellation dated August 21, 1995. Haripada pleaded that he had informed as to the cancellation of the said power of attorney to the defendant no. 1 orally and also by a lawyer's letter dated August 21, 1995. The fact of the cancellation of the general power of attorney was also published in a local newspaper on August 23, 1995.

The defendant no. 1, in spite of having full knowledge as to the cancellation of the power of attorney, executed a sale deed in favour of his wife and sons i.e. defendant nos. 2 and 3 on August 25, 1995. Haripada, therefore, filed the suit for a declaration of his title over the suit property and also for a declaration that the sale deed executed on August 25, 1995 by the defendant was void and inoperative.

The suit was contested by the defendant nos.1, 2, and 3 asserting as to the genuineness of the sale deed dated August 25, 1995. The defendants contended that a sum of Rs.20000/- was paid to the plaintiff as a consideration money for the sale. It was the case of the defendants that the defendant no. 1 received the lawyer's notice as to the cancellation of

the deed on August 26, 1995 and as such, he had no knowledge about the cancellation of the power of attorney on the date when he executed the sale deed in favour of his wife and sons on August 25, 1995.

During pendency of the suit Haripada died and one of the sons of Haripada carried the suit as plaintiff while other sons and daughters of Haripada were impleaded as defendants in the suit.

Law relating to cancellation of a power of attorney has been considered by this bench in a judgment passed in **FMAT 455 of 2019 (*Sharad Singhi Vs. Sheojee Tiwari & Ors.*)**. It was held that :

“The status of the constituted attorney is akin to an agent terminable at any point by the principal except the agent before such time exercised his authority given under the aforesaid instrument to bind the principal. More so, when a power to do specified act is given to the agent the power of attorney is required to be construed strictly as the act of the agent in excess of the authority shall not bind the principal. The exception can be seen in Section 202 of the Contract Act, 1872 protecting the interest of an agent against termination of the agency if he has an interest in the property constituting the subject-matter of the agency. Illustration (a) appended to Section 202 of the Act makes the position more clear when an authority to sell the property of the principal was given to the agent who out of the sale proceeds pays himself to the debts due to him from the principal. The authority cannot be said to be a bare agency but coupled with the grant and may be deemed to be irrevocable as the purpose underlining such authority is to secure some benefit.

The contention of the plaintiff that

the aforesaid power of attorney are irrevocable has to be understood in the perspective of the intention gathered from the power of attorney. Mere use of the word “irrevocable” does not ipso facto makes the power of attorney irrevocable but depends upon the terms disclosed therein that it created or recognized an agency coupled with interest in favour of the agent. In other words, the agency creates any interest in the subject-matter of the agency into the agent, such agency cannot be terminated taking shelter either under Section 201 or 203 of the Contract Act but the right of the agent is saved by virtue of an exception provision contained in Section 202 thereof.”

It was not a case of the defendant nos. 1, 2 and 3 that the agency granted in favour of the defendant no. 1 was coupled with the grant of interest in the suit property. The agency created by the said power of attorney was terminable at any point of time by the original plaintiff in terms of Section 201 of the Contract Act, 1872. No exception can be taken as to the cancellation of the said power of attorney by the original plaintiff since such cancellation did not come within the mischief of Section 202 of the Contract Act, 1872.

Both the courts below after due consideration of the evidence adduced came to a concurrent finding that the original plaintiff, Haripada, had duly cancelled the said power of attorney by a registered instrument and the defendant no. 1 had due knowledge of the cancellation of the power of attorney and in spite of

such knowledge he had executed the sale deed in favour of his wife and son. Both the courts below also disbelieved the payment of Rs.20000/- by the defendants as consideration for the sale to the original plaintiff. We have no reason to interfere with such concurrent finding of facts in this second appeal. The execution of sale deed was without any authority having no binding effect on the original plaintiff.

The judgment of the courts below does not suffer from any illegality warranting interference in this second appeal.

The appeal no. S.A.T. 340 of 2019 and the connected application, being IA NO: CAN 1 of 2019 (Old No: CAN 10362 of 2019), are dismissed having not involved any substantial question of law without any order as to costs.

(Harish Tandon, J.)

(Kausik Chanda, J.)