

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 182 OF 2018

1. Ravindradas @ Rajendra Bholaram Yadav,
aged about 48 years, Occ: Agriculturist
2. Kamlesh Bholaram Yadav,
aged about 38 years, Occ: Private Job
3. Santosh Bholaram Yadav,
aged about 45 years, Occ: Business,

All R/o. Dahi, Tq. Patti, Dist. Pratapgrah,
Uttarpradesh, presently at Akola,
Tq. & Dist. Akola.

.... **APPELLANTS.**
(Org. Plaintiffs)

// VERSUS //

1. Vasant Narayan Agrawal,
aged about 62 years,
Occ: Retired, R/o. Near Jai Hind
Chowk, Police Chowki, Old City,
Akola, Tq. & Dist. Akola.
2. The Manager, Nishant Sahakari,
Gramin Pat Puravatha Sastha
Maryadit, Akola Branch : Dabki Road,
Akola, Tq & Dist. Akola.

.... **RESPONDENTS.**
(Original Defendants)

Shri A.R.Deshpande, Advocate for Appellants.
None for Respondents.

CORAM : **ANIL S. KILOR, J.**
DATE OF RESERVING THE JUDGMENT : **01/12/2021**
DATE OF PRONOUNCING THE JUDGMENT : **22/03/2022**

JUDGMENT :

1. This appeal is arising out of the judgment and decree dated 22/11/2017 passed by the Ad-hoc District Judge-2, Akola in Regular Civil Appeal No. 108 of 2012, dismissing the appeal arising out of the judgment and decree dated 27/07/2007 rendered in Special Civil Suit No. 17 of 2004 by the learned Civil Judge Senior Division, Akola, dismissing the suit for specific performance of contract along with compensation.

2. The brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court.)

The plaintiffs/ appellants filed a suit for specific performance. It is the case of the plaintiffs that the suit house No.

201 out of Survey No.9 of 2003 of village Bhaurad, admeasuring 3100 sq.ft. situated at Rajeshwar Nagar, a suit property, is owned by the defendant No.1. It is the further case of the plaintiff prior to execution of agreement for sale by defendant No.1 in respect of suit property on 25/04/2003, defendant No.1 had executed the sale deed of Plot No.6 arising out of field Survey No. 99/3 dated 28/07/2001 for consideration of Rs.1,00,000/-. It is submitted that subsequently, defendant No.1 had executed the sale deed in the name of plaintiffs in respect of Plot No.7 on 25/07/2002 for consideration of Rs.65,000/-. It is further pleaded that the plaintiff had been to the spot with a view to raise construction over the purchased plot. At that time, it was noticed that Plot Nos. 6 and 7 were not actually on the spot and construction of other persons was seen. Therefore, the plaintiffs contacted defendant No.1 through their power of attorney Ramsamuj Dinu Yadav and asked him to show the plots which were sold by him to the plaintiffs but defendant No.1 failed to search out those plots. Therefore, the plaintiff lodged report against the defendant No.1 to police and

offence was registered under Sections 420 and 468 of Indian Penal Code.

3. It is further submitted that as per Agreement for Sale, defendant No.1 had agreed to sell out the suit property for consideration of Rs.4,00,000/-. It was also agreed that the price of the plot Nos. 6 and 7 should be fixed for the amount of Rs.2,50,000/-. Accepting that price, defendant No.1 executed agreement for sale as referred to above and he agreed to execute the sale deed on 25/08/2003. As the defendant failed to execute sale deed despite of receipt of notice issued by the plaintiffs the suit came to be filed.

4. The defendant No.1 resisted the suit by filing written statement and it is alleged that the power of attorney of the plaintiffs is doing illegal business of money lending and as the defendant No.1 was in need of money, he requested for hand loan of Rs.20,000/- in the year 2001 and as a security a sale deed was executed. However, the said sale deed was nominal one. It is

further stated that the mother of the defendant No.1 was suffering from illness and for her treatment defendant No.1 given Rs.25,000/- as a hand loan and as a security the power of attorney of the plaintiffs got executed the sale deed. It is further alleged that though the amount was repaid, the plaintiffs refused to return the sale deeds.

5. The defendant No.2 opposed the suit by filing written statement. It is contended that defendant No.1 has obtained loan of Rs.50,000/- from the bank on 15/12/2001. At that time, defendant No.1 had mortgaged the suit property in favour of the defendant No.2. It is stated that the defendant No.2 is ready to release the mortgage, if the loan amount is deposited and cleared.

6. The learned trial Court, after scrutinizing the oral as well as documentary evidence, dismissed the suit vide judgment and decree dated 27/07/2007 passed by the Civil Judge Senior Division, Akola in Special Civil Suit No. 17 of 2004. The plaintiffs thereupon, carried the appeal before Ad-hoc District Judge-2,

Akola vide Regular Civil Appeal No. 108 of 2012. The same came to be dismissed vide impugned judgment and decree dated 22/11/2017, the same is under challenge in this appeal.

7. This Court, on 5th April 2018 while issuing notice, was pleased to frame the following substantial question of law:

“Whether the Courts below were justified in holding against the appellants on the basis that when the agreement dated 25/04/2003 was executed on their behalf by one Ramsamuj Yadav, he did not have a power of attorney executed in his favour by the appellants and that powers of attorney were executed in his favour by the appellants subsequently on 27/05/2003 and 25/08/2003, as a result of which the agreement itself could not be taken as a valid basis for seeking specific performance by the appellants, notwithstanding that by subsequent execution of the said powers of attorney and the conduct of the appellants, authority was indeed given to said power of attorney to execute sale deed and to do acts, necessary in respect of the said agreement/transaction?”

8. Shri U.J.Deshpande, learned counsel for the respondent No.1 filed pursis for withdrawal of Vakalatnama along with letter issued to respondent No.1. He informed that in spite of service of letter long back, the respondent No.1 has neither given instructions nor engaged any other advocate to represent him. In view of this, permission to withdraw the Vakalatnama is granted.

9. In the circumstances, heard Shri A.R.Deshpande, learned counsel for the appellants.

10. The learned counsel for the appellants submits that though the agreement was executed on 25/04/2003 and Power of Attorney Exhs. 49 and 57 are dated 27/05/2003 and 25/08/2003, respectively, i.e. subsequent to the execution of the agreement, however, it shows that the plaintiffs have ratified the act of Power of Attorney holder, to enter into an agreement on 25/04/2003 on behalf of plaintiffs. Thus, according to him, in the given facts and circumstances though the Power of Attorney are of subsequent

dates it will not be taken away the effect of agreement dated 25/04/2003.

11. It is submitted that as per Section 58 of the Evidence Act, the admitted facts need not be proved. It is further submitted that in view of the fact that the defendant No.1 is not disputing the agreement, it is not necessary to prove the agreement and both the Courts below ought to have decreed the suit in favour of the plaintiffs.

12. To consider the contentions raised by the appellants, I have perused the impugned judgment and decree of both the Courts below and also the record and proceedings.

13. There is no dispute that on the date of execution of the agreement dated 25/04/2003, the Power of Attorney of the plaintiffs had no authority to sign the said agreement. However, the subsequent to the said agreement to sell the Power of Attorney was

given which is at Exh.49 and is dated 27/05/2003. The another Power of Attorney is at Exh.57, dated 25/08/2003.

14. The Hon'ble Supreme Court of India in the case of *Jugraj Singh & another ..vs.. Jaswant Singh and others*¹ has held that ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him. The relevant portion of the said judgment reads thus:

“9. The only question is whether the second power of attorney was effective to render valid the transaction of sale and the registration of the document both earlier than the power of attorney. In our judgment, it would be so. Mr. Hardev Singh does not read into this matter the fact of ratification by Vernon Seth Chotia of his earlier power of attorney. The second power of attorney states in express terms that the first power of attorney was defective and was being ratified. Vernon Seth Chotia also stated in the second power of attorney that the act of Mr. Chawla would be his act which included not only the making of the document but also the presentation of that document. Now the law is quite clear that ratification relates back to the original act provided there is a disclosed principal and this has been stated nowhere better than by

1 (1970)2 SCC 386

Lord Macnaughton in Keighley, Maxted and Co. v. Durant quoting Tindal, C. J. in Wilson v. Tumman.

"That an act done, for another, by a person though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by, and with all the consequences which follow from, the same act done by this previous authority. And so by a wholesome and convenient fiction, a person ratifying the act of another, who, without authority, has made a contract openly and avowedly on his behalf, is deemed to be, though in fact he was not, a party to the contract."

10. *Relation back of an act of ratification was expressly accepted in this case. Other cases have been summarised in the manual of the Law and Practice of Powers of Attorney issued by the Council of the Chartered Institute of Secretaries. This follows from the maxim of law "Omnis ratihabitio retrotrahitur et mandate priori acquiparatur" - that is to say, ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was*

done by him. The learned authors quote the case of the House of Lords which we have above cited and add to it certain other cases with which we do not consider necessary to encumber this judgment.”

15. In the teeth of the above referred observations of the Hon'ble Supreme Court of India, I revert back to the facts of the present case. In the case in hand, both the Courts below have concurrently held that the agreement dated 25/04/2003 is not valid as on the date of execution of the said agreement the Power of Attorney who signed the said agreement on behalf of the plaintiffs had no authority or power to sign the same. Both the Courts have held that after signing the agreement dated 25/04/2003, Exhs. 49 and 57 were executed giving authority to the Power of Attorney. For the above referred reasons both the Courts below dismissed the suit. The learned lower appellate Court did not enter into the point of readiness and willingness only on the ground that the agreement is not valid for the above stated reasons.

16. The Hon'ble Supreme Court of India in a case of *U. Manjunath Rao ..vs.. U. Chandrasekhar & anr.*² has held that First Appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court.

17. In the present matter, both the Courts failed to appreciate that the plaintiffs ratified the act of the Power of Attorney, executing the agreement dated 25/04/2003, on behalf of the plaintiffs. Thus, the learned lower appellate Court has committed error in arriving at a conclusion that the agreement dated 25/04/2003 is not valid for the reason that Exh.49 and Exh.57 giving authority to the Power of Attorney were executed subsequently. The said finding is contrary to the law laid down in the case of *Jugraj Singh* (supra).

18. In that view of the matter and as the learned appellate Court has not considered the appeal of the plaintiffs on merit for the reason that the agreement itself was not valid, I am of the opinion that this matter needs to be referred back to the learned first appellate Court for a decision afresh.

19. Accordingly, I have answered the substantial question law and pass the following order:

- i) The appeal is partly allowed.
- ii) The judgment and decree dated 22/11/2017 passed by the Ad-hoc District Judge-2, Akola in Regular Civil Appeal No.108 of 2012 is hereby quashed and set aside.
- iii) The matter is referred back to the Ad-hoc District Judge-2, Akola for deciding it afresh on restoration of the Regular Civil Appeal to its original number.
- iv) The learned Ad-hoc District Judge-2, Akola is requested to decide the appeal expeditiously and in any case not beyond 31st December 2022.

- v) Record and Proceedings be sent back to the First Appellate Court forthwith.

The Second Appeal stands **disposed of** accordingly. No order as to costs.

In view of disposal of the Second Appeal, the Civil Application(s), if any, shall stand **disposed of**.

(ANIL S. KILOR, J)

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