

18.04.2023
KC(8)

S.A.T. 46 of 2020
Madan Shaw
-versus-
Paresh Chandra Das
With
CAN 2 of 2021

Mr. Surya Prasad Chattopadhyay,
Mr. Satya Ranjan Kundu,
Mr. S.K. Das,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee.....For the appellant.

Mr. Sattwik Bhattacharyya,
Mr. Aashutosh Bhattacharya,
Mr. Krishnendu Chakraborty.....For the respondent.

Mr. Chattopadhyay, learned counsel for the appellant has very painstakingly tried to demonstrate before us that a substantial question of law is involved in this intended second appeal. He took the point that the substantial evidence on which the learned trial court and the first appellate court decreed the suit was on the basis of the evidence of Smt. Madhumita Chakraborty, the daughter and constituted attorney of the respondent/plaintiff. She has deposed on matters beyond the purview of the power of attorney and that the evidence should have been wholly disregarded and the suit dismissed.

Mohinder Kaur –vs- Sant Paul Singh, reported in (2019) 9 SCC 358 cited by Mr. Chattopadhyay enunciated the following dictum quoting Janki Vashdeo

Bhojwani –vs- Indusind Bank Ltd., reported in (2005) 2

SCC 217, as follows:

“In *Janki Vashdeo*, it was held that a power-of attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by the power-of-attorney holder. Likewise, the power-of-attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross-examined. In our opinion, the failure of the respondent to appear in the witness box can well be considered to raise an adverse presumption against him as further observed therein as follows: (SCC p.223, para 15).”

A power of attorney holder or constituted attorney is the agent of the executant. Like an agent, he has the power to bind the principal by making statements on his behalf which may also include admission of a fact or liability. He has the power to act on behalf of the principal and to confirm any act done by the principal. But such power is confined to the act of the principal during operation of the power of attorney. He does not have the power to make any statement or admission or do any act on behalf of the principal prior to the date of execution or subsequent thereto. However, as constituted attorney if he has personal knowledge of any act concerning the principal, he does have the power to depose with regard to it and such evidence is admissible before the court.

We notice that in this matter the constituted attorney being the daughter of the respondent/plaintiff has also deposed from her own personal knowledge. So, there is nothing in the evidence which was inadmissible and ought to have been disregarded.

For those reasons we find it fit not to admit this appeal.

But considering the most persuasive yet gentle submissions made by Mr. Chattopadhyay, we grant the appellant time up to 31st March, 2024 to quit, vacate and deliver vacant possession of the subject premises to the respondent subject to the following terms and conditions without prejudice to the right of the respondent to claim mesne profit or any amount for the earlier period:

- 1) On and from 1st May, 2023 till the appellant vacates the premises he shall pay the occupation charges @ Rs. 700/- (seven hundred) per month in advance by the 7th of each month;
- 2) He shall quit, vacate and deliver vacant possession of the suit premises by 31st March, 2024.

In default of any one condition, the respondent shall be at liberty to proceed with execution of the impugned decree forthwith.

On fulfilment of the above conditions, the respondent shall not take any steps in execution till 31st March, 2024.

The appeal (S.A.T. 46 of 2020) and the application (CAN 2 of 2021) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)