IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113 **RSA-195-2023 (O&M)**
DATE OF DECISION: 09.02.2023

OM PARKASH (NOW DECEASED) THR LR … Appellant (s)

Versus

NEHA MAKKAR AND ORS ... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Arun Kumar Singal, Advocate for the appellant(s).

ANUPINDER SINGH GREWAL, J. (ORAL)

The appellant has challenged the judgments of the Courts below whereby his suit for declaration has been dismissed.

Learned counsel for the appellant submits that the mother of the plaintiff namely Ganga Devi, had given a General Power of Attorney in favour of defendant No.2 in the year 1997 but she had expired on 03.02.2000 and therefore, the sale deed could not have been executed in the year 2011. While relying upon Section 202 of the Indian Contract Act, 1872 learned counsel for the appellant submits that both the illustrations set out two circumstances under which the agency would not lapse on the death of the principal. These illustrations do not apply to the instant case and therefore the agency would be deemed to have been lapsed at the death of the principal as per Section 201 of the Indian Contract Act, 1872. He also submits that agreement to sell dated 20.05.1997 (Ex.D-19) had not been proved in accordance with law. In support of his submissions, he has relied upon the judgment of the Single Bench of Karnataka High Court in the case of

Corporation Bank, Bangalore Vs. Lalitha H. Holla and others, AIR 1994 Karnataka 133.

Heard**.**

The appellant had filed a suit for declaration to the effect that sale deed of plot No.365 situated in Sector 13, HUDA, measuring 6 marlas bearing Vasika No.7305 dated 23.12.2011 executed by defendant No.2 was illegal. The mother of the plaintiff namely Ganga Devi is stated to be the original allottee of the plot. She had executed General Power of Attorney in favour of defendant No.2 on 20.05.1997. An agreement to sell was also executed between Ganga Devi and defendant No.2 on 20.05.1997 and a demand draft of Rs.1,09,187/- is stated to have been paid to Ganga Devi, who had expired on 03.02.2000 and had received all other amounts in cash. The sale deed (Ex.P-2) was executed and registered on 23.12.2011 by defendant No.2 in favour of defendant No.1 and a total sale consideration of Rs.16,79,000/- was paid to defendant No.2.

I do not find any merit in the argument of the counsel for the appellant that the agency would lapse after the death of the principal. It has been specified in Section 202 of the Indian Contract Act, 1872 that the agency where the agent has an interest in the subject matter cannot be terminated either by insanity or at the death of the principal. I draw support from the judgment of the Division Bench of Gujarat High Court in **Maharani Shanta Devi (her highness) Vs. Shavjibhai H. Patel and others, 1998(4) Civil Law Journal 252** and of this Court in **Smt. Parkash Devi Vs. Rajinder Kumar**

(since deceased) through LRs and Ors. bearing RSA No.2819 of 2007 decided on 05.07.2022 wherein it has been held that the agency would not stand terminated after the death of the principal. The relevant extract of the judgment in the case of **Maharani Shanta Devi (her highness) Vs. Shavjibhai H. Patel and others** (supra) is reproduced hereunder:-

> "14. Xxxxx Once it is found that the interest is created in the subject matter of the agreement, may be by the agreement itself it would still be a case of any agency coupled with interest, such interest may be created simultaneously and by the agreement itself and we also find that in such a case if the rescinding of the contract is held to be permissible, it would frustrate the very purpose for which the agreement was made, obviously, the plaintiff respondent had an interest to see that the scheme is executed. Of course, the scheme could be executed only after it had been sanctioned in accordance with law. Nevertheless, the interest in the execution of the scheme subject to the condition as aforesaid, which was created by the agreement, does create a valuable interest in favour of the plaintiff respondent and on the basis of the principles and on the basis of the ratio of the judicial pronouncements, it is clear that in the case at hand, an agency was created in which the plaintiff respondent had an interested and, therefore, it could not be terminated to the prejudice of such interest in view of Section 202 of the Indian Contract Act. xxxxxxx."
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> "18. In Bowstead and Reynonlds on "Agency", 16^{th} Ediition, at page Nos.660-661, it has been mentioned that the authority expressed to be irrevocable is

> not determined by death etc. In Chitty on “Contract”, 27th Edition, Vol.2, page 94-95, the learned Author while dealing with the ‘Termination of Authority’ has commented that, if there is an interest coupled with the authority, that is, if the agreement is entered into by Deed or on sufficient consideration, whereby an authority is given for the purpose of providing a security, such an authority is irrevocable even by death, etc.”

It is important to note that defendant No.2, after the death of Ganga Devi, had been paying the installments and other dues to the Haryana Urban Development Authority (HUDA) being GPA of Ganga Devi which had been placed on record as Ex.D-2 to Ex. D-9, Ex.D-11, Ex.D-12 to Ex.D-15, Ex.D-17 and D-18 in this regard.

Therefore, I do not find any illegality in the judgments and decrees of the Courts below wherein the suit preferred by the plaintiff-appellant has been dismissed.

Consequently, the petition stands dismissed.

Civil miscellaneous application(s), if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

09.02.2023
SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No