

RSA-1944-2018(O&M)

Date of Decision : 18.01.2023

Smt. Gora

...Appellant

versus

Bir Singh and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Chanderhas Yadav, Advocate for the appellant.

B.S. Walia, J. (Oral)

1. Regular Second Appeal has been filed by one of the plaintiffs (appellant herein) against the concurrent findings recorded by the learned Courts below, dismissing the suit of the plaintiffs for declaration for cancellation of sale deed dated 25.08.2009 and for injunction for restraining respondent Nos.1 and 2 from interfering in the peaceful possession of the suit property.

2. Brief facts of the case are that the appellant and her sister (Bhora-original plaintiff No.2) and respondent No.2 are in the relationship of paternal aunts and nephew and that the appellant and Bhora had executed a registered power of attorney dated 10.08.2009, in favour of respondent No.2, authorizing him to sell the property owned by them. However, due to dispute between the plaintiffs with respondent No.2, registered power of attorney dated 10.08.2009, executed by the appellant and her sister-Bhora, in favour of respondent No.2 was cancelled vide registered cancellation deed dated 18.08.2009.

3. Learned counsel contends that the only point in issue is with

regard to whether due notice had been issued by the appellant and

plaintiff No.2 to respondent No.2 with regard to the cancellation of the registered power of attorney dated 10.08.2009, before the execution of the sale deed dated 25.08.2009, by respondent No.2 in favour of respondent No.1. Learned counsel contends that the judgment and decree passed by the learned trial Court dismissing the civil suit filed by the plaintiffs was challenged by way of appeal only by one of the plaintiffs namely appellant herein i.e. Gora. Learned counsel has also referred to paragraph No.11 of the judgment of the learned Appellate Court in support of the plea that respondent No.2 had due notice of the cancellation of the registered power of attorney dated 10.08.2009. A perusal of the contents of paragraph No.11 of the judgment passed by the learned Appellate Court reveals that respondent No.2 and his cousin-Billu are stated to have accompanied the plaintiffs when they had cancelled the registered power of attorney dated 10.08.2009 and on said basis, learned counsel contends that it stands established that respondent No.2 had due notice of the cancellation of the registered power of attorney, therefore, respondent No. 2 could not have executed the sale deed on 25.08.2009.

4. I have considered the submission of learned counsel and have gone through the impugned judgments but am unable to agree with the submission of the learned counsel. Admittedly, the cancellation deed was not furnished to respondent No.2 against acknowledgement nor there is any notice in writing containing acknowledgement of respondent No.2 of intimation of cancellation of the registered power of attorney on 18.08.2009. Apart from the statement of appellant of respondent No.2 having accompanied her at the time when she had cancelled the registered power of attorney dated 10.08.2009 along with Billu, no other

evidence is there on the record. Accordingly, it cannot be established that cancellation of the registered power of attorney dated 10.08.2009, was to the knowledge of respondent No.2 prior to the execution of the sale deed, therefore, he could not have executed sale deed dated 25.08.2009, in favour of respondent No.1. A perusal of paragraph No.13 of the judgment passed by the learned Appellate Court reveals reference to the evidence of Ajay Kumar, Registration Clerk (PW-3), who has produced the record of power of attorney No.223 dated 10.08.2009, cancellation deed No.236 dated 18.08.2009 and sale deed No.3796 dated 25.08.2009 (Ex.P-1, P-2 and P-3 respectively) and also stated that the entries regarding cancellation deed were not mentioned against the entry of registration of power of attorney. A perusal of paragraph No.14 of the judgment passed by the learned Appellate Court reveals reference to the evidence of Mamraj (PW-4), who stated that on 18.08.2009, the appellant and her sister-Bhora had cancelled the registered power of attorney dated 10.08.2009, executed by them in favour of their nephew i.e. respondent No.2 and the cancellation deed had been scribed by one Mohinder Chaudhary, which was read over to the appellant and her sister-Bhora (plaintiff No.2). It is also mentioned that respondent No.2 had full knowledge of execution of power of attorney and further that Sonu (nephew of the appellant) son of Siri Pal, brother of the appellant had called him to witness the sale deed, although he was not the *nambardar* of the village in question, where the property was situated, that at the time of execution of the sale deed, Sonu, appellant as well as her sister-Bhora and respondent No.3 (Bhora) were present and that he had signed the sale deed at the instance of Sonu son of Siripal and that he was not acquainted with the appellant and respondent No.3 (plaintiff No.2) prior

to the cancellation of the power of attorney. On query, learned counsel for the appellant has read out the evidence of Mamraj (PW-4) and admits that there is no mention in the same of the presence of respondent No.2 at the time of execution of the cancellation deed and affixation of signatures on the same by Mamraj. Learned counsel further concedes that neither the scribe of the cancellation deed, Mohinder Chaudhary, nor the appellant's nephew Sonu son of Siripal, who was present at the time of execution of the cancellation deed, were examined as witnesses.

5. In the light of aforementioned position as well as well established position that in the absence of notice of cancellation of power of attorney either to the attorney or to the purchaser of termination of the agent's authority, the validity of sale deed executed by the agent would not be affected in any. Reference in this connection can be made to the decision of a Coordinate Bench of this Court in **Smt. Ram Asri alias Nikko vs. Rakesh Chand and others 2008 (4) RCR (Civil) 335**. Similarly, in **Rajesh and others vs. Tarsem Lal and others 2015 (8) RCR (Civil) 805**, it has been held that in the absence of failure to discharge the onus by the plaintiff to show that the agent has been informed about the revocation of agency, the plaintiff cannot escape the consequences from the action of the agent in selling the property and the only benefit which the plaintiff can obtain is to seek for a proper account from his agent in the manner that the law contemplates and cannot allow for impeaching the transaction of sale. Relevant extract of the aforementioned decisions is reproduced as under:-

Ram Asri alias Nikko (Supra)

12. This contention is, however, not acceptable and is not based upon the true interpretation of the aforesaid provisions of law.

The expression "a person is said to have notice" has been clearly defined to mean that when a fact actually comes to the notice of the person unless he willfully abstains from an enquiry and search which he ought to have made or in case of gross negligence. Even the explanation appended to this provision impute knowledge to the person who acquires the property through a registered instrument. Admittedly, there was a registered general power of attorney in favour of Ram Gopal which was produced at the time of registration of sale deed. It has also come in the statement of CharanDass, guardian of defendants Nos. 1 and 2 who were minor at the time of sale of property in their favour that JaramDass told him that Ram Gopal, his son will sell the property to them. There was no occasion for him to have made any further enquiry in view of the statement of JaramDass and the registered general power of attorney. No evidence whatsoever has been brought on record to establish that the vendees (defendants Nos. 1 and 2) had the knowledge of cancellation of power of attorney. Sale was effected on 7.7.1977 with delivery of possession. JaramDass was alive and he died on 15.10.1978 i.e. more than a year after the execution of the sale deed. He never challenged the sale deed during his life time. Apart from above, Section 208 of the Indian Contract Act, 1872 protects the rights of bona fide purchaser under such a situation. Section 208 reads as under :

"208. When termination of agent's authority takes effect as to agent, and as to third persons. - The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."

13. This Section clearly provides that termination of an agent's authority is not to take place unless communicated to him and will not effect the third party unless it becomes known to him. Therefore, it was obligatory for the plaintiff to have established not only that Jaram Gopal Dass had the knowledge of cancellation of his general power of attorney, but also that the vendees (defendants Nos. 1 and 2) had the knowledge of the cancellation of general power of attorney.

Though an attempt is made that Ram Gopal Dass being the son of JaramDass and staying with him had the knowledge of cancellation, but no other evidence has been brought on record that he actually had the knowledge. It is mere presumption and not the proof. Assuming Ram Gopal had the knowledge, but there is absolutely not even an iota of evidence to establish that the vendees-defendants Nos. 1 and 2 had the knowledge of the cancellation of general power of attorney in favour of Ram Gopal. A similar issue came up for consideration before the Madras High Court in the case of KathoomBiviAmmal and another v. Arulappa Nadar and another, AIR 1970 Madras 76 wherein following observations have been made :

"2.... This illustration is apposite to the facts of this case. In Mulla on Indian Contract Act, Students Edition, Eighth Edition page 226, the case of Trueman v. Loder, (1840)11 Ad & El 589, is referred to. That was a case where A traded as B's agent with B's authority. All parties with whom A made contracts in that business were held to have a right to hold B liable to them until B gives notice to the world that A's authority is revoked; and it makes no difference if in a particular case the agent intended to keep the contract on his own account. It is argued on behalf of the appellant that it is very unreasonable to expect that the first defendant should inform the whole world that she had cancelled the power-of-attorney given to the fourth defendant, and that she cannot be expected to approach every body with whom the fourth defendant was likely to enter into contract and inform them of the cancellation. I do not think that such considerations have any relevance in the face of the clear words of the section. The policy of the law, apparently in the interests of trade and commerce, is that the agent's action should bind the principal, even though the principal might have cancelled the agent's authority unless the third persons with whom the agent enters into contracts

knew of the termination of the agency. On this point, therefore, the conclusion of the lower appellate Court is correct, and it should be held that the mortgage executed by the fourth defendant in favour of the plaintiff is valid and binding on the first defendant."

14. Similar view has been expressed by the Madhya Pradesh High Court in the case of Kulsekarapatnam Hand Match Workers' Cooperative Cottage Industrial Society Ltd., Madras State v. RadhelalLalloolal and others, AIR 1971 Madhya Pradesh 191 wherein following observations have been made :

"12. As regards the liability of the principal on the agreement of 16th October, 1964, there is no manner of doubt that the contract of agency terminated w.e.f. 30th September, 1964, but we are of the view that such termination would not affect the buyer. So far as third parties are concerned, the law is that the termination of a contract of agency takes effect only from the time the third party obtains knowledge of it. This is clear from Section 208 of the Contract Act. The principle is also now well settled that a third parry is not affected unless/he has knowledge of such termination....."

Rajesh and others (Supra):

2. The most crucial point for consideration was whether there was a valid cancellation of the contract of agency, which is implicit in a deed of power of attorney. Section 206 of the Contract Act requires a communication of the cancellation of the power of attorney. An unilateral document of cancellation by the principal cannot operate eoinstanti. On the other hand, the cancellation will operate in the manner provided under Section 206, which requires a reasonable notice to be given of revocation of agency. Section 207 of the Contract Act states that the revocation could be expressed or implied and in this case, the plaintiffs were attempting to show that the notice was issued by the registered post on 19.07.1994 and registration notice filed in Court. When there was a denial in respect of notice, the presumption that is available for service would stand diluted and in terms of the decision of the Hon'ble Supreme Court in Puwada

Venkateswara Rao v. Chidamana Venkata Ramana, 1976 (2) SCC 409, the burden of establishing service shall be cast on the person, who states that a particular registered post had been sent. The mere fact that the document is sent by registered post cannot prove anything, if there is a denial and the plaintiffs, who sought to rely on the lack of authority for an agent to sell, had failed to discharge the onus on him to show that the agent had been informed about the revocation of agency. If revocation is not established, the plaintiff cannot escape the consequence from the action of the agent in selling the property. The only benefit which the plaintiff can obtain is to seek for a proper account from his agent in the manner that the law contemplates and cannot allow for impeaching the transactions of sales themselves.

6. Accordingly, in view of the position noted above as well as the decisions of this Court in **Ram Asri alias Nikko’s case (supra)** and **Rajesh’s case (supra)**, I do not find any ground to interfere with the well reasoned judgments of the Courts below. No question of law much less substantial question of law arises for consideration in this case.

7. Dismissed.

(B.S. Walia)
Judge

18.01.2023
rajesh

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