



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.264 OF 2017

Shri. Ashok Shankar Chitnis and Ors. ... Appellants.

Versus

Shri. Vanechand Gemrajaji Oswal and Ors. ... Respondents.

Mr. R.V. Govilkar, Senior Advocate a/w Ms.Shaba N. Khan,
Ms.Mihir Govilkar, Advocates for the Appellant.
Mr. S.S. Patwardhan i/by Mr.Chetan G. Patil, Advocate for the
Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 10, 2024

P. C.:

1. Being aggrieved by the judgment of the 1st Appellate Court dated 12th February, 2016 reversing the findings of the trial Court partly decreeing the Special Civil Suit No.497 of 1999, the present Appeal has been preferred.

2. The facts of the case are that the suit property bearing House Property located at City Survey No.340-A situated in Kolhapur was co-owned by the plaintiff and the defendant Nos.2 to 7 in equal share i.e. $\frac{1}{2}$ share of the plaintiff and $\frac{1}{2}$ share of

Defendant Nos.2 to 7. On 15th March, 1997, Power of Attorney (POA) was executed by the plaintiff in favour of the defendant No.2 who is his nephew. The POA is stated to be revoked by issuing notice dated 25th September, 1997 to Defendant no.2. On 23rd October, 1997, the defendant No.2 executed a sale deed in favour of the defendant no.1 in respect of the entire property which included 50% share of the plaintiff. On 20th July, 1999, the plaintiff issued public notice of termination of the Power of Attorney executed in favour of defendant no.2. On 14th October, 1999, Regular Civil Suit No.497 of 1999 was filed by the plaintiff challenging the sale deed executed in favour of the defendant no.2 and for recovery of possession of his share in the property.

3. In the proceedings before the trial Court, the defendant no.2, i.e. the POA holder of the plaintiff choose not to participate in the proceedings and the same was contested only by the defendant no.1. The trial Court by judgment dated 6th March, 2014 partly allowed the suit and cancelled the sale deed which was executed by the defendant no.2 *qua* the half share of the plaintiff. The trial Court directed partition to the extent of half share of the

suit property. As against this, the defendant no.1 preferred an appeal being Regular Civil Appeal No.141 of 2014 which came to be allowed setting aside the judgment and decree of the trial Court.

4. Heard Mr. R.V. Govilkar, learned Senior Advocate appearing for the Appellants and Mr. S.S. Patwardhan, learned counsel appearing for the Respondent No.1.

5. Mr.Govilkar, learned Senior Advocate appearing for the defendant would submit that the share of the plaintiff in the suit property is not disputed. He submits that the POA was revoked by sending a notice to the defendant no.2 despite whereof the sale deed came to be executed by the defendant no.2 in favour of the defendant no.1. He submits that the sale deed based on the POA as regards the half share of the plaintiff after revocation was null and void *qua* the plaintiff's share. According to him, once the notice has been sent to the POA holder, the revocation of the POA is complete and then it is not necessary for the plaintiff to issue any further notice to any third party. He would further submit that by public notice the termination of Power of Attorney was published.

He submits that the remedy of the defendant no.1 is to seek damages as against the defendant no.2 and the plaintiff cannot be forced to seek the remedy against the defendant no.2 when the POA has been validly revoked. In support of his submission, he relies upon the decision of this Court in *Surekha Sakharam Washiwale v. Nanoba Dhondiba Bharekar and Ors. [2014(2) Mh.L.J.]*.

6. *Per contra*, Mr.Patwardhan, learned counsel appearing for the defendant no.1 submits that the provisions of the Section 208 of the Indian Contract Act, 1872 (for short '*Contract Act*') has been rightly considered by the Appellate Court and unless the fact of revocation is made known the third party, the principle is bound by the acts of the agent and the POA is deemed to be in subsistence.

7. Considered the submissions and perused the record.

8. The shares of the parties, and the execution of the POA is not in dispute. The only issue which arises for consideration is as to whether the revocation of the POA by the plaintiff would render the conveyance deed executed between defendant nos.1 and 2 null

and void. In this context, the provisions of Sections 201 to 208 of the Contract Act governs the revocation of the authority. Section 203 of the Contract Act, provides that the principle may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principle. Section 206 of the Contract Act provide that reasonable notice must be given such revocation or renunciation.

9. In the present case, by notice dated 25th September, 1997, the plaintiff has revoked the POA, however, what is the relevant for our purpose is Section 208 of the Contract Act, which provides when the termination of agent's authority will take effect as regards the agent, and as to third persons and provides that 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.

10. Plain reading of Section 208 of the Contract Act would indicate that unless the factum of termination of the authority of the agent is made known to third person, the termination does not take effect. One of the modes in which the termination can be

made known to the third party is by issuance of public notice in which case if subsequent to the issuance of the public notice, the third party acts on the basis of the POA which has been revoked, no defence will be available to the third party to protect the transactions entered into with the POA holder.

11. In the present case, the Appellate Court has considered the provisions of Section 208 of the Contract Act. Pertinently, the Appellate Court's judgment records that the evidence indicate that the defendant no.1 was present at the time of execution of the POA and even his signature was obtained as witness over the written authority. The Appellate Court further records that the defendant no.1 in his evidence has specifically deposed that he is not aware about the revocation procedure adopted by the plaintiff and in the cross-examination he has denied about the knowledge of revocation.

12. Considering the statutory provisions of Section 208 of the Contract Act, unless the factum of the revocation was made known to the defendant no.1, especially when the plaintiff was aware of the interest of the defendant no.1 and that subsequent transaction

would have been entered into by the parties with the defendant no.1 based on the POA, it was incumbent upon the plaintiff to bring to the notice of the defendant no.2 the factum of revocation of the POA. The revocation was complete *vis-a-vis* the defendant no.2, however, regarding to third party the authority continued unless the fact was brought to their notice.

13. Mr.Govilkar, learned Senior Advocate has relied upon the decision of the learned Single Judge of this Court in the case of ***Surekha Sakharam Washiwale*** (supra). In the facts of that case, the learned Single Judge has held that the party, one who authorized a person and/or the party who act on his behalf, though the document is registered, once withdrawn the same authority by whichever way and/or method, such authorized person and/or the Power of Attorney Holder, just cannot still insist that the registered Power of Attorney/documents unless set aside by filing separate Suit, no one can prevent, including even the person like the appellant-plaintiff, to enter and/or deal with the property, is unacceptable. Once the Power of Attorney is cancelled by whatever the procedure available, that just cannot be overlooked by the

Court at this stage of the proceedings.

14. The decision of the learned Single Judge does not indicate that the provisions of Section 208 of the Contract Act was brought to the notice of the learned Single Judge and that the same was considered. The said decision, insofar as in the present case where the Appellate Court relies on the provisions of Section 208 to reverse the findings of the trial Court, cannot be said to be applicable.

15. In light of the discussion above, no substantial question of law arises in the present case. Second Appeal stands dismissed.

(Sharmila U. Deshmukh, J.)