



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 193/2017**

Date of Decision: 05.09.2024

IN THE MATTER OF:

INDER PAL BHATIA

S/O SHRI RAM DITTA MAI BHATIA

R/O 71, SEA LORD B, CUFFE PARADE, MUMBAI-400005

AND 73, II ND FLOOR, BHERA ENCLAVE,

PASCHIM VIHAR, NEW DELHI-110087,

THROUGH ATTORNEY

SHRI CM PRAKASH BHATIA

S/O SHRI RAM DITTA MAI BHATIA,

R/O 73, ILND FLOOR, BHERA ENCLAVE,

PASCHIM VIHAR, NEW DELHI-110087

.....Appellant

Through: Mr. Om Prakash Bhatia, GPA of
appellant, in person.

versus

NORTH DELHI MUNICIPAL COPORATION

SERVICE TO BE EFFECTED THROUGH COMMISSIONER,

S.P.MUKHERJEE CIVIC CENTRE,

JLN MARG, MINTO ROAD,

NEW DELHI-110002.

.....Respondent

Through: Mr. Sanjeev Sagar, SC for NDMC
with Ms. Nazia Parveen, Adv.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

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Signing Date:13.09.2024
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By:PURUSHAINDRA
KUMAR KAURAV



The instant appeal has been filed by the plaintiff for setting aside the judgment and decree dated 02.09.2016 passed by the Additional District Judge-02 (North), Rohini Courts, Delhi in Suit No.146/2014 titled as ***Shri Inder Pal Bhatia v. North Delhi Municipal Corporation***, whereby, the suit for recovery against the defendant has been dismissed.

2. Shorn of unnecessary details, the facts would exhibit that the plaintiff is the owner of property being Plot No.44, build up on 136 square yards land out of Mustatil No.5, Killa No. 13/5, situated at village Nangloi, Delhi abadi known as Friends Enclave, Sultanpuri Road, Near Railway Crossing, Nangloi Jat, Delhi-110086. The said property is stated to have been purchased *vide* sale deed registered on 06.05.1972 before the Sub-Registrar.

3. The plaintiff alleges that on 02.01.2012, without serving any prior notice of demolition, the defendant demolished a portion measuring 60.2 sq. metres of the aforesaid property and illegally occupied the same allegedly on the pretext of carrying out road development activities. According to the plaintiff, neither he was granted any compensation nor was he provided any alternative site, despite the defendant receiving the legal notice dated 16.03.2012.

4. Aggrieved by the inaction of the defendant, the plaintiff filed the Civil Suit through his brother, namely Om Prakash Bhatia, acting in the capacity of General Power of Attorney (hereinafter "GPA") holder, seeking recovery of Rs.19,99,999/- in the form of compensation for the alleged illegal action of the defendant.

5. The learned Trial Court, looking at the controversy involved in the Civil Suit, framed various issues for consideration. However, the plaintiff



has been non-suited only on the ground that the GPA holder was not entitled to institute the suit on behalf of the plaintiff.

6. The learned Trial Court has held that Om Prakash Bhatia was never authorized by the plaintiff in the capacity of attorney to file the Civil Suit. According to the learned Trial Court, the conditions mentioned in the GPA dated 09.01.1996 are not sufficient to empower Om Prakash Bhatia to institute the Civil Suit in question and rather, the plaintiff ought to have executed a Special Power of Attorney (hereinafter “SPA”) for the said specific purpose. It has been further held that when the GPA was executed, there was no cause of action for Om Prakash Bhatia to institute the suit as the same has only arisen on 02.01.2012.

7. Mr. Om Prakash Bhatia, appearing in person as GPA holder on behalf of the plaintiff, submits that the learned Trial Court has erroneously dismissed the Civil Suit. He takes the Court through the GPA in question, more specifically paragraph nos.5 and 6 therein, to contend that the same unequivocally delineates the condition that the GPA holder has the requisite mandate to institute a suit on behalf of the plaintiff. According to him, the said GPA has not been revoked till date. He further submits that the GPA confers a wider power than the SPA and therefore, the observation of the learned Trial Court that the SPA ought to have been executed is not tenable in the eyes of law.

8. Learned counsel appearing for the defendant vehemently opposes the aforesaid submissions and submits that in the year 1977, Government of India came up with a policy to regularize certain unauthorized constructions and the land which was coming in the way of roads, bridges etc. was decided to be acquired while giving an alternative land or compensation. According to learned counsel, the plaintiff had not claimed



any such benefit at that time and rather, preferred to file a suit through his GPA at a subsequent point of time seeking damages. He, therefore, contends that defendant is not liable to pay any compensation for the unauthorized construction of the plaintiff and the learned Trial Court has rightly determined that the suit cannot be instituted by the GPA.

9. I have heard the learned counsel appearing on behalf of the parties and perused the record.

10. The short controversy involved in the instant appeal, at this stage, relates to the authority of the GPA holder herein i.e., Om Prakash Bhatia to institute the Civil Suit in question on behalf of the plaintiff and whether the same is valid as per law.

11. Order III Rule 2 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) authorises a recognised Power of Attorney holder to appear, give evidence, make applications and perform other acts as envisaged in the said provision, if so expressly authorised.

12. In the case of *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*¹, the Supreme Court has held that the Power of Attorney is governed by the Indian Contract Act, 1872 and it creates an agency, whereby, the grantor authorises the grantee to do the acts specified therein. It is well settled that the Power of Attorney has to be construed strictly and the agent cannot derive any power, which has not been conferred by the principal upon him by implication or extension.

13. It is, therefore, pertinent to refer to the recitals of the GPA which has been placed on record as *Annexure P-6*, particularly paragraph no.5 therein, which reads as under:-

¹ (2012) 1 SCC 656



“5. To sign, verify and present all kinds of suits, complaints, appeals, revisions, statements, applications, claims, affidavits and all other documents in the proper courts of law either original or appellate and to proceed in all the cases, to withdraw them, to receive documents and any money or moneys from the court or from the opposite party either in execution of the decree or otherwise and on receipt of payment to sign and deliver proper receipt and discharge for the same.”

14. A plain reading of the aforementioned extract would indicate that Om Prakash Bhatia has been, *inter alia*, expressly authorized by the plaintiff to sign, verify and present all kinds of suits, complaints etc. in the proper Courts of law. Thus, the question which falls for consideration at this juncture is whether the powers mentioned in the above extract would lead the Court to infer that the same inherently includes the authority to institute a suit.

15. To answer the aforesaid proposition, it is germane to refer Order IV Rule 1 of CPC which stipulates that every suit shall be instituted by presenting a plaint. It implies that the institution of suit begins with the presentation of a plaint. Therefore, since the GPA holder in the present case was authorized to present the plaint, the same would signify that he was well within his powers to institute the suit on behalf of the plaintiff. On this aspect, further sustenance can also be drawn from the decision of the High Court of Punjab and Haryana in the case of ***Dharam Pal Sharma v. State of Punjab***², wherein, while dealing with an almost similar controversy, it was held that the power to sign plaint includes the power to institute suit and verify the pleadings. The relevant paragraphs of the said decision reads as under:-

“5. After hearing the counsel, I am of the view that judgment and decree of the learned Additional District Judge is not sustainable in law. The relevant portion of the power of attorney, Ex. P-1, reads as

²1997 SCC OnLine P&H 1184



under:—

“To engage any advocate or advocates to defend or offend any matter relating to us or our properties in any court upto highest appellate court and to sign plaint, complaint, written statement, replication, application under any order or rule of section 151 C.P.C. and in short to do all such other things which he deems fit and necessary for the better prosecution of the purposes mentioned above and act or acts done by our Attorney shall be considered done by us personally and we hereby undertake to ratify the same.”

6. A reading of the above-quoted portion of the power of attorney makes it very clear that the attorney was authorised to sign plaint and to do all such other things which he deemed fit and necessary for the proper prosecution of the case. The power to sign plaint includes the power to institute suit and verify the pleadings on behalf of the plaintiff. The Courts below are not right in saying that the power of attorney, Ex. P-1, did not authorise the attorney to verify the pleadings or to institute the suit. The order under appeal thus, is to be set aside and it is so ordered. Since the other issues were not decided by the Additional District Judge, the matter is remitted to the said Court for deciding the appeal on merits.”

16. In the case at hand, it has been expressly mentioned in the GPA agreement that the GPA holder shall have the power to sign and verify the plaint so as to present the same. It is *ex-facie* evident that the GPA agreement in the case at hand not only vests the power on the executee to sign, verify and present all kinds of suits, complaints etc. in the proper courts of law, rather the executant has expressly provided the authority to proceed with the case in Courts. The said authorisation entails the stages of proceedings right from signing and verifying the plaint, suit etc. to the presentation of the same before the Courts. The GPA holder has even been categorically empowered to withdraw the cases from the Courts of law. Thus, a conspectus of the terms of the GPA would indicate that the plaintiff has intended to authorise the GPA holder, in unambiguous terms, for conducting legal proceedings in various aspects encapsulated therein, including the power to institute and proceed with the suit.



17. In the considered opinion of the Court, the learned Trial Court has erred in dismissing the suit of the plaintiff on the ground that Om Prakash Bhatia did not have requisite authority to file the suit.

18. Further, the observation made by the learned Trial Court that the plaintiff should have executed an SPA instead of GPA also does not hold any water as besides other factors, the striking difference between them is that the former is executed for carrying out a specific task, purpose or transaction, whereas, the latter comes into picture when the Power of Attorney is conferred for fulfilling more than one purposes. Reliance can be placed upon the decision of the Supreme Court in the case of *Prakash Roadlines (P) Ltd. v. Oriental Fire & General Insurance Co. Ltd.*³, wherein, it has been reiterated that a document has to be interpreted not by its nomenclature but on the basis of what is contained in the said document.

19. Accordingly, the impugned judgment and decree is hereby set aside and the matter is remitted back to the learned Trial Court for fresh consideration on merits.

20. The instant appeal is allowed in the aforesaid terms and stands disposed of accordingly. Parties to bear their own costs.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 5, 2024

p'ma

³ (2000) 10 SCC 64