



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

APPEAL FROM ORDER NO. 1249 OF 2012

WITH
CIVIL APPLICATION NO. 1704 OF 2012
IN
APPEAL FROM ORDER NO. 1249 OF 2012

Surekha Sakharam WashiwaleAppellant.

Vs.

Nanobha Dhondiba Bharekar & Ors.Respondents.

Mr. Rajesh A. Tekale for the Appellant.

Mr. Pralhad D. Paranjape for Respondent No.1.

CORAM : ANOOP V. MOHTA, J.

DATE : 12 DECEMBER 2013.

ORAL JUDGMENT:-

Heard finally, by consent of the parties.

The Appellant-original Plaintiff has challenged order dated 20 July 2012, whereby her Application Exhibit-5 is rejected by the learned Joint Civil Judge, Senior Division, Pune.

2 On 9 April 2012, the Appellant has filed a Suit for cancellation of sale deed dated 11 October 2011, which is within limitation, on the following foundation.

3 In the year 2001, the Appellant purchased land admeasuring 1,925 sq. fts out of Survey No. 112/7B + 8A+9A/1, area admeasuring 01 Hector 28.05 Are situated at village Kothrud, Taluka Haveli, District Pune from Babanrao Dhondiba Sutar and others by way of registered sale-deed dated 27 December 2001. Her name is also came to be mutated in 7/12 extract under Mutation Entry No. 17138. She has constructed temporary sheds. Since then she is in possession of the Suit property.

4 The Appellant, as alleged, was in need of money and therefore, obtained loan from Respondent No.5 for Rs.75,000/- and by way of security executed a Visar Pavati in respect of Suit property. Respondent No.5 assured her that there are two intending buyers and she would fetch very good price for the property and convinced her to execute a Power of Attorney in favour of Defendant No. 2. The Appellant used to inquire about the sale. Respondent No.5 always gave false assurances and told to wait for some more days so that she would fetch good price. Later on, Respondent No.5 started threatening her and also insisted to sell the property to himself.

Therefore, the Appellant cancelled the Power of Attorney by publishing notice dated 8 December 2007, in daily newspaper "Prabhat". The Appellant received no consideration and never transferred the title or possession of the Suit property to anybody, on the basis of the Power of Attorney.

5 On 11 October, 2011, the Appellant got knowledge that Respondent Nos. 2 to 5 were trying to mis-utilize the documents and have executed sale-deed dated 11 October 2011, in favour of Respondent No.1. The Respondents were trying to make mutation entries and were likely to take forcible possession of the Suit property. Therefore, filed the Suit for declaration and temporary injunction for restraining the Respondents from taking over forcible possession of the Suit property.

6 The Power of Attorney though registered in the year 2007 itself, the Appellant cancelled the same by public notice on 8 December 2007. The sale-deed in question, is based upon the Power of Attorney issued who, as alleged, inspite of cancellation, misused the same and sold the property in question to Respondent-Defendant

No.1. The basic document, based upon which the Plaintiff had received Rs.75,000/-, was admittedly not a registered document.

7 The sale-deed in question admittedly not signed by the Appellant-Plaintiff. The considerations so mentioned in the registered sale-deed are not received by the Appellant, but by Respondent-Defendant Nos. 2, 3 and 4 and on the respective dates. Even the case of Respondent No.1 is that the amount given only to the other Defendants'/Respondents'. There is nothing on record to show that the said amount though paid by cheques were further deposited in the account of Appellant-Plaintiff, which was one of the condition even of the alleged Power of Attorney.

8 The Apex Court recently in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*¹ has doubted such transaction based upon the Power of Attorney. The validity and the effect of such transactions are also discussed and tested, and in a way declared that the transfer of immovable property based upon such Power of Attorney and/or through such Power of Attorney needs to be tested

1 2009(7) SCC 363

and the facts of sale just cannot be accepted, when the doubts and materials are placed on record to show about the misuse and misdeed, based upon the same Power of Attorney.

9 The submission, therefore, that Defendant No.1 being bona fide purchaser and has made payment to the registered Power of Attorney Holder and as recorded in the registered sale-deed, just cannot be overlooked unless the Plaintiff-Appellant makes out the case by leading evidence to the contrary, this in my view, in the present facts and circumstances, is not acceptable. Defendant No.1 though purchased the property, as the Power of Attorney Holder signed and/or accepted the consideration on behalf of the Appellant-Plaintiff that itself in no way sufficient ground, at this stage, to overlook the cancellation of Power of Attorney by the public notice. The Power of Attorney Holder-Defendant-Respondent No.1, just cannot denied and or show ignorance of such public notice of cancellation of their authority. Their ignorance is also in the background, apart from receipt of consideration from time to time, without depositing the amount in the account of the Appellant-Plaintiff, itself *prims-facie* shows that the transaction so entered into is not with permission

and/or consent of the Appellant-Plaintiff, who is admittedly the owner of the property in view of the earlier sale-deed, as recorded above, of the year 2001.

10 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. The person who had given authorization, is the best person to cancel and/or to withdraw such authorization. Once it is withdrawn/cancelled, such authorized person, in my view, is not empowered and/or can proceed to use and/or misuse the authority/the Power of Attorney.

11 In the present case, in view of the above admitted position

on record, therefore, it is sufficient to consider the case of the Appellant who is in possession of the suit property since long, being the owner and the sale-deed in question, even if executed and registered. This cannot be the reason not to grant protective relief, as prayed by the Appellant-Plaintiff in this matter.

12 The registered sale-deed in question, therefore, based upon such withdrawn Power of Attorney and is no way dis-entitled to grant the reliefs, so prayed. The case is made out for the protection to avoid further complications and the third party rights in the property.

13 For the above reasons, I am inclined to set aside the impugned order.

14 Resultantly, the following order:-

ORDER

- a) Impugned order dated 20 July 2012, is quashed and set aside.
- b) The Appeal from Order is accordingly allowed.

- c) The Respondents are injuncted from disturbing the possession of the Appellant-Plaintiff.
- d) The Appellant-Plaintiff is also required to maintain the status-quo with regard to the property in question, pending the disposal of the Suit.
- e) The Appeal from Order, so also the Civil Application are disposed of, accordingly.
- f) There shall be no order as to costs.

15 The learned counsel appearing for Respondent No.1 seeks stay to the effect and operation of this order as till this date, there was no interim protection in favour of the Appellant-Plaintiff. Considering the reasons so recorded above, the effect and operation of this order is stayed only for four weeks from today.

(ANOOP V. MOHTA, J.)