

DEB RATAN BISWAS AND ORS.

v.

MOST. ANAND MOYI DEVI AND ORS.

(Civil Appeal No. 2728 of 2006)

APRIL 15, 2011

**[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]**

*Code of Civil Procedure, 1908 – s.151 – Appellants filed partition suit against the respondents – Respondents had executed General Power of Attorney in favour of two persons (to manage and collect rent of the immovable property but not conferring any right regarding title to the property) which was registered – Parties to the suit entered into compromise – Trial Court passed decree in terms of the compromise – Subsequently, Respondents filed miscellaneous petition through one of the attorneys ('S'), for recalling the decree on the allegation that the signatures on the compromise were forged – Petition dismissed by trial court – Respondents filed revision before High Court which was allowed – On appeal, held: The finding of fact recorded by the trial court that there was no forgery was based on material on record and could not have been validly interfered with in Civil Revision by the High Court – The trial court rightly held that 'S' was only an attorney and could not claim any independent capacity in the proceedings – The principal (Respondents) signed the compromise for partition of the property, which in law amounts to implied revocation of power of attorney in favour of 'S' – Respondents cannot be allowed to say that their own act of signing the compromise petition was collusive and fraudulent – The High Court observed that Respondents should have consulted the power of attorney 'S' before signing the compromise petition – This is a strange kind of reasoning – The principal is not bound to consult his attorney before signing a compromise petition – The High Court also held that if 'S' was not willing to sign the compromise petition his*

A *unwillingness should have been mentioned in the compromise petition – This also is a strange reasoning – The impugned judgment of the High Court is set aside and the order of the trial court is restored – Contract Act, 1872 – s.207, Illustration.*

B *Deeds and Documents – Power of Attorney – Execution of – Effect – Held: Even after execution of a power of attorney the principal can act independently and does not have to take the consent of the attorney – The attorney is only an agent of the principal.*

C **The appellants filed title suit against the respondents for partition of certain properties. While the partition suit was pending, the defendants-respondents ‘P’ and ‘A’ executed a General Power of Attorney in favour of ‘U’ and ‘S’ which was registered. The parties to the suit, including ‘P’ and ‘A’ filed a compromise petition which was approved by the trial court and a decree was directed to be passed in terms of the compromise.**

E **Subsequently, a miscellaneous petition purporting to be on behalf of ‘P’ and ‘A’ was filed through the attorney ‘S’ under Section 151 CPC praying for recalling the said decree on the allegation that the signatures on the compromise were forged. The trial court held that**

F **Miscellaneous Petition filed at the instance of only one of the attorneys was not maintainable, as according to the terms of the power of attorney, both the constituted attorneys were entrusted to act jointly. Hence, the miscellaneous petition filed by ‘S’ was dismissed. Against that order, the respondents filed a Civil Revision which**

G **was allowed by the High Court, and hence the instant appeal.**

**Allowing the appeal, the Court**

H **HELD:1. The finding of fact recorded by the trial**

court after detailed discussion of the evidence was that there was no forgery. This finding is based on material on record and it is a finding of fact. Hence it could not have been validly interfered with in Civil Revision by the High Court. [Para 8] [307-G-H; 308-A]

2. The trial court rightly held that 'S' was only an attorney and he cannot claim any independent capacity in the proceedings. The principal 'P' and 'A' signed the compromise for partition of the property, which in law amounts to implied revocation of power of attorney in favour of 'S' vide Illustration to Section 207 of the Indian Contract Act. 'P' and 'A' cannot be allowed to say that their own act of signing the compromise petition was collusive and fraudulent. [Para 9] [308-B-D]

3. The trial court went into the evidence in great detail and recorded findings of fact which could not have been interfered with by the High Court in civil revision. It is well settled that in civil revision the jurisdiction of the High Court is limited, and it can only go into the questions of jurisdiction, but there is no error of jurisdiction in the present case. [Para 10] [308-E]

4. The High Court observed that 'P' and 'A' should have consulted the power of attorney 'S' before signing the compromise petition. This is a strange kind of reasoning. The principal is not bound to consult his attorney before signing a compromise petition. The High Court also held that if 'S' was not willing to sign the compromise petition his unwillingness should have been mentioned in the compromise petition. This also is a strange reasoning. It is well-settled that even after execution of a power of attorney the principal can act independently and does not have to take the consent of the attorney. The attorney is after all only an agent of the principal. Even after executing a power of attorney the principal can act on his own. [Paras 11, 12] [308-F-H; 309-A]

A **5. The impugned judgment and order of the High Court is set aside and the order of the trial court is restored. [Para 13] [309-B]**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2728 of 2006.

From the Judgment & Order dated 21.5.2004 of the High Court of Judicature at Patna in Civil Revision No. 945 of 2002.

S.B. Sanyal, Ranjan Mukherjee for the Appellants.

C Respondent-In-Person, P.S. Mishra, Pramod Swarup, Sakha Ram Singh, Pareena Swarup, Tathagat H. Vardhan, Mayur Chaturvedi, Rituraj Choudhary, Akeshey Verma, Praveen Swarup, Varinder Kumar Sharma, Atishi Dipankar for the Respondents.

D The Judgment of the Court was delivered by

E **MARKANDEY KATJU, J.** 1. This appeal has been filed against the impugned judgment and order dated 21.5.2004 passed by learned Single Judge of the Patna High Court in Civil revision No. 945 of 2002.

2. The facts have been stated in the impugned judgment and we are not repeating the same except where necessary.

F 3. It appears that a Title Suit No. 186 of 1984 by one Nrisingha Prasad Biswas and his four sons (who are the appellants herein) was filed against the respondents herein before the Subordinate Judge-V, Bhagalpur for partition of certain properties. While the aforesaid partition suit was pending, the defendants Smt. Pushpa Biswas and Apurva Kumar Biswas executed a General Power of Attorney on G 31.7.1992 in favour of Umesh Chandra and Dr. Sanjeev Kumar Mishra and the same was registered. The terms and conditions giving the powers to the attorneys were specifically set out in

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the Power of Attorney itself.

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4. On 30.7.1996, the parties to the suit including Pushpa Biswas and Apurva Kumar Biswas filed a compromise petition which was forwarded to the Sheristedar for scrutiny and report. On 31.7.1996, on receiving the report of the Sheristedar dated 30.7.1996, the Subordinate Judge-V, Bhagalpur approved the terms of the compromise and directed that a decree be passed in terms of the compromise.

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5. Subsequently, on 29.8.1996, a petition purporting to be on behalf of Pushpa Biswas and Apurva Kumar Biswas was filed through the attorney Dr. Sanjeev Kumar Mishra under Section 151 CPC being Miscellaneous Case No. 13/16 of 1996 praying for recalling the order dated 31.7.1996 passed in terms of the compromise on the allegation that the signatures on the compromise were forged.

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6. On 7.6.2002, the learned Subordinate Judge-V, Bhagalpur held that Miscellaneous Petition filed at the instance of only one of the attorneys was not maintainable, as according to the terms of the power of attorney both the constituted attorneys were entrusted to act jointly. Hence, he dismissed the Miscellaneous Case filed by Dr. Sanjeev Kumar Mishra.

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7. Against that order dated 7.6.2002, the respondents herein filed a Civil Revision being Civil Revision No. 945 of 2002 which was allowed by the impugned judgment, and hence this appeal.

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8. In the order dated 7.6.2002 in Misc. Case No. 13/96, the learned Subordinate Judge-V, Bhagalpur considered the prayer of the applicant in that Miscellaneous Case that the the compromise petition had not been signed by the petitioners and their signatures were forged. The finding of fact recorded by the learned Subordinate Judge-V, Bhagalpur after detailed discussion of the evidence was that there was no forgery. This finding is based on material on record and it is a finding of fact.

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A Hence it could not have been validly interfered with in Civil Revision by the High Court.

B 9. In his order dated 7.6.2002, the learned Subordinate Judge-V Bhagalpur has held that Dr. Sanjeev Kumar Mishra was only an attorney and he cannot claim any independent capacity in the proceedings. We agree with this view. The principal Pushpa Biswas and Apurva Kumar Biswas have signed the compromise for partition of the property, which in our opinion in law amounts to implied revocation of power of attorney in favour of Dr. Sanjeev Kumar Mishra vide Illustration to Section 207 of the Indian Contract Act. Pushpa Biswas and Apurva Kumar Biswas cannot be allowed to say that their own act of signing the compromise petition was collusive and fraudulent.

D 10. The learned Subordinate Judge-V, Bhagalpur has gone into the evidence in great detail and recorded findings of fact which could not have been interfered with by the High Court in civil revision. It is well settled that in civil revision the jurisdiction of the High Court is limited, and it can only go into the questions of jurisdiction, but there is no error of jurisdiction in the present case.

F 11. We have carefully perused the impugned judgment of the High Court. The High Court has observed that defendants Nos. 2 and 2a viz., Pushpa Biswas and Apurva Kumar Biswas should have consulted the power of attorney Dr. Sanjeev Kumar Mishra before signing the compromise petition. This is a strange kind of reasoning. The principal is not bound to consult his attorney before signing a compromise petition.

G 12. The High Court has also held that if Dr. Sanjeev Kumar Mishra was not willing to sign the compromise petition his unwillingness should have been mentioned in the compromise petition. This also is a strange reasoning. It is well-settled that even after execution of a power of attorney the principal can

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act independently and does not have to take the consent of the attorney. The attorney is after all only an agent of the principal. Even after executing a power of attorney the principal can act on his own. A

13. For the reasons given above this appeal is allowed. The impugned judgment and order of the High Court is set aside and the order dated 7.6.2002 of the learned Subordinate Judge-V, Bhagalpur is restored. There shall be no order as to costs. B

B.B.B.

Appeal allowed. C