

SUPREME COURT OF INDIA

Shanti Budhiya Vesta Patel

Vs.

Nirmala Jayprakash Tiwari

C.A.Nos.....of 2010

(Dr. Mukundakam Sharma and R.M. Lodha JJ.)

21.04.2010

JUDGEMENT

DR. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. In the present appeals, the appellants have challenged the legality and validity of the order dated 12.10.2007 passed by the High Court of Judicature at Bombay whereby the High Court dismissed all the three Civil Applications preferred by the appellants herein seeking recall of an earlier order dated 13.06.2006 passed by the High Court which was based on the consent terms duly signed by all the parties.

3. In order to properly appreciate the precise nature and scope of the controversy arising in the present appeals, it would be appropriate as well as expedient to set out a brief statement of pertinent

facts. The original appellant, Budhiya Vesta Patel, was the predecessor-in-interest of the present appellants.

Budhiya Vesta Patel was appointed as a watchman by one R.K. Tiwari, who was cultivating grass on the suit property since 1954-55, to take care of the suit property and for this a Kachcha shed on the suit property was provided to him. In due course of time, Budhiya Vesta Patel extended the shed to construct a chawl known as Budhiya Patel Chawl consisting of 38 rooms, which were let-out by him.

4. After the death of the real owner of the suit property, Mr. Anant Mahadeo Tambe, husband of Leela Anant Tambe, respondent no. 7 herein, the suit property stood recorded in the name of respondent no. 7. By means of a consent decree passed in Suit No. 1230 of 1992 between respondent no. 7 and M/s. Hitesh Enterprises, respondent no. 8 herein, the latter became the owner of the suit property.

5. In the year 1999, Budhiya Vesta Patel filed a suit against respondent no. 7 and said R.K. Tiwari, the predecessor-in-title of Respondent nos. 1 to 6 herein, before the Bombay City Civil Court, Bombay being Suit No. 5163 of 1999 seeking a declaration that he is the owner of the suit property by adverse possession. Since said R.K. Tiwari also claimed title to the suit property, he also filed a suit.

6. Against this, a counter-claim being Counter Claim No. 11 of 2002 seeking eviction of Budhiya Vesta Patel and his tenants from the suit property was filed by respondent no. 7 and respondent no. 8. The aforesaid suits were contested and on the basis of the pleadings of the parties, issues were framed and evidence was led.

7. The trial Court by its judgment and order dated 10.02.2003 and 11.02.2003 dismissed the suit filed by Budhiya Vesta Patel and allowed the counter claim filed by respondent Nos. 7 and 8. The trial Court negated Budhiya Vesta Patel's claim of ownership of the suit property by adverse possession since his initial possession of the suit property was a permissive possession.

8. Aggrieved by the said judgment and order, several appeals came to be filed before the High Court of Bombay. Budhiya Vesta Patel had filed two appeals, being F.A. No. 1388 of 2003 and F.A. No. 1389 of 2003; the former against the dismissal of the suit filed by him and the latter against the decree passed against him in the counter claim. The third appeal being, F.A. No. 1390 of 2003, was preferred by one Yusuf Vali Mohd.

Bilikhya (respondent no. 9 herein), who was the Power of Attorney holder of Budhiya Vesta Patel. Respondent Nos. 1 to 6 also filed an appeal against the judgment and order of the trial Court which was registered as F.A. No. 1523 of 2003. However, subsequently, the same was withdrawn.

9. During the pendency of the aforesaid appeals, Budhiya Vesta Patel died on 05.12.2004. On 07.01.2005, each of the present appellants executed an irrevocable Power of Attorney in favour of respondent no. 9. On the basis of the said Powers of Attorney, respondent no. 9 filed three separate applications being Civil Application Nos. 3180 of 2005, 3181 of 2005 and 992 of 2005 in the aforesaid three appeals wherein he prayed that the legal representatives of Budhiya Vesta Patel, i.e., the appellants be brought on record in all the three appeals in place of Budhiya Vesta Patel.

10. On 26.04.2006, the appellants executed a Power of Attorney in favour of one Narender M. Patel. It is alleged by the present appellants that respondent no. 9 colluded with respondent no. 8 and, therefore, respondent no. 9 forced and coerced them to enter into a compromise with respondent nos. 7 and 8, which was strongly objected to by the appellants. On this, the appellants further allege that they were threatened with dire consequences by the aforesaid respondents.

Consequently, the appellants got filed three complaints dated 01.05.2006, 17.05.2006 and 23.05.2006 with the police against respondent nos. 8 and 9. However, it is alleged that despite this, respondent no. 9 for himself and for and on behalf of the appellants as their Power of Attorney holder entered into consent terms with respondent nos. 7 and 8 in F.A. No. 1389 of 2003 and thereby submitted to the decree of eviction. The High Court, by its order dated 13.06.2006, allowed the aforesaid applications filed by respondent no. 9 and also disposed of the said appeals after taking on record the consent terms entered into between respondent nos. 7 and 8 on one hand and respondent no. 9 on the other. Subsequent to filing of the consent terms, the names of the tenants were deleted from the array of the parties. No appeal was, however, filed by any tenant.

11. The appellants filed, before the High Court, three civil applications being Civil Applications Nos. 3628 of 2006, 3629 of 2006 and 3630 of 2009 praying for recall of aforesaid order dated 13.06.2006 alleging that fraud had been played upon the High Court by filing the said consent terms. By a common order dated 12.10.2007, the High Court dismissed the aforesaid applications. Hence the parties are, in appeal, before us.

12. Before we proceed to give an account of the submissions made by the counsel appearing for the parties, we wish to make note of a development that took place after filing of this SLP by 6 the appellants. After this SLP was filed, respondent no. 9 filed a civil application before the High Court praying for setting aside the consent decree dated 13.06.2006 on the ground that respondent no. 8 had failed to perform his obligation under the consent terms, i.e., payment of Rs 1 crore and 15 lakhs to him.

The High Court, by an order dated 06.07.2009, dismissed the said application.

13. We may now direct our attention to the rival submissions made before us by the parties.

14. Dr. Rajeev Dhawan, learned senior counsel appearing for the appellants, submitted that the aforesaid consent terms were filed without the knowledge and consent of the appellants and as such the consent decree was passed without taking the consent of the appellants who were necessary parties. It was also submitted that the purpose behind executing a General Power of Attorney in favour of respondent no. 9 by Budhiya Vesta Patel and, upon his death, by the appellants was to safeguard their property by issuing clear instructions to him. It was the stand of the Dr. Dhawan that the fraudulent act of the 7 respondent no. 9 in arriving at a settlement with the respondent nos. 7 and 8 and consequently filing the same in the High Court without obtaining the consent of the appellants amounted to a breach of the scope of the authority conferred on him by the appellants and thus the consent decree passed by the High Court was a nullity. Dr. Dhawan tried to further assail the validity of the consent terms as also the consent decree on the ground that the terms of the compromise arrived at were iniquitous.

15. It was further submitted that since fraud had been played by respondent no. 9 on the appellants by trying to siphon off the properties belonging to the appellants, the Court has a responsibility to protect the rights and interests of the appellants and therefore the consent decree is required to be set aside and quashed. In the course of his submissions, Dr. Dhawan also referred to the three complaints filed by the appellants with the police against harassment and threats given to them by respondent nos. 8 and 9. Dr. Dhawan pointed out before us that coercion and goon tactics, in addition to fraud, had been employed by respondent nos. 8 and 9 to force the appellants to sign the consent terms.

16. It was further submitted that the High Court erred in dismissing the applications filed by the appellants seeking recall of its earlier order. The High Court failed to see through the monstrous designs of respondent no. 9 even though ample material was placed on record and allegations of fraud were clearly made before the High Court.

17. On the other hand, Mr. Ashok H. Desai, Mr. Dushyant Dave and Mr. Jaydeep Gupta, learned senior counsel appearing for the respondent Nos. 7 and 8 as also respondent No. strongly refuted the aforesaid submissions while bringing to the notice of the Court that, in fact, Budhiya Vesta Patel had himself entered into a Development Agreement dated 12.01.1994 with respondent no. 9 whereby the former transferred his rights, title and interest in the suit property to the latter for a consideration of Rs. 2,00,000/- which was fully paid by respondent no. 9 to the Budhiya Vesta Patel and accepted by him prior to the execution of the said agreement. It 9 was further submitted that the irrevocable Powers of Attorney which were executed in favour of respondent no. 9 by Budhiya Vesta Patel and, upon his death, by the appellants made the acts, which were carried out by respondent no. 9 in the

best interest of the appellants, binding on the appellants and that there existed no valid ground for setting aside the compromise arrived at between the parties and the consent decree passed by the High Court.

18. It was also submitted that as the appellants had failed to establish that under the terms of the Power of Attorney which had executed in his favour by the appellants, respondent No. 9 was not authorized to enter into a settlement of the kind he had entered, it could not be said that there was a conflict of interest between the appellants and respondent No. 9 who was the agent of the appellants.

19. In the light of the rival submissions made by the counsel appearing for the parties, we have perused the entire record before us. There is no dispute with regard to the fact that a Development Agreement dated 12.01.1994 had been entered into between Budhiya Vesta Patel and respondent no. 9 whereby and whereunder Budhiya Vesta Patel transferred his rights, title and interest in the suit premises in favour of respondent no. 1 for a consideration of Rs 2,00,000/-. The records show that the said amount was fully paid and also that the said agreement was registered with the office of the Sub- Registrar. Thus, by entering into the said agreement and accepting the said consideration in full and final satisfaction for the transfer of the suit property in favour of the respondent no. 9, Budhiya Vesta Patel divested himself of his right, title and interest in the suit property. Pursuant to the said agreement, Budhiya Vesta Patel executed an irrevocable Power of Attorney dated 17.02.1994 in favour of respondent no. 9 for a period of 15 years.

20. We may here refer to some of the relevant portions of the aforesaid agreement, which are being reproduced hereinbelow:

"AND WHEREAS it is hereby further agreed by and between the parties hereto that the Developer shall be at full liberty to assign, transfer the benefit of the Agreement in respect of the aid property to party or parties of his choice at such terms and conditions as to be or he may deem fit and proper without any further consultation or consent of the Owner in that behalf

4. The consideration payable by the developer to the Owner for his share right, title, interest has been fixed at Rs. 2,00,000/- (Rupees two lakhs only) and the said consideration has been paid by the Developer to the Owner on or before the execution of these presents (the receipt and payment whereof the Owner doth hereby admit and acknowledge and of and from the same do hereby forever discharge the Developer "

21. Further, a Deed of Confirmation dated 15.12.1995 duly registered on the same date was executed between Budhiya Vesta Patel and respondent no. 9 by which Budhiya Vesta Patel confirmed that the aforesaid Development Agreement was subsisting, valid and in full force and

would be binding on the heirs, executors, administrators and assigns of the parties to the said Development Agreement. This was followed by a Declaration dated 23.08.2001 by Budhiya Vesta Patel wherein he acknowledged the rights, title and interest of the respondent no. 9 over the suit property, the receipt of consideration of Rs 2,00,000/- and extended the period of the said Power of Attorney indefinitely and undertook to ratify and confirm the acts done by respondent no. 9.

22. The appellants have challenged the consent decree passed by the High Court praying that the same should be set aside as it was obtained by playing a fraud upon them. We do not feel persuaded to hold so for a number of reasons which are being set out in the paragraphs below.

23. It is interesting to see the appellants challenge the consent decree passed by the High Court, particularly when each one of them had, upon the death of Budhiya Vesta Patel, executed an Affidavit-cum-Declaration as well as separate Powers of Attorney dated 07.01.2005 in favour of the respondent no. 9. All the said Powers of Attorney were irrevocable and duly registered for valuable consideration. A bare perusal of the said Affidavits- cum-declarations would reveal that the appellants knew that respondent no. 9 was the constituted attorney of their predecessor-in-interest and that the suit property had been transferred to respondent no. 9 for a consideration of Rs 2,00,000/-. It is pertinent to note that in the said Affidavits- cum-Declarations each of the appellants had undertaken to be bound by all the deeds and documents entered into between their predecessor-in-interest and respondent no. 9 and they had also confirmed and ratified the said deeds and documents thereby conferring right on respondent no. 9 to enforce those at all times in the future. In fact, in the said affidavits, the appellants categorically admitted the right of ownership of respondent no. 9 over the suit property.

24. By executing the said Powers of Attorney in favour of the respondent no. 9, the appellants had consciously and willingly appointed, nominated, constituted and authorized respondent no. 9 as their lawful Power of Attorney to do certain deeds, things and matters. The relevant clauses are being extracted hereinbelow: - "6. To sign Petition or present Petitions or Petition, to file suit and to sign and verify claims, written statements, pleadings, applications, returns, and to appear, act in any Court- Civil, Criminal, Court Receiver and /or Revenue, original or appellate or Revisional or before any competent authority, Officer, or Officer for in respect of or in connection with the aforesaid and with buildings etc. thereon and/or any other proceedings, suit or appeal in connection with the management and superintendence of my said lands for any purpose whatsoever necessary.

7. To compromise, compound and/or negotiate and settle any dispute or disputes and refer the same to Arbitration."

25. It is thus crystal clear that the appellants had not only confirmed and ratified the deeds and documents entered into between their predecessor-in-interest and respondent no. 9 but also constituted respondent no. 9 as their lawful attorney authorizing him, inter alia, to sign petitions,

appear before the Courts and also to compromise or compound disputes. In fact, the appellants are estopped from questioning the acts done by respondent no. 9.

26. The learned counsel appearing for respondent No. 7 placed reliance on a decision of this Court in *Jineshwardas (D) by LRs. SCC 372* to argue that the party executing the Power of Attorney is bound by the acts of the Power of Attorney holder and that the Court could accept a compromise terms entered into by the Power of Attorney holder on behalf of the parties and that such a compromise would be a valid compromise.

27. We are of the considered view that in the aforesaid circumstances, the appellants could not be said to have any right to assail the consent decree passed by the High Court. We do not think it proper for the appellants to question and challenge the consent terms signed and submitted by respondent no. 9 on their behalf which were duly accepted and acted upon by the High Court and which we also find to be just and reasonable. The fact that under the consent terms the appellants were paid a sum of Rs 10,00,000/- when they were not entitled to the same also reinforces our conviction that the consent terms arrived at were just.

28. As noted by us in one of the preceding paragraphs, the predecessor-in-interest of the appellants had nothing remaining in the suit property after he had transferred the same under the said development agreement to respondent no. 9 for a full and final consideration of Rs 2,00,000/-. Thus, the predecessor-in interest of the appellants had no right, title or interest subsisting in the suit property. The appellants are the legal heirs of Budhiya Vesta Patel and as such they could not have claimed a title better than that of Budhiya Vesta Patel. The 16 predecessor-in interest of the appellants had relinquished his title, right or interest over/in the suit property in favour of respondent no. 9. A general proposition of law is that no person can confer on another a better title than he himself has. [Reference in this regard may be made to the decisions of this Court in *Mahabir Gope v. Harbans Narain Singh* 1952 SCR 775; *Asaram v. Mst. Ram Kali* 1958 SCR 986 and *All India Film Corporation Ltd. v. Raja Gyan Nath* (1969) 3 SCC 79.]

29. It is also the case of the appellants that there was no due compliance with the provisions of Order 23 Rule 3. The counsel appearing for the appellants submitted that responsibility of the Court is to see that the consent terms have been arrived at in satisfaction of all the parties and that injustice is not caused to any party. The counsel further submitted that one of the modes by which Order 23 Rule 3 ensured this was by requiring the compromise agreement to be in writing and signed by the parties.

30. This was strongly refuted by the counsel appearing for the respondents stating that it is well settled that under Order 23 Rule 3 of the Code of Civil Procedure, 1908, a compromise may be signed by the counsel or the Power of Attorney holder.

Counsel for the respondents referred to and relied upon the Bank of India and Others (1992) 1 SCC 31 where it was held thus:

"39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non- resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated."

31. It is settled position of law that the burden to prove that a compromise arrived at under Order 23 Rule 3 of the Code of Civil Procedure was tainted by coercion or fraud lies upon the party who alleges the same. However, in the facts and circumstances of the case, the appellants, on whom the burden lay, have failed to do so. Although, the application for recall did allege some coercion, it could not be said to be a case of established coercion. Three criminal complaints were filed, but the appellants did not pursue the said criminal complaints to their logical end.

32. It is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion there must be a) an express allegation of coercion or fraud and b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars. In Bishundeo Narain v. Seogeni Rai reported in 1951 SCR 548 it was held thus:

"27. We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

28. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid.

There can be no departure from them in evidence. General allegations are insufficient even to

amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4 of the Civil Procedure Code."

33. In the present case, the appellants have, however, failed to furnish the full and precise particulars with regard to the alleged fraud. Since the particulars in support of the allegation of fraud or coercion have not been properly pleaded as required by law, the same must fail. Rather the Affidavits-cum- Declarations executed by the appellants indicate that no coercion or fraud was exercised upon the appellants by respondent no. 8 or 9 at any point of time and thus the consent decree cannot be said to be anything but valid.

34. In this regard, we wish to refer to the judgment of this Court in the case of Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke reported in AIR 1954 SC 352 wherein this Court while dealing with the nature of a consent decree held in para 9 as under:

"9. The obvious effect of this finding is that the plaintiff is barred by the principle of res judicata from reagitating the question in the present suit. It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of res judicata.

35. We may also refer to the decision of this Court in Loonkaran v. State Bank, Jaipur reported in (1969) 1 SCR 122 where interpreting Section 202 of the Indian Contract Act, this Court held thus:

"Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such agent. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked."

36. The appellants also alleged that they had revoked the Powers of Attorney executed by them in favour of the respondent no. 9 by filing complaints with the police. We are of the considered opinion that this contention of the appellants is devoid of merit. Although there is no denying the fact that three police complaints had been filed on three different dates with the police against the alleged harassment and threats by respondent nos. 8 and 9, it is difficult to understand how the Powers of Attorney executed by the appellants or their predecessor-in-interest stood revoked. The record of the case reveals that each of the complaints was filed by a separate person - the first complaint was filed by the appellants themselves, the second by an Advocate and the third by one

Narendra M. Patel, who is himself a builder. It is significant to note that all these complaints came to be filed when said Narendra M. Patel came into the picture. Further, it is important to take note of the fact that all the Powers of Attorney executed in favour of respondent no. 9 as also all the deeds and documents entered into between the predecessor-in-interest of the appellants and respondent no. 9 were duly registered with the office of the Sub-Registrar. Neither any document nor any of the Powers of Attorney was ever got cancelled by the appellants.

37. The appellants also further contended before us that they had revoked the Powers of Attorney executed in favour of respondent no. 1 by executing a fresh Power of Attorney in favour of said Narendra M. Patel. It is significant to note that despite filing of the complaints with the police nothing was done by the appellants to bring the allegations contained in the said complaints to the notice and knowledge of the High Court although that could have been comfortably done had the appellants wished to do so. The Power of Attorney in favour of said Narendra M. Patel was executed by the appellants on 26.04.2006 whereas the first complaint was filed with the police on 01.05.2006 and the consent terms were entered into on 22.05.2006. The consent decree was actually passed by the High Court on 13.06.2006.

38. The appellants, thus, had ample time and opportunity with them to bring the said allegations to the notice and knowledge of the High Court at any time between 26.04.2006 and 13.06.2006. The appellants had considerable amount of time available with them. As noted earlier, with regard to the complaints filed, the appellants did not take any follow up action to bring them their logical end.

39. It is crystal clear that the appellants chose not to avail an opportunity which was available to them. In such circumstances, it will not be appropriate to say that the deeds and documents as well as the Powers of Attorney executed in favour of respondent no. 9 stood revoked merely by filing complaints with the police. We cannot lose sight of the fact that a registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure.

40. In any event, if we direct our attention to the contents of the Power of Attorney executed by the appellants in favour of said Narendra M. Patel, we find that the stand taken by the appellants throughout that they had, by executing a Power of Attorney in favour of Narendra M. Patel, revoked the Powers of Attorney executed in favour of respondent no. 9 to be baseless.

In fact, a look at the terms of the Power of Attorney executed in favour of Narendra M. Patel would show to the contrary. The relevant portion of the said Power of Attorney is being extracted hereinbelow: -

"6. To correspond with all the body cooperate for otherwise including government and semi-government bodies and Municipal Corporation of Greater Bombay and make applications etc. in respect of any of the matters pertaining to the said the property and the said premises.

AND FURTHER that these presents and the powers hereby given shall in no wise extend or be deemed or continued to extend to repeal, revoke, determine or make void any other power or powers of attorney at any time heretobefore or hereafter given or executed by us to or in favour of any other person or persons for the same or any distinct or other purpose or purposes but such power or powers shall remain and be of the same authority, validity and power, force and effect as if these presents had not been made."

(emphasis supplied)

41. Before we part with the discussion, we wish to make note of the fact that respondent no. 9 has, in the counter-affidavit filed in this Court, prayed for declaring the consent terms to be cancelled and annulled on the ground that the consent terms have been rendered infructuous due to the failure of respondent no. 8 to perform his obligations as per the consent terms. We have a strong feeling that a money game is being played. Since the stakes are high, each party before us is trying to draw the maximum advantage. To us, there seems to be no other reason for respondent no. 9 having adopted such a course of action.

42. In view of the foregoing discussion, we are of the considered view that entering into the compromise as also filing of the same in the High court of Bombay by respondent no. 9 on behalf of the appellants was without any fraud and well within the scope of his authority. Accordingly, we find no merit in the present appeals and the same are hereby dismissed. There will be no order as to costs.