

RAJASTHAN HIGH COURT

Amina Begum

Vs.

Mohd.Ramzan

Civil Revn.Petn. No. 229 of 2004

(PrakashTatia, J.)

20.09.2004

ORDER

PrakashTatia, J.

1. Heard learned counsel for the petitioner and learned counsel for the respondent Nos. 1 and 2 plaintiffs. None appeared for rest of the respondent.
2. Brief facts of the case are that the plaintiffs-respondents No. 1 and 2- Mohd. Ramzain and Shagir Ahmed instituted a suit for cancellation of the sale deed dated 18th May, 1998. The said sale deed was alleged to have been executed by one ShriJannat Begum in favor of Amina Begum. Amina Begum also instituted a suit for injunction against these very plaintiffs-Mohd. Ramzan and Shagir Ahmed. It is alleged that during the pendency of the suits, the plaintiffs-respondent Nos. 1 and 2 executed an agreement for sale of the disputed property in favour of one Shahabuddin on 2nd Dec., 2002 after taking consideration of Rs. 10,00,000/- from Shahabuddin. It is also alleged that a general power of attorney was also executed in favour of Shahabuddin by the plaintiffs-respondents No. 1 and 2 on the same day that is on 2nd December, 2000.
3. During the pendency of the suit, an application was submitted by the said power of attorney-holder Shahabuddin in the trial Court stating therein that the matter has been settled between the parties and the plaintiffs did not want to proceed with the suit as no dispute survives after the settlement. It is also mentioned that the dispute arose because of provocation of some other persons and now there is no dispute. After admitting certain facts relating to the passing of the property in favor of the petitioner-defendant Amina Begum, the plaintiffs through their power of attorney-holder Shahabuddin made a prayer only to the effect that the suit of the plaintiffs may be

dismissed as withdrawn and the parties shall bear their own costs.

4. An application for withdrawal of the suit was also filed in the suit, which was filed by Amina Begum for seeking injunction on the basis of her alleged title flowing from the sale deed dated 18th May, 1998.

5. The trial Court vide order dated 6th May, 2004 rejected both the applications filed in the cross suits. Amina Begum challenged the order dated 6th May, 2004 by filing a revision-petition before this Court, which was registered as *Smt. Amina Begum v. Mohd. Ramzan and another*.¹The above revision-petition was decided by this Court vide order dated 16th Aug., 2004 after hearing the respondents No. 1 and 2-plaintiffs, respondents Nos. 1 and 2 in present litigation. In the above revision-petition, this Court after hearing the parties held that the power of attorney dated 2nd Dec., 2002 is a general power of attorney and not a special power of attorney as same is not related to a single transaction and the contents of the power of attorney also suggest that Shahabuddin is classified as general power of attorney. The Court also on the facts of this case held that the power of attorney has not been cancelled in accordance with law. This Court in the above referred revision-petition held that since the plaintiff-Amina Begum wants to withdraw her suit and she has unqualified right to withdraw the suit, therefore, the Court below committed illegality in rejecting the application for withdrawal of the suit filed by Smt. Amina Begum. The Court in addition to the above held that, the question whether Shahabuddin could have compromised on behalf of the defendants-respondents cannot be examined and decided and that matter is left open to be decided at appropriate time by appropriate Court because of the simple reason that the application for withdrawal of the suit was being simply allowed.

6. According to learned counsel for the petitioner, in view of the decision given by this Court in above referred revision-petition dated 6th Aug., 2004, there is finding of the fact against the respondents Nos. 1 and 2-plaintiffs that they executed power of attorney in favor of Sahabuddin and it was not cancelled in accordance with law. The power of attorney is general power of attorney and not special power of attorney. The dispute about compromise was left open by the High Court. In this case also the same power of attorney- holder submitted the application for withdrawal of the suit on behalf of the respondents-plaintiffs. In view of the above, the order passed by the Court below rejecting the application filed by the said power of attorney Sahabuddin on behalf of the respondents Nos. 1 and 2-plaintiffs deserves to be set aside and the suit of the plaintiffs is required to be dismissed as withdrawn.

7. Learned counsel for the respondents vehemently disputed any agreement between the plaintiffs-respondents and Sahabuddin and also disputed the power of attorney and, thereafter, submitted that even from the said power of attorney, Sahabuddin has not been given any power to withdraw the suit. He has been given only power to proceed with the suit and prosecute the suit. In view of the above reasons and in view of the fact that this Court, in the above referred revision-petition has not recorded any finding with respect to any settlement between the parties, therefore, this Court is not either bound by the decision nor there exists any reason for holding that the plaintiffs-respondents have withdrawn their suits through their power of attorney by moving an application because of any compromise between the parties.

8. I considered the submissions of learned counsel for the parties and perused the relevant documents. A bare perusal of the application filed by Sahabuddin for withdrawal of the suit filed before the trial Court, it is clear that the application has been filed by Sahabuddin for and on behalf of the plaintiffs- respondents Nos. 1 and 2. In that application after narrating the facts that how litigation started and how it has come to an end and after admitting the claim of the said Amina Begum, the only prayer made before the Court was to the effect that the plaintiffs want to withdraw the suit. This prayer in itself is clearly and unconditional prayer for withdrawal of the suit only. Since the plaintiffs have not sought any decree in their favor on the basis of compromise and sought only withdrawal of the suit, the scope of the enquiry for deciding this application is entirely different from any application filed for obtaining the decree from the Court on the basis of compromise. For passing decree on the basis of compromise as per R. 3 of Order 23, the Court is required to satisfy itself that the suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties. The Court is further given power to record the compromise even in those cases where one of the party denies the adjustment or satisfaction of the claim, by adjudicating upon the question raised by the parties. The explanation appended to R. 3 of Order 23 further specifically provides that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule. Contrary to it, Rule 1 of Order 23 permits the plaintiff to abandon his claim against all or any of the defendants and further permits the part withdrawal of the claim. It has been held in so many cases that right to withdrawal a suit without any liberty for institution of the fresh suit is an unfettered right of the plaintiff unless any right already accrued to the other party in the suit.

9. As stated above, in this case, since there is no prayer for recording compromise and for passing decree in the light of compromise or settlement, it is an application for simple withdrawal of the suit. Therefore, the fact of compromise may be in the mind of the plaintiff's seeking withdrawal of the suit, but was not of much relevance for the Court as parties had not sought any relief on the basis of that compromise.

10. In view of the decision given by this Court in revision-petition referred above, that the general power of attorney was executed by the respondents Nos. 1 and 2 in favor of Sahabuddin and that power of attorney has not been cancelled in accordance with law by the plaintiffs-respondents Nos. 1 and 2, are binding and question whether parties compromised or not is not relevant.

11. The question survives for determination is that whether any power was given to the said Sahabuddin so as to authorize him to withdraw the suit instead of proceeding with the suit?

12. Learned counsel for the petitioner vehemently submitted that the power of attorney is a general power of attorney and, therefore, the power of attorney had right to act on behalf of the plaintiffs for all purposes, which includes either to proceed with the suit or to withdraw the suit. It is also submitted that the word has been used in the power of attorney indicating that no restriction is in the power of attorney so as to deprive power of attorney holder from taking a decision, how to get the suit decided, which includes decision of suit by withdrawal of suit itself.

13. In addition to the above, it is also submitted that in any case, if it is found that there is no specific mention of giving power to withdraw the suit in the power of attorney, still the power of attorney, which is a general power of attorney contains specifically that the plaintiffs have given a general power to Sahabuddin empowering him to deal with the property in question also in addition to conduct the case. Looking to that wide power given to power of attorney, he had right to take any step in relation to property also. If Sahabuddin submitted an application for withdrawal of the suit, he exercised his power granted by the power of attorney for dealing with the property.

14. Learned counsel for the respondents reiterated what he has stated in his earlier arguments but with additional ground that the power to deal with the property does not mean that on that basis the power of attorney can submit an application for withdrawal of the suit though relating to the only property for which power of attorney was given.

15. I considered the submissions of learned counsel for the parties. So far as whether

the power given for "Pairvi" of the suit by the plaintiffs to Sahabuddin includes right to withdraw the suit, need not to be decided in this case in view of the fact that in case it is held that the power of attorney given by the plaintiffs to Sahabuddin containing a specific power to deal with the property, means a power given to the power of attorney to take a decision relating to property anywhere including in Court proceedings.

16. In the background of these facts, it appears that the power of attorney was given to Sahabuddin giving two rights; one to deal with the case including right of appointing the advocate and submit the application or revision whatever may be, but it is relating to the case. In the second part, the authority has been given to Sahabuddin to deal with the property itself. The power of attorney is a general power of attorney and has not been cancelled is a finding already recorded by this Court in S.B. Civil Revision Petition No. 177/2004 and is binding up to the plaintiffs-respondents Nos. 1 and 2. No restrictive words have been used in deed of power of attorney so far as the power for dealing with the property in question is concerned. In such fact situations, any action taken affecting the property is certainly an exercise of right given under the power of attorney only. It cannot be said that by general power of attorney with a right to deal with the property, permit power of attorney to deal with the property in any Government department only or anywhere else except in the Court. The property may be dealt with at many places in many forms including in the Court. By entering into compromise or proceeding with the suit and by obtaining the judgment, decree or order or settling the matter affecting the property itself, the power of attorney only deals with the property. Therefore, in the facts of the case, it can be safely held that the power of attorney gave two powers to Sahabuddin; one for prosecuting the case and another for dealing with the property. And within his power to deal with the property, he merely submitted an application for unconditional withdrawal of the suit, which was well within his authorization given under the power of attorney.

17. The trial Court in its order dated 6th May, 2004 observed that the application has not been signed by the plaintiffs and the plaintiffs denied the facts mentioned in the application and they submitted that they are not agreeing with the agreement. The trial Court failed in reading latter part of the power of attorney. The trial Court also failed to decide whether this is a general power of attorney or a special power of attorney. Not only this, but the Court below has even recorded the finding that the application for withdrawal of the suit dated 25th Sept., 2003 is result of the collusion between Sahabuddin and the plaintiffs without there being occasion for holding so, as an application for unconditional withdrawal of suit on behalf of plaintiffs at the most the

trial court could have inquired into fact whether alleged power of attorney is in fact power of attorney or not but that has not been done. After decision on issues by this Court in Revision Petition No. 177/2004, issue, whether power of attorney was given or not, is no more open. The trial Court further observed that in the application, Sahabuddin has admitted against the interest of the plaintiffs and in favour of the petitioner-Amina Begum to harass the plaintiffs and for creating confusion only and by this, the process of the Court was abused. The trial Court rejected the application with costs of Rs. 3,000/-. As stated above, all findings were recorded by the Court below without there being any material on record and merely on the basis of unwarranted conjectures and assumptions only. If the Court below was of the opinion that in the light of the power of the attorney, the power has not been given to Sahabuddin to withdraw the suit, then the application could have been rejected on this ground but there was no occasion for the Court below to make unwarranted and stigmatic observation in the order against any person without holding an enquiry by giving parties to prove their allegation.

18. In view of the above discussions, this revision-petition of the petitioner deserves to be allowed. At this stage, it may be observed that this Court has not determined any rights of any of the party under any compromise or agreement because it is beyond the scope of the application, which was submitted for withdrawal of the suit only. Whether the agreement was executed by the plaintiffs in favor of Sahabuddin and any right accrued to Sahabuddin under the agreement dated 2nd Dec., 2002, whether any consideration was paid by Sahabuddin and received by the plaintiffs is also foreign to scope of this litigation. The only question before this Court in this revision-petition was whether the suit was sought to be withdrawn by a competent person or not and the competency of that person has already been decided by this Court in S.B.C.R.P. No. 177/2004, which is binding upon the parties and also upon this Court.

19. In view of the above discussions, the revision-petition is allowed. The impugned order dated 6th May, 2004 is set aside. The application filed by Sahabuddin on behalf of the plaintiffs for unconditional withdrawal of the suit is allowed. Hence, the suit of the plaintiff is dismissed as having been withdrawn.

Revision allowed.

Cases Referred.

1. 2005 AIR(Raj) 41