

## RAJASTHAN HIGH COURT

Prahlad

Vs.

Laddevi

S.B. Civil First Appeal No. 454 of 2006.

(R.S. Chauhan, J.)

01.03.2007

### JUDGMENT

**R.S. Chauhan, J.**

1. This appeal arises out of the judgment dated 31.5.2006 passed by the Additional District Judge (Fast Track) No. 4, Tonk whereby the learned Judge has decreed the suit in favor of the plaintiff-respondents and has cancelled the sale deed dated 6.5.2003 executed by the defendant No. 1 in favor of the defendant No. 2 and has restrained the defendants from alienating the disputed land by way of permanent injunction. For the sake of brevity, the original defendant Nos. 1 and 2 in the suit, shall be referred to as 'the appellants' and the original plaintiff-respondent Nos. 1 to 8 in the suit, shall be referred to as 'the respondents.'

2. The brief facts of the case are that the respondent Nos. 1 to 8 are the legal heirs of Late Milap Chand Jain. Mr. Milap Chand Jain was having an agriculture land, bearing Khasra No. 296/2/2, measuring six bighas and eight biswas, situated at Village Mohammedpura, Tehsil Tonk. Mr. Jain executed a power of attorney in favour of the appellant No. 1 on or about 28.5.1997 in regard to the aforementioned land. Admittedly, Mr. Jain died on 21.10.1997. However, despite his death on 21.10.1997, the appellant. No. 1 executed a sale deed in favor of the appellant No. 2, who happens to be his wife on 6.5.2003. Since the respondents were aggrieved by the said sale deed, they filed a civil suit for cancellation of the sale deed and prayed for permanent injunction against the appellants.

3. The appellants filed their written statements and denied all the averments made in the plaint. According to the appellants, Mr. Jain had executed the power of attorney on 28.5.1997. The appellant further claims that on 28.5.1997 Mr. Jain had also entered

into an agreement to sell with regard to the disputed land. He had also received a sale consideration of Rs. 1 lac from the appellant No. 1. Since he had received a sale consideration, the possession of the land was also given to the appellant No. 1. The appellants further claimed that they were not aware of Mr. Jain's death. It was further pleaded that on 6.5.2003 the appellant No. 1 had executed the sale deed in favor of the appellant No. 2 in a *bona fide* manner. Therefore, the sale by the appellant Nos. 1 and 2 was legal and valid.

4. Based on the pleadings of both the parties, the learned trial Court framed as many as five issues. In order to support their case, the respondents examined Mr. Ashok Kumar and filed three documents. On the other hand, the appellants examined four witnesses and filed agreement to sell as a document. After going through the oral and documentary evidence, vide judgment and decree dated 31.5.2006, the suit was decreed in favor of the respondents, as mentioned above. Hence, this appeal by the appellants before this Court.

5. Since the appeal has already been admitted and since the arguments have been heard extensively, upon the consent of both the parties, this case is finally decided by this judgment.

6. Mr. Praveen Jain, the learned counsel for the appellants, has strenuously argued that the appellant No. 1 was the power of attorney holder for Mr. Jain. Therefore, under the said power, he could validly sell the land to the appellant No. 2. Hence, the sale was a *bona fide* one. Moreover, the land was already transferred by Mr. Jain through an agreement to sell dated 28.5.1997 to the appellant No. 1. Therefore, the appellant No. 1 was an absolute owner of the said land. Hence, he has a right to sell the land to his wife, the appellant No. 2.

7. On the other hand, Mr. O.P. Jain, the learned counsel for the respondents, has argued that the title of the land is not transferred through an agreement to sell. Therefore, through the agreement to sell, the appellant No. 1 did not become the absolute owner of the land. Moreover, according to the sale deed dated 6.5.2003, the appellant No. 1 has sold the land to the appellant No. 2 not in his capacity as the owner of the land, but in his capacity as a power of attorney holder of Mr. Jain. Furthermore, since Mr. Jain had already expired on 21.10.1997, the power of attorney granted by him, could not be operative after his death. Therefore, on 6.5.2003 the appellant cannot be treated as a power of attorney holder of Mr. Jain. Lastly, that according to the appellant No. 1 himself, he did not receive any consideration for the

sale of the land to the appellant No. 2. Therefore, the contract is void *ab-initio*. He has, thus, supported the impugned judgment and decree.

8. This Court has considered the rival contentions of both the learned counsels for the parties and has perused the impugned judgment and decree.

9. A power of attorney granted by the donor to the donee is operative and effective only during the lifetime of the donor. The donor and donee stand in relationship of master and agent. Since the actions done by the donee are deemed to be actions done on the part of the donor, naturally such a power of attorney cannot be operative or be effective after the demise of the donor. Therefore, the power of attorney granted by Mr. Jain on 28.5.1997 came to an end on 20.10.1997 upon his demise.

10. It is also not conceivable that the appellants did not know about the death of Mr. Jain. For, the power of attorney is given to a person who is person of truth. Moreover, according to the testimony of respondent No. 2, Ashok Kumar, the land in dispute is used for agricultural purpose; it has been given to the appellant No. 1 on a sharing basis. Thus, the appellant No. 1 and the respondents share a close relationship with each other. Therefore, the contention raised by the appellant No. 1 that he was unaware of the death of Mr. Jain is unacceptable. Since on 6.5.2003 the power of attorney dated 28.5.1997 was no longer in effect, the appellant No. 1 could not have signed the sale deed on 6.5.2003 as the power of attorney holder of Mr. Jain. For, obviously on 6.5.2003 he had no such power of attorney on behalf of Mr. Jain.

11. Although the agreement to sell dated 28.5.1997 has been produced by the appellants before the trial Court, but an agreement to sell does not transfer the title of the property to the appellant No. 1. The learned trial court has correctly concluded that on the basis of the agreement to sell, the appellants could have filed a suit for specific performance against the respondents. But they have failed to do so. Therefore, the appellant No. 1 could not have sold the land to the appellant No. 2 claiming himself to be the sole owner of the said land. The trial Court has further correctly noticed that according to the sale deed dated 6.5.2003, the appellant No. 1 has sold the land not in his capacity as the owner, but in his capacity as the power of attorney holder for Mr. Jain. Hence, the trial Court has legally and validly passed the impugned judgment.

12. The trial Court has also correctly noticed that according to the testimony of the appellant No 1, he has admitted in his cross-examination that although the sale deed claims that he has received a monetary consideration of Rs. 1.5 lacs, but he has not received any such consideration. According to Section 25 of the Contract Act, 1812, a

contract without a consideration is a void. Therefore, there is neither any illegality nor any perversity in the impugned judgment.

13. In the result, there is no force in this appeal. The appeal is without any merit. It is, hereby, dismissed. There shall be no order as to costs.

Appeal dismissed.