

CIVIL REVISION

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: August 23, 2010.

C.O. No. 3111 of 2009

Parulbala Das

Versus

Champa Rani Dasi & Anr.

Points:

Power of attorney- Registered on a stamp paper of Rs.50/- without creating any interest whether comes within the mischief of Entry No.48 (f) of the Indian Stamp Act, 1899 and requires further registration-Indian Stamp Act, 1899 Entry No. 48(f)

Facts:

Plaintiff filed a suit for recovery of possession. In that suit, he filed a petition for admitting the power of attorney by making the same as exhibit. The power of attorney was executed by the plaintiff and it was registered with the court fee of Rs.50/-. It was done between the close relations and for that reason the plaintiff has specifically stated that no consideration was passed for execution of such power of attorney. The attorney was directed to make deposit of the sale proceed in the bank account of the plaintiff. The application was rejected by the Trial Court.

Held:

The power of attorney does not itself create, declare, limit, assign, extinguish any right etc. and that it shall merely create a right to execute another document only. In such a situation, according to decision reported in AIR 1952 SC 153 the said document requires registration with the requisite stamp papers. It was done accordingly. So, it does not require further impounding

at all. The power of attorney has been properly registered on proper stamp paper.

Paras 4 & 5

Cases cited:

AIR 1952 SC 153; Satish Kumar & ors Vs. Surinder Kumar & ors, AIR 1970 SC 833

For the Petitioner: Mr. Mihir Das,

Mr. Prasanta Kr. Banerjee,

Mr. Indranil Nandi.

For opposite parties: Mr. Kajal Roy,

Mr. Abhisek Banerjee.

Prasenjit Mandal, J. : This application is at the instance of the plaintiff and is directed against the order no.25 dated June 10, 2009 passed by the learned Civil Judge (Junior Division), First Court, Chandannagar in Title Suit No.225 of 2006. By the impugned order, the learned Trial Judge has directed impounding of a power of attorney. Being aggrieved, this application has been preferred.

2. The short fact is that the plaintiff filed the suit for ejectment after revocation of licence against the defendants. She is the owner and possessor of the premises in suit by way of inheritance after death of her husband. The defendant no.1 is a close relation of the elder brother of the plaintiff's husband and for that reason there was good relationship between the plaintiff and the defendant no.1. Thereafter, the plaintiff asked the defendant no.1 to quit and vacate the suit property but she did not comply with the said request. In the meantime, the defendant no.1 inducted the defendant no.2 in the suit premises and so his status is nothing but a trespasser or a licensee

under a licensee. But the defendants did not vacate the premises in suit. So, the suit was filed for recovery of possession. In that suit, plaintiff filed a petition for admitting the power of attorney by making the same as exhibit and that application was rejected by the impugned order. Being aggrieved, this application has been filed by the plaintiff.

3. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the so-called power of attorney was executed by the plaintiff and it was registered with the court fee of Rs.50/-. It was done between the close relations and for that reason the plaintiff has specifically stated that no consideration was passed for execution of such power of attorney. The attorney was directed to make deposit of the sale proceed in the bank account of the plaintiff. The learned Trial Judge did not agree to the prayer of the plaintiff of marking the said document as exhibit on the ground that the said document comes within the mischief of Entry No.28 (f) of the Indian Stamp Act, 1899. This power of attorney had been executed and registered. It has been specifically stated that no consideration money was passed.

4. On perusal of the power of attorney, it appears that this power of attorney does not itself create, declare, limit, assign, extinguish any right etc. and that it shall merely create a right to execute another document only. In such a situation, according to decision reported in AIR 1952 SC 153 the said document requires registration with the requisite stamp papers. It was done accordingly. So, it does not require further impounding at all.

5. The learned Advocate for the opposite party refers to the decision of *Satish Kumar & ors Vs. Surinder Kumar & ors. Reported in AIR 1970 SC 833* and submits that according to this decision the document requires impounding. With due respect to him, I find that this relates to an award and

it lays down when an award is to be registered or when it becomes enforceable on the basis of a decree passed by a competent court. Therefore, this is not at all applicable in the instant situation. Here, I may record that power of attorney has been properly registered on proper stamp paper.

6. This being position, I am of the view that the learned Trial Judge has failed to exercise his jurisdiction in not considering the document as exhibit. The said deed does not come within the purview of Entry No.48 (f) under the Indian Stamp Act, 1899. Therefore, the order impugned cannot be sustained. It is set aside.

7. The application filed by the plaintiff dated May 5, 2009 for marking the said document as exhibit stands allowed. The learned Trial Judge shall mark the power of attorney as exhibit.

8. With such order, this application is allowed.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

