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Ravi Sharma Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-26-1991

Reported in : 46(1992)DLT629

Judge : Usha Mehra, J.

Acts : Advocate Act, 1961 - Sections 32 and 33; Code of Civil Procedure (CPC), 1908 - Order 3, Rule 1

Appeal No. : Interim Application No. 2711 of 1990 and Suit No. 3106 of 1988

Appellant : Ravi Sharma

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : B.C. Mittal and; S.K. Kaul, Advs

Judgement :

Usha Mehra, J.

(1) The suit on behalf of Ravi Sharma was filed by Shri Hem Chand Mittal, special attorney. The suit is against Delhi Development Authority for settlement of accounts and declaration. The point raised was whether the attorney could after the institution of the suit plead the same in person on behalf of the plaintiff.

(2) To understand this point, brief facts of the case are that Ravi Sharma was allottee of flat No. 2087 in Pocket-11, Sector-D, Vasant Kunj Self Financing Scheme of Delhi Development Authority (hereinafter called the DDA). Mr. Ravi Sharma authorised his father-in-law, Sh. Hem Chand Mittal to institute this suit as his lawful attorney. The plaintiff who had registered himself for category Ii (two bed rooms) also was required to deposit a sum of Rs.10,000.00 with the DDA. When the procedure for allotment of flats was commenced plaintiff filed an application for allotment of category Ii plot. He also indicated his preference of different localities and schemes. He was declared successful in the draw of lots as on 14th December, 1983 for allocation of flat on Third floor, Pocket-11, Sector D, Vasant Kunj. Fifth and final Installment was also deposited. Along with that he enclosed the documents required. Defendant misappropriated the funds of the plaintiff because he did not start the work at site of Sector-D, Vasant Kunj inspire of having received the Installments from the plaintiff. The defendant instead of adhering to the terms and conditions threatened to cancel the allotment. Forced by the circumstances be filed the suit.

(3) Notice was issued to the defendant/DDA and Counsel for the defendant took up the plea that special attorney was permitted to verify and institute the suit but he has no authority to plead the same.

(4) I have heard Mr. H.C. Mittal, attorney of the plaintiff in person and Mr. S.K. Kaul, Counsel for the DDA. Mr. Kaul in support of his contention has placed reliance on the decision of the Andhra Pradesh High Court in the case of Hari 0m Rajender Kumar and Others v. Chief Rationing Officer of Civil Supplies A.P.Hyderabad, reported in : AIR 1990 AP340 The facts of this case were that a person filed a writ of Mandamus against the Chief Rationing Officer. They were represented by their general power of attorney holder. At the time of the admission of the writ petition the petitioners filed an application seeking permission to allow the general power of attorney holder to appear an attorney in person to plead their case. The application was allowed. At that time the respondents were not represented nor had the opportunity to oppose the same. Subsequently when the matter came up before the Court a doubt was raised whether the general power of attorney holder was competent to plead the case of the petitioner. The said

general power of attorney holder had been appearing frequently in certain cases on behalf of various parties and pleading their cases. The Court after considering various provisions of the Advocates Act 1961 came to the conclusion that a non-Advocate cannot be permitted to address the Court on the strength of the power of attorney. The provisions of Order 3 Rule 1 Civil Procedure Code was also considered and it was opined that to permit appearance, application for arguing in any Court by a power of attorney holder on behalf of a principal is subject to the provisions of the Advocates Act, 1961 in particular Sections 32 and 33. It was in this background that the application seeking permission to plead the case was dismissed.

(5) So far as the principal of law is concerned there cannot be any quarrel with the same But taking into consideration the facts of the present 631 case the judgment of the Andhra Pradesh High Court is not applicable. In the present case the suit leas been filed by Mr. Hem Chand Mittal on the basis of a special power of attorney executed in his favor. In fact he steps into the shoes of the plaintiff because suit is filed through him. thereforee his position is different from that of the general power of attorney holder as in the case of the Andhra Pradesh. thereforee these two positions being different it cannot be said that Mr. H C. Mittal cannot plead the case. As already observed above he has filed the suit in fact suit is instituted, signed and verified by him. thereforee in fact he is pleading his own case as attorney of Sh. Ravi Sharma. Hence there is a difference between pleading one's own cause and that a case of other person as general attorney. It is not the case of the Dda that Mr. H.C. Mittal has been pleading the case of various other parties as was the case in Andhra Pradesh. Ravi Sharma happens to be the son-in-law of H.C Mittal and thereforee he has filed the suit on behalf of his son-in-law on the strength of the power of attorney executed by Sh. Ravi Sharma who happens to be not in India.

(6) thereforee for all these reasons I find that Mr. H.C. Mittal Is competent to plead the case. The objection of the Dda is accordingly.

(7) Now list this application for arguments before the Deputy Registrar on 2nd Dec., 1991.

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