

Prem Raj Vs. Babu Ram

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Court : Delhi

Decided On : Feb-26-1991

Reported in : 1991RLR458

Judge : P.K. Bahri, J.

Acts : [Indian Contract Act, 1872](#) - Sections 202

Appeal No. : Interim Application No. 5639 of 1989 and Suit No. 2043 of 1989

Appellant : Prem Raj

Respondent : Babu Ram

Advocate for Pet/Ap. : R.K. Saini,; Sanjiv Sachdev and; Mukul Rohatagi, Advs

Judgement :

P.K. Bahri, J.

(1) [ED facts : Plaintiff obtained plot no. 5/60, W.E.A., Ramjas Road on 27.8.43 and built upon it. Pff. agreed to sell it to Defts. 1 & 2 on 9.2.81 & 14.4.81. He executed two Power-of- Attorneys in favor of Deft. 3 (wife of Deft. 1). Deft. 3 then sold the properly to Defts. 1 & 2 who then sold the same to Deft. 4. Pff. then by a Regd. notice cancelled the Poa in favor of Deft. 3. He then sued Defts. alleging that Dda had refused permission to sell and agreement became frustrated and he was entitled to forfeit money received and possession be restored to him. He filed

an application for interim injunction]. After detailing above, order is :

(2) The learned counsel for the plaintiff has argued that the pff. had cancelled the power of attorneys executed in favor of deft. No. 3 and thus, deft. No. 3 had no legal right to execute the sale deed in favor of defts. 1 & 2 acting as attorney of the pff. It is not disputed before me that the entire sale consideration had been received by the pff and the pff. had transferred possession of the plot in question to deft. 1 & 2 at the time of execution of the agreements for sale on receipt of the sale consideration. The learned counsel for the pff. has drawn my attention to sub clause (vii) which lays down ; 'Without first obtaining such consent to sub-divide the said land or to part with the possession or transfer or sub-lease a part only of the said land.', in support of his contention that the sale deed could not be executed and registered in favor of defts. 1 & 2 in violation of the said sub- clause as admittedly no consent had been obtained from the Dda for selling the plot to defts. 1 & 2. There is no merit in this contention. This sub-clause would not apply where the whole of the plot is to be sold or alienated. This sub-clause came up for interpretation in C.W. 127/90, Ashoka Metal Decor P. Ltd. vs. Dda, D/13.6.90, and it was held by the D.B. that no prior consent is required to be obtained for alienating the plot. The D.B. had directed the Dda to mutate the property in favor of deft. 4 vide decision in the said W.P. So, it cannot be, prima facie, said that the sale deed could not be executed and registered in favor of defts. 1 & 2 without obtaining the prior consent of the DDA.

(3) The plea of the pff. that the power of attorneys executed in favor of deft. 3 were revoked and thus, deft. 3 had no authority to execute and register the sale deeds in favor of defts 1 & 2, prima facie, has no merit inasmuch as it is quite evident that the said power of attorneys had been executed by the pff. for consideration and unless and until the pff. made out a case of failure of consideration the pff. had, no authority, prima facie, to revoke the said power of attorneys.

(4) Under Section 202 of the Contract Act, it is mentioned 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 interest. Be that as it may, once it is admitted that the

power of attorneys were executed in favor of deft. 3 by the pff. for consideration, the pff. has to show some strong ground/or revoking the power of attorneys which grounds have not been shown by the pff. in the plaint. The only ground which has been highlighted is the violation of the term of the lease regarding obtaining of prior consent of the Dda which ground has been found by me to be without merit, prima facie, in view of the judgment by the D.B. on this aspect. I may refer to Harbans Singh vs. Shanti Devi, 1977 RajL.R. 487 where also on similar facts it was held that the power of attorney cannot be revoked or cancelled once it is executed for consideration creating interest in the property. So, I hold that the pff. has no prima facie case and thus, the pff. is not entitled to obtain any interim injunction.

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