

Kumarasen Vs. the Inspector General of Registration,

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Court : Chennai

Decided On : Feb-12-2008

Reported in : (2008)4MLJ74

Judge : P. Jyothimani, J.

Acts : Stamps Act - Sections 56(1)

Appeal No. : W.P. No. 7820 of 1998

Appellant : Kumarasen

Respondent : The Inspector General of Registration, ;The District Registrar, Registration Department and the Sub

Advocate for Def. : L.S.M. Hasan Fizal, Government Adv.

Advocate for Pet/Ap. : V. Lakshminarayanan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P. Jyothimani, J.

1. This writ petition is filed for a direction against the order of the first respondent Inspector General of Registration, dated 06.01.98 by which the revision filed by the

petitioner dated 27.05.96 has been rejected by holding that the documents produced for Registration should be treated as Settlement as per the Schedule 58A(1) of the Indian Stamps Act.

2. The petitioner and his brothers have executed a General Power of Attorney in favour of one G. Ponnuswamy, who is the Managing Trustee of P.K. Govindasamy Educational and Charitable Trust. The object of the trust was to advance, propagate and provide Nursery, Primary and Technical Education and so on. The said trust proposed to start a Polytechnic in Patchal Village and the petitioner and his brothers as owners of the property has only proposed to permit the said P.K. Govindasamy Educational and Charitable Trust to occupy the other lands and it was in that regard, the General Power of Attorney deed dated 12.12.95 was executed.

3. The petitioner has never agreed to sell the property to the Educational Trust. When the documents were produced to the third respondent, Sub Registrar, Thirupattur, he referred the matter to the second respondent to ascertain the nature of the document. However, the second respondent has given an opinion that the said document should be construed as a conveyance deed. When revision was moved before the first respondent, the first respondent has construed the said document as a settlement deed and directed the payment of stamp duty as stated above. It is against this impugned order dated 06.01.98 passed by the first respondent the present writ petition is filed.

4. The first respondent has filed a counter affidavit. In the counter affidavit, the first respondent has admitted that the petitioner along with Mr. G. Ashokan and Mr. G. Yuvarajan have executed a deed styled 'General Power of Attorney' deed on 12.12.95 appointing M/s. P.K. Govindasamy Educational and Charitable Trust as agent. As per the counter affidavit, the Principals are also the trustees of the Trust. Therefore, a reading of the document shows that the Trust to be in possession and enjoyment of the property for the purpose of running a Polytechnic institution that it is not merely a Power of Attorney but a transfer and the Sub Registrar, Thirupattur has treated the document as pending document No. 171/95 and referred it to the District Registrar about the nature of the said document. The District Registrar in

the order dated 14.01.96 has classified the document as a deed of conveyance and that was challenged by way of Revision before the Chief Controller of Revenue Authority (C.C.R.A) under Section 56(1) of the Indian Stamp Act, but by the impugned order has assigned the document as Settlement by way of declaration of trust. According to the first respondent, the principals are the joint owners of the property since, the property is an ancestral property of the family and the principals are also the trustees. Since the trust requires land to accommodate the Polytechnic Institution, the Principals are authorising the trust as their agent and utilise the land on their behalf. Therefore, according to the first respondent an over all reading of the documents shows that it is a transfer. It is also specifically stated that the word in the document produced for registration states as follows,

To take possession of the properties morefully described in the schedule hereunder with standing trees, improvements and structures and enjoy the same.

clearly shows that the intention of the authors of the document is not merely to make the Trust of their Agent permitting them to use and to effect transfer.

5. Mr. V. Lakshminarayanan, learned Counsel appearing for the petitioner would submit that reference to the document dated 12.12.95, shows in clear terms that the idea of the document is to permit the agent to house the said technical institute in the property belonging to the Principals. The word authorising agent to take possession of the property does not mean that the intention of the Principals are to transfer the Property in favour of the agents. He has also submitted that the possession of Agent is not of his individual right but is for and on behalf of the principal. To substantiate his contention he would also rely upon the Judgments of the Hon'ble Supreme Court reported in : [1989]2SCR232 (Smt. Chandrakantaben J. Modi and Narendra Jayantilal Modi v. Vadilal Bapalal Modi and Ors.) and : AIR 1990 SC673 (Southern Roadways Ltd., Madurai v. S.M. Krishnan).

6. Mr. L.S.M. Hasan Fizal, learned Government Advocate appearing for the respondents would submit that in as much as the Principal and agent are one and the same since the Principals are also the Trustees, it is not merely to authorise his Agent to use the property but an essential right has been given by way of

transfer and therefore the impugned order of the first respondent need not be interfered with.

7. Heard Mr. V. Lakshminarayanan, learned Counsel appearing for the petitioner as well as Mr. L.S.M. Hasan Fikal, learned Government Advocate appearing for the respondents and perused the entire records.

8. The reasons assigned in the impugned order by the first respondent to treat the document presented for registration as settlement deed is basically on the wordings of the document wherein the documents authorises the agent to take possession of the properties along with standing trees, improvements and structures and enjoy the same. The first respondent has construed these words as transfer of ownership from the person who executed the documents to the other persons styled as Power Agent. The document is treated as General Power of Attorney Deed by which the petitioner along with the brothers who are the owners of the property have nominated M/s. P.K. Govindasamy Educational and Charitable Trust represented by its Managing Trustee G. Ponnusamy as their power agent. The body of the said document makes it clear that executants of the deed and the said G. Ponnusamy along with others constituted the Trust called M/s. P.K. Govindasamy Educational and Charitable Trust. The Trust is empowered by the power to use the property for the purpose of Trust. Merely because the executants of the documents are also Trustees of the said Trust, the only point to be considered is as to whether by such document, the transfer if effected, in favour of M/s. P.K. Govindasamy Educational and Charitable Trust which is an independent person in the eye of law especially when the fact remains that the executants of the document are the real owners of the property. Therefore, it is the case where the owners of the property are permitting the trustees to use the property and it is in that background the words in the document viz.,

WHEREAS we propose to permit the said 'M/s. P.K. Govindsamy Educational and Charitable Trust' to house the said technical institution in our properties morefully described hereunder in the schedule.

and what is stated in Clause 1 is

(1) to take possession of the properties morefully described in the schedule hereunder with standing trees, improvements and structures and enjoy the same.

the words 'to take possession' cannot be construed as an absolute possession given to the trustees and it has to be taken only a permission to use the property for a specified purpose.

9. Overall reading of the document makes it clear that the executants who are the owners of the property have permitted the legal person viz., the Trust in which of course the executants are also the trustees to use the properties which can only be construed as used by the Trust on behalf of the executants. Law is well settled that by appointing an Agent in respect of dealing with an immovable property, the possession of the agent cannot be deemed to confer ownership upon the Agent and the possession is for and on behalf of the principal. In other words, individual right to the agent who is expected to act for the benefit of the principal alone.

10. As correctly pointed out by the learned Counsel appearing for the petitioner, it was in AIR 1989 SC 1269 (Smt. Chandrakantaben J. Modi and Narendra Jayantilal Modi v. Vadilal Bapalal Modi and Ors.), the Hon'ble Supreme Court has elaborately dealt with the nature and position of the Agent and held that the possession of the Agent is the possession of the principal and in view of the fiduciary relationship between the Principal and Agent under the law of Agency. The observation of the Hon'ble Supreme Court relevant for the purpose of this case is referred in para 19 which is as follows:

19. There is no merit in the further argument that the defendant No. 1 must be treated to be in joint possession as he was actually collecting the rent from the tenants. It is well settled that the possession of the agent is the possession of the principal and in view of the fiduciary relationship the defendant No. 1 cannot be permitted to claim his own possession. This aspect was well emphasised in David Lyell v. John Lawson Kennery (1889) 14 AC 437, where the agent who was collecting the rent from the tenants on behalf of the owner and depositing it in a separate earmarked account contained to do so even after the death of the owner. After more than 12 years of the owner's death his heir's assignee brought the action against the agent for possession and the agent defendant pleaded adverse

possession and limitation. The plaintiff succeeded in the first court. But the action was dismissed by Court of Appeal. The House of Lords reversed the decision of the Court of Appeal and remarked: 'For whom, and on whose behalf, were those rents received from Ann Duncan's death? Not by the respondent for himself, or on his own behalf, anymore than during her lifetime'. Emphasising the fiduciary character of the agent his possession was likened to that of trustee, a solicitor or an agent receiving the rent under a power of attorney, Another English case of Williams v. Pott : (1871) LR 12 Eq 149 arising out of the circumstances similar to the present case was more interesting. The agent in that case was the real owner of the estate but he collected the rents for a considerably long period as the agent of his principal who was his mother. After the agent's death his heir claimed the estate. The mother (the principal) had also by then died after purporting by her will to devise the disputed lands to the defendants upon certain trusts. The claim of the plaintiff was dismissed on the plea of adverse possession. Lord Romilly, M.R., in his judgment observed that since the possession of the agent was the possession of the principal, the agent could not have made an entry as long as he was in the position of the agent for his mother, and that he could not get into possession without first resigning his position as her agent which he could have done by saying 'The property is mine; I claim the rents, and I shall apply the rents for my own purposes'. The agent had thus lost his title by reason of his own possession as agent of the principal....

This view has also been reiterated by the Hon'ble Supreme Court in (Southern Roadways Ltd., Madurai v. S.K. Krishnan) in para 11 which is as follows:

11. There is yet another significant fact to be borne in mind when we deal with the rights of an agent. An agent who receives property or money from or for his principal obtains no interest for himself in the property. When he receives any such property he is bound to keep it separate from his own and that of others.

11. The Hon'ble Supreme Court has in fact referred to the judgment in (Smt. Chandrakantaben J. Modi and Narendra Jayantilal Modi v. Vadilal Bapalal Modi and Ors.) has ultimately held that the crux of the matter is that the Agent holds the Principal's property only on behalf of the Principal and he clearly owns instead of

himself and he cannot deny the principal's title to property nor can he convert it into any other kind or use, his possession as the possession of the principal for all purposes.

12. In view of the settled legal position the reasons assigned by the first respondent by construing the document produced before him as a Settlement is not sustainable in law. In view of the same, the writ petition is allowed and the impugned order of the first respondent in Pa.Mu. No. 36301/,3/96, dated 06.01.98 is set aside and the respondents are directed to register the document as General Power of Attorney document. No costs.

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