

K Akbar Ali vs K Umar Khan on 12 February, 2021

Bench: Indira Banerjee, Hemant Gupta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 31844 OF 2018

K. AKBAR ALI

.....PETITIONER

VERSUS

K. UMAR KHAN & ORS.

.....RESPONDENT

ORDER

1. The Petitioner/Plaintiff filed a Civil Suit in the original side of the High Court of Judicature at Madras challenging the sale deed dated 2.6.2010 executed by the first defendant in favour of Defendant Nos.2 and 3, inter alia, on the ground that there is a pre-emption agreement dated 5.11.1998 executed between the Plaintiff and the first Defendant. The said agreement is said to be executed on the basis of the Power of Attorney executed by the first Defendant in favour of her son on 2.1.1989.

2. On the face of the averments in the plaint filed by the Petitioner/Plaintiff in Paragraph 3, the first Defendant, a permanent resident of Salem had given a Power of Attorney to her son, Mr. Zahir Ali to maintain and administer the suit property. The cause title of the plaint reveals that the Petitioner/Plaintiff impleaded the first Defendant as represented by her power agent A.J. Zahir Ali. While the suit was pending the first Defendant died whereupon her heirs were impleaded Defendant Nos. 4 to 9.

3. The Defendant Nos. 2 and 3 moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, inter-alia, on the ground that there is no Power of Attorney authorising Zakir Ali to enter into any sale or pre-emption agreement. The learned Single Judge rejected the application filed by Defendant Nos. 2 and 3 on 15.9.2016. However, in appeal, the Division Bench of the High Court allowed the application and held that the Power of Attorney does not authorize the attorney to execute an agreement as the Power of Attorney was granted for conduct of Court proceedings only. Aggrieved by the order passed by the Division Bench of the High Court in appeal, the present Special Leave Petition has been preferred by the Petitioner/Plaintiff.

4. Learned Counsel for the Petitioner/Plaintiff argued that clause 6 of the Power of Attorney “to do all lawful, as my said attorney deems fit and just on my behalf” authorizes the attorney to take all steps which are necessary and proper, as considered by the attorney. Such aspect has not been appreciated by the Division Bench of the High Court in proper perspective. It is also argued that the sale deed executed has been challenged by the heirs of the Defendant No. 1, now deceased and that the challenge to sale deed has been successful. Therefore, the sale deed executed by Defendant No. 1 in favour of Defendant Nos. 2 and 3 is not legal and valid which cannot affect the rights of the Petitioner/Plaintiff.

5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

6. In this case, the Petitioner/Plaintiff has, as stated above, asserted that the Power of Attorney was given to Mr. Zahir Ali to maintain and administer the suit property. There is no assertion in the plaint that the Power of Attorney authorized Mr. Zahir Ali to execute any pre-emption agreement.

7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC v. Debts Recovery Appellate Tribunal* reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the Power of Attorney given by the first Defendant to Mr. Zahir Ali.

9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a Power of Attorney holder, the Court is not debarred from looking into the Power of Attorney. It is open to the Court to read the terms of the Power of Attorney along with the plaint in the same manner as documents appended to the plaint, which form part of the plaint.

10. The argument of the learned Counsel for the Petitioner/Plaintiff that the expression ‘to do all lawful acts’ in Clause 6 of the Power of Attorney will include an act of sale of the property is not tenable. The acts mentioned in the Power of Attorney are in respect of Court proceedings and that too with reference to Civil Suit No. 72 of 1979. There is no clause permitting the attorney to sell the property or to enter into any agreement to sell. In the absence of any such clause in the Power of Attorney, the Defendant No. 1 cannot be bound by the acts of her son. Therefore, the purported pre-emption agreement does not give any right to the plaintiff to file the suit. The suit is thus not

maintainable.

11. The argument advanced by the Petitioner/Plaintiff that the plaint discloses triable issues, and therefore, should not be rejected at the initial stages is devoid of merit. The entire basis of filing of a suit is the pre-emption agreement dated 5.11.1998 executed by a Power of Attorney holder. To confer a right and to bind the owner, there has to be a valid Power of Attorney. In the absence of valid Power of Attorney, no right will accrue to the plaintiff.

12. It is patently clear from a meaningful reading of the plaint in its entirety that the plaintiff has no cause of action against the first defendant being the owner of the suit property, the Power of Attorney being patently invalid. The inter-se dispute between the heirs of the deceased-Defendant No.1 will not confer any right on the petitioner as his claim is based upon a pre-emption agreement executed by a power of attorney, which does not authorize the attorney to deal with the property of the said defendant.

13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.

14. We are, therefore, not inclined to interfere with the impugned judgment and order of the Division Bench of the High Court under Article 136 of the Constitution of India. Consequently, the Special Leave Petition is dismissed.

.....J. (INDIRA BANERJEE)J. (HEMANT GUPTA) NEW DELHI;

FEBRUARY 12, 2021.

ITEM NO.2

Court 14 (Video Conferencing)

SECTION XII

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s).

31844/2018

(Arising out of impugned final judgment and order dated 17-07-2018 in OSA No. 185/2018 passed by the High Court Of Judicature At Madras) K AKBAR ALI Petitioner(s) VERSUS K UMAR KHAN & ORS. Respondent(s) IA No. 127457/2020 - STAY APPLICATION Date : 12-02-2021 The matter was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s)

Mr. R. Balasubramanian, Sr. Adv.

Mr. Santosh Kumar Pandey, AOR

For Respondent(s)

Mr. R. Basant, Sr. Adv.

Ms. Rasna Kalkat, Adv.

Mr. Manu Krishnan, Adv.

Ms. Liz Mathew, AOR

Mr. Raghenth Basant, Adv.

Mr. Arjun Singh Bhati, AOR

UPON hearing the counsel the Court made the following O R D E R Issue notice.

Mr. R. Basant, learned counsel accepts notice on behalf of respondents.

The special leave petition is dismissed, in terms of the signed order.

Pending applications, if any, stand disposed of.

(MANISH ISSRANI)
COURT MASTER(SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed Order is placed on the file)