

A

YOGESH NAVINCHANDRA RAVANI

v.

NANJIBHAI SAGRAMBHAI CHAUDHARY & ORS.

(Civil Appeal Nos. 3114-3115 of 2023)

B

APRIL 25, 2023

[B. R. GAVAI AND VIKRAM NATH, JJ.]

Power of attorney: Role of power of attorney holder –

- C *Application for restoration, at the behest of the power of attorney holder, whose power of attorney stood cancelled – Tenability of – Is not tenable – On facts, suit by original plaintiff challenging the sale deed – Subsequently, the original plaintiff died in 2006 and his LRs brought on record – Suit dismissed by the trial court – First appeal filed by the LRs and the appellant-son of the original plaintiff, also dismissed – Thereafter in 2015, second appeal filed by VM, the power of attorney holder under a power of attorney executed by the original plaintiff, prior to his death – VM was also appointed the power of attorney holder by the appellant – VM represented all the LRs of the original plaintiff including the appellant-son of the original plaintiff in the second appeal –*
- E *However, office objections raised as the earlier power of attorney got expired with the death of the original plaintiff and there was no Vakalatnama signed by other LRs – Non-removal of objections – Dismissal of the second appeal by the High Court – Application seeking restoration of the second appeal and transposition of other LRs as defendants and the same was allowed – Later, cancellation of the power of attorney by the appellant by public notice – Pursuant thereto, the appellant engaged an advocate to file a pursis for the withdrawal of the second appeal which was allowed by the High Court – However, even after cancellation of the power of Attorney, VM filed an application for review of the said order and consequent restoration of the second appeal – On appeal, held: Order by the High Court restoring the second appeal, not sustainable and is quashed and set aside – Since VM was having power of attorney on behalf of the appellant, the appeal could have been filed only on his behalf – Appellant had cancelled the power of attorney issued in favour of VM by issuing a public notice – As such, VM had no*
- H

authority in law to continue with the second appeal – After the transposition of the other LRs was allowed, appellant was the sole appellant – As such, in his position as dominus litis, he was very well within his right to withdraw the second appeal – After the withdrawal of the second appeal by appellant, an application for restoration, at the behest of the power of attorney holder, whose power of attorney stood cancelled, was not at all tenable. A B

Adverse remarks – Expunction of – Adverse remarks by the High Court – Justification of – Held: Remarks against the appellant totally unwarranted and uncalled for.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3114- C 3115 of 2023.

From the Judgment and Order dated 14.02.2020 of the High Court of Gujarat at Ahmedabad in CA No. 2 of 2018 and MCA No. 1 of 2018.

With D

Civil Appeal Nos. 3116-3117 of 2023.

Harin Raval, Sr. Adv., Anando Mukherjee, Ms. Ekta Bharati, Ms. Shreya Bansal, Ms. Shrestha Narayan, M/s Aura & Co., Shashank Khurana, Ms. Shalini Singh, Ms. Divya Anand, Ankit Anandraj Shah, Kumar Aditya, Vivek Beniwal, Advs. for the appearing parties. E

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted.

2. The appeals arising out of SLP(C) Nos. 13943-13944 of 2020, filed by Yogesh Navinchandra Ravani, challenge the final judgment and order dated 14th February 2020, passed by the High Court of Gujarat at Ahmedabad in Civil Application (for condonation of delay) No. 2 of 2018 in R/Second Appeal No. 238 of 2015 with Misc. Civil Application (for Review) No. 1 of 2018 in R/Second Appeal No. 238 of 2015, whereby the High Court passed strictures against the appellant-Yogesh Navinchandra Ravani and recalled its order dated 11th September 2017, thereby restoring the aforesaid Second Appeal to its original number and status. F G

H

- A 3. Aggrieved by the adverse remarks made by the High Court in its judgment, appellant - Yogesh Navinchandra Ravani has preferred these appeals so as to have those remarks expunged.
- B 4. Appeals arising out of SLP(C) Nos. 13079-13080 of 2020 have been filed by Lalitbhai Jesangbhai Parmar against the same impugned judgment and order as above, albeit the challenge here is against the restoration of Second Appeal to its original number and status and the costs imposed upon the appellant-Lalitbhai Jesangbhai Parmar.
- C 5. The facts, in brief, giving rise to the present appeals are as under :
- D 5.1 One Jesangbhai Kachrabhai Parmar (hereinafter referred to as "original plaintiff") had instituted a suit, bearing Regular Civil Suit No. 92 of 2015 (Old No.165/2001), before the Additional Senior Civil Judge, Mehsana, challenging the sale deed dated 14th September 2000 executed by one Nanjibhai Sagambhai Chaudhary in favour of one Sureshbhai Hirabhai Chaudhary with respect to the suit property.
- E 5.2 The said suit came to be dismissed by the 7th Additional Civil Judge, Mehsana, vide judgment and decree dated 12th June 2008. It is pertinent to note that the original plaintiff had expired on 31st December 2006, i.e. during the pendency of the said suit and his Legal Representatives ("LRs" for short) had been brought on record in the said proceedings.
- F 5.3 A first appeal, being Regular Civil Appeal No. 77 of 2008, was preferred by the LRs of the original plaintiff including the appellant-Lalitbhai Jesangbhai Parmar, being the son of the original plaintiff before the 4th Additional District Judge, Mehsana, which too came to be dismissed, vide judgment and order dated 23rd July 2015.
- G 5.4 Thereafter, a Second Appeal, being Regular Second Appeal No. 238 of 2015 was preferred before the High Court by the LRs of the original plaintiff, including the appellant-Lalitbhai Jesangbhai Parmar. It is pertinent to note that the Second Appeal, which displayed all the LRs of the plaintiff as appellants, was preferred by one Vitthalbhai Maganbhai Parmar, who was the Power of Attorney holder under a power of attorney executed by the original plaintiff on 4th January 2001, prior to his death. Another Power of Attorney dated 20th November

2012, had also been executed in his favour by the appellant-Lalitbhai Jesangbhai Parmar. Thus, Vitthalbhai Maganbhai Parmar was the power of attorney holder only for the appellant- Lalitbhai Jesangbhai Parmar, and not for the other LRs of the original plaintiff on whose behalf the aforesaid Second Appeal had been preferred. Crucially, the other LRs of the original plaintiff had not signed any Vakalatnama to prefer the aforesaid Second Appeal. A B

5.5 The registry of the High Court, recognizing the aforementioned discrepancy, raised office objections as to whether the Vakalatnama had been signed by all the appellants or not. C

5.6 In spite of repeated opportunities, these objections were not removed, and the aforesaid Second Appeal came to be dismissed on 27th November 2015, for non-removal of office objections. Thereafter, an application being Miscellaneous Civil Application No. 894 of 2016 for restoration of the Second Appeal was filed wherein it was stated that the Power of Attorney holder, i.e. Vitthalbhai Maganbhai Parmar had informed the registry of the High Court about his inability to obtain authority letter from all the LRs of the deceased original plaintiff, thereby requesting their transposition as defendants. D

5.7 The High Court, vide Order dated 9th March 2016, allowed the said application and restored the Second Appeal to its original status. E

5.8 Subsequently, the Second Appeal came to be admitted by the High Court, vide its order dated 21st April 2016, and the parties were directed to maintain *status quo*. The crux of the dispute begins hereinafter. F

5.9 The appellant-Lalitbhai Jesangbhai Parmar, on coming to know about the filing of the aforesaid Second Appeal by his Power of Attorney holder-Vithalbhai, cancelled the Power of Attorney, vide Public Notice dated 20th June 2017, since the aforesaid Second Appeal had been preferred without his knowledge or instruction. Pursuant to the cancellation of the Power of Attorney, appellant-Lalitbhai Jesangbhai Parmar engaged appellant-Yogesh Navinchandra Ravani, an advocate, to file a *pursis* for withdrawal of the Second Appeal and allied civil applications. G

H

- A 5.10 The High Court, vide order dated 11th September 2017, took on record the aforesaid *pursis* and permitted withdrawal of the Second Appeal.
- B 5.11 However, even after cancellation of the Power of Attorney executed in favour of Vitthalbhai Maganbhai Parmar, he filed Misc. Civil Application No. 1 of 2018 before the High Court for review of its order dated 11th September 2017 and consequent restoration of the Second Appeal, as well as Misc. Civil Application No. 2 of 2018 seeking condonation of delay.
- C 5.12 The High Court, vide impugned judgment and order dated 14th February 2020, allowed the aforesaid applications, thereby restoring the Second Appeal to its original number and status. Additionally, costs were imposed upon the appellant– Lalitbhai Jesangbhai Parmar and strictures were passed against the appellant-Yogesh Navinchandra Ravani for his conduct as advocate of Lalitbhai Jesangbhai Parmar,
- D while seeking withdrawal of the Second Appeal. Hence, the present appeals.
- E 6. We have heard Mr. Harin Raval, learned Senior Counsel appearing on behalf of the appellants and Ms. Divya Anand and Mr. Ankit Anandraj Shah, learned counsel appearing on behalf of the respondents.
- F 7. Mr. Raval submits that the very application for review of the order dated 11th September 2017, at the behest of the so- called Power of Attorney Holder Vitthalbhai Maganbhai Parmar, was not maintainable. It is submitted that the Power of Attorney in favour of the said Vitthalbhai Maganbhai Parmar stood cancelled vide Public Notice dated 20th June, 2017. It is submitted that the application for review, filed using the earlier Power of Attorney of original plaintiff dated 4th January 2001 could not have been filed, inasmuch as, on the death of the original plaintiff, the Power of Attorney Holder Vitthalbhai
- G Maganbhai Parmar had no authority to continue with the proceedings. Learned counsel submitted that unless a fresh Power of Attorney by the legal heirs of the deceased original plaintiff was executed, he could not have continued with the proceedings. It is further submitted that once the appellant-Lalitbhai Jesangbhai Parmar had filed an application for transposing of the other legal heirs of the deceased original plaintiff
- H

as defendants and once the High Court, having allowed the said application vide Order dated 9th March 2016, he became the *dominus litis.* A

8. It is submitted that the strictures passed by the High Court against the appellant-Yogesh Navinchandra Ravani, who was only a lawyer appearing on behalf of the appellant- Lalitbhai Jesangbhai Parmar, were totally unwarranted and uncalled for. B

9. The respondent Nos. 5 to 7 have filed their reply, stating therein that they had not executed any Power of Attorney in favour of said Vitthalbhai Maganbhai Parmar. It is submitted that they also did not intend to challenge the Order dated 23rd July 2015, passed by the 4th Additional District Judge, Mehsana, dismissing the First Appeal, viz. Regular Civil Appeal No.77 of 2008 and, as such, the application filed by said Vitthalbhai Maganbhai Parmar for restoration of the Second Appeal was not tenable. C

10. From the perusal of the record, it would reveal that Second Appeal No.238 of 2015 was filed on behalf of all the legal heirs of the original plaintiff by Vitthalbhai Maganbhai Parmar, claiming to be the Power of Attorney Holder under Power of Attorney executed by the original plaintiff on 4th January 2001. Another Power of Attorney dated 20th November 2012 was executed in favour of said Vitthalbhai Maganbhai Parmar by the appellant-Lalitbhai Jesangbhai Parmar. It is, thus, clear that after the death of the original plaintiff on 31st December 2006, the said Power of Attorney dated 4th January 2001 executed by him in favour of Vitthalbhai Maganbhai Parmar ceased to have any effect. Though another Power of Attorney was executed in favour of said Vitthalbhai Maganbhai Parmar, it was executed only by the appellant-Lalitbhai Jesangbhai Parmar. As such, Vitthalbhai Maganbhai Parmar had no right to file appeal on behalf of the other legal heirs. D E F

11. The Registry of the High Court, noticing that the Vakalatnama was not signed by all the appellants, had raised office objections. On non-removal of the office-objections, the Second Appeal came to be dismissed on 27th November 2015. Thereafter, Miscellaneous Civil Application No. 894 of 2016 came to be filed for restoration of the Second Appeal. The said application also came to be filed by said Vitthalbhai G H

- A Maganbhai Parmar. It will be relevant to note the averments made by said Vitthalbhai Maganbhai Parmar in the said application, which read thus:
- “3. The applicants state that an office objection was raised by the Registry as regards non-production of power of attorney or authority letter on behalf of all the heirs of deceased plaintiff authorizing the deponent to prefer the second appeal. The applicant state that the deponent had informed the Registry about inability to obtain the authority letter of all the heirs of the deceased plaintiff and requested to permit their transposition as defendants.
- B The applicants submit that the applicants were under a bona fide impression that the same shall be allowed and the appeal shall be listed by the Registry before the Hon'ble Court for admission hearing in due course.
- C “...”
- D 12. It appears that the High Court, vide Order dated 9th March 2016, restored the Second Appeal to its original status.
- E 13. It appears that, vide the Office Endorsement dated 13th April 2016, the draft amendment and fresh title with names were accepted and, as such, office objection came to be removed.
- F 14. It would further appear from the record that an application for Draft Amendment came to be filed by Nanavati & Company, Advocate for the appellants in Second Appeal No.238 of 2015. It will be relevant to refer to the same, which reads thus:
- G “The applicant prays to make amendment in the memorandum of petition in the above matter. The applicant submits that due to bona fide mistake the names of all the plaintiffs were mentioned in the title (appellant side) in the above mentioned second appeal. The applicant submits that only one of the legal heirs-Lalitbhai Jesangbhai Parmar through Power of Attorney Vitthalbhai Maganbhai Parmar is desirous of pursuing the legal remedy.
- H Therefore, I humbly request this Hon'ble Court to substitute the title of the memorandum of appeal with a new title provided herewith.”

15. Subsequently, a notorised pursis dated 19th July 2017 came to be filed by appellant-Lalitbhai Jesangbhai Parmar, stating therein that, on account of transposition of the other appellants, he was the sole appellant and he wanted to withdraw the Second Appeal. As such, vide order dated 11th September 2017, the High Court permitted the withdrawal of the Second Appeal, and the Second Appeal stood dismissed as withdrawn.

A

B

16. It could thus be seen that, since Vitthalbhai Maganbhai Parmar was having Power of Attorney on behalf of the appellant-Lalitbhai Jesangbhai Parmar, the appeal could have been filed only on his behalf. Appellant-Lalitbhai Jesangbhai Parmar had cancelled the Power of Attorney issued in favour of Vitthalbhai Maganbhai Parmar on 20th June 2017, by issuing a Public Notice in daily newspaper, namely, ‘Sandesh’ on 21st June, 2017. As such, Vitthalbhai Maganbhai Parmar had no authority in law to continue with the Second Appeal.

C

17. We are, therefore, of the considered view that the Civil Application No.1 of 2018 (for restoration) filed by said Vitthalbhai Maganbhai Parmar on 11th October 2018 itself was not tenable, inasmuch as the Power of Attorney executed in his favour by appellant-Lalitbhai Jesangbhai Parmar on 20th November 2012 stood subsequently cancelled on 20th June 2017 by a issuing Public Notice.

D

E

18. We, therefore, find that, by the impugned judgment, an anomalous situation has arisen where the appellant-Lalitbhai Jesangbhai Parmar, who does not desire to prosecute the Second Appeal, would be forced to pursue his appeal. Similarly, the legal heirs of the deceased original plaintiff, who also do not want to continue with the proceedings, would be forced to continue with the litigation.

F

19. As discussed herein above, after the transposition of the other LRs was allowed, appellant-Lalitbhai Jesangbhai Parmar was the sole appellant. As such, in his position as *dominus litis*, he was very well within his right to withdraw the Second Appeal. After the withdrawal of the Second Appeal by appellant-Lalitbhai Jesangbhai Parmar, an application for restoration, at the behest of the Power of Attorney Holder, whose Power of Attorney stood cancelled, was not at all tenable.

G

20. In any case, we find that the observations made by the High Court against appellant-Yogesh were totally unwarranted and uncalled for.

H

- A 21. In this view of the matter, we find that the impugned judgment and order passed by the High Court is not sustainable in law. The same is quashed and aside.
22. In the result, both the appeals are allowed.
- B 23. For the reasons stated, I.A. No.129619 of 2020 for deletion of respondent No.4 is allowed. All pending applications shall stand disposed of. No costs.

Nidhi Jain
(Assisted by : Tamana, LCRA)

Appeals allowed.