Jugraj Singh & Anr vs Jaswant Singh & Ors on 16 March, 1970

Equivalent citations: 1971 AIR 761, 1971 SCR (1) 38, AIR 1971 SUPREME COURT 761

Author: M. Hidayatullah

Bench: M. Hidayatullah, A.N. Ray, I.D. Dua

PETITIONER:
JUGRAJ SINGH & ANR.

Vs.

RESPONDENT:
JASWANT SINGH & ORS.

DATE OF JUDGMENT:
16/03/1970

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
RAY, A.N.
DUA, I.D.

CITATION:
1971 AIR 761 1971 SCR (1) 38
1970 SCC (2) 386

ACT:
Power of Attorney-Execution by Indian abroad-Subsequent power ratifying defects-Effect of-If relates back.
Declaration-Suit for declaration, but no prayers either for cancellation of order or injunction-Suit hit by s. 42, Specified Relief Act-Mortgagor not party-Suit if properly framed-Costs-Award of.

HEADNOTE:
V the son of the mortgagor executed a power of attorney in California (U.S.A.) authorising S to sell the property and to execute the sale deed and present it for registration. S executed the sale deed in favour of the respondents, who applied for the redemption of the mortgage under s. 9 of the Punjab Redemption of Mortgages Act, 1913. The Collector ordered the redemption. The appellants-the sons of the

mortgagees filed a suit suit under s. 12 of the Act praying for a declaration that the -respondents were neither owners nor they had any right of redemption, as per the orders of the Collector which was illegal and the appellants were not bound by it. V was not party to this suit. During the pendency of the suit V executed a fresh power of attorney in California in favour of S, stating that first one was defective and was being ratified and further that the act of S will be that of V, which included not only the making of the document but also the presentations. The second power of attorney was produced in the suit, and the suit was dismissed. Appeal in the District Court and a second appeal filed in the High Court failed. Dismissing the appeal, this Court,

HELD : The first power of attorney was not authenticated as required by s; 33 of the Indian Registration Act which in the case of an Indian residing abroad,requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anythingto show that he was a Notary Public. In any event there was no authentication by the Notary Public (if he was one) in the manner which the law would consider adequate. The second power of attorney however did show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law, and was also duly authenticated in accordance with our laws. The only complaint was that the Notary Public did not say in his endorsement that V had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This made the second power of attorney valid and effective both under s. 85 of the Indian Evidence Act and s. 33 of the Indian Registration Act. [42 G-43 C]

The second power of attorney was a valid document and it authorised S to execute the document as well as to present it for registration. This being a document ratifying a former inconclusive act related back

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to the time when the first document was made and cured the illegality in the presentation for registration which had taken place.

Now the law is quite clear that ratification relates back to the original act provided there is a disclosed principal. [43 E-F]

Keighly Maxsted & Co. v. Durant; [1901] A.C. 241 and Wilson v. Tumman, 1843 6 M & G 242, relied on.

Kottie Keran & Ors. v. Lachmi Prasad Sinha & Ors. 58 I.A. 58, held inapplicable.

The appellants were not entitled to the declaration prayed

for. They neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit was hit by s. 42 of the Specific Relief Act and they were to be denied the declaration without these specified reliefs. Indeed they had only to ask for the setting aside of the order.
The suit was notproperly framed. The appellants as plaintiffs in the case joined the transferees from V but made no attempt to join V, the son of the original mortgagor. The suit could be only properly framed with all the parties before the Court.Even if V was not a necessary party, he was at least a proper party.If he had been brought before the court, it could have known from himwhether he bad given the authority to execute the document and he could have adopted the act of S by ratifying it again. Normally costs should follow the event and it is not the rule that costs should be left to be borne to the parties. Here a case was decided against one of the parties in a contentious 'matter, and costs should have been awarded. [44 F-45D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 198 of 1967.

Appeal by special leave from the judgment and order dated December 14, 1966 of the Punjab and Haryana High Court in Regular Second Appeal No. 399 of 1966.

Hardev Singh, H. L. Kapoor and Dhul Chand. for the appel- lants.

Bishan Narain, Sadhu Singh, Bireswar Bhattacharya and Jagmohan Khanna, for the respondents.

The Judgment of the Court was delivered by Hidayatullah C.J., This is an appeal against the judgment of a learned Single Judge of the High Court of Punjab dated December 14, 1966 confirming the dismissal of a suit filed by the appellants. The facts of the case are as follows :

One Bhag Singh mortgaged certain lands to Ran Jang Singh in the year 1923. On September 6, 1961 one Vernon Seth Chotia, son of Bhag Singh executed a power of attorney in Califor- nia, U.S.A. authorising Sardar Kartar Singh Chawla, an advocate of this Court, to sell the property and execute the sale deed and present it for registration. This power of attorney was witnessed by one Daniel E. Cooper. On the strength of this document, Sardar Kartar Singh Chawla executed the sale deed on May 30, 1963 in favour of the respondents in this appeal. He presented it for registration and the document was registered. The vendees thereupon sought to redeem the mortgage and applied under s. 9 of the Punjab Redemption of Mortgages

Act, 1913. They deposited the entire amount clue under the mortgage in the Collector's court and we understand that the amount is still lying there, because of the later proceedings from which this appeal arises. The Collector ordered the redemption of the mortgage. The Ap- pellants who are the sons of the original mortgagee thereupon filed a suit under s. 12 of the Act on August 7, 1963. It is necessary to refer to their petition of plaint, not with a view to finding out what they stated there, but to see what reliefs they claimed in the suit. In para 10 of the petition of plaint, the appellants as plaintiffs stated "The plaintiffs pray that a decree for declaration to the effect that the defendants are neither the owners of the above mentioned land nor they have any right to get the aforesaid land redeemed as per the orders of the S.D.O. Mukatsar exercising the powers of Collector, dated the 6th August, 1963 which is illegal and against law and the plaintiffs are not bound by it and neither the defendants are entitled to take possession of the aforesaid land in accordance with that order, be passed in favour of the plaintiffs against the defendants with costs."

While this suit was still pending and because of the challenge to the power of attorney on the ground that it had not been properly authenticated under the law, a fresh power of attorney was executed by Vernon Seth Chotia on March 23, 1964 in favour of Sardar Kartar Singh Chawla. The second power of attorney was subscribed and sworn to before the Notary Public in and for the County of Alameda, State of California. The Clerk of the Court as required by the laws of California appended a certificate that the Notary Public had duly given the certificate in acknowledgement of the execution of the power of attorney by Vernon Seth Chatia. The endorsement of the Notary Public reads: I "Subscribed and sworn to before me this 23rd day of March 1964.

Betly J. Botelko Notary Public in and for the County of Alameda, State of California."

This second power of attorney was produced in the suit and the court of first instance ordered the dismissal of the suit, because it was of opinion that the transfer in favour of the redeeming mortgagors by Vernon Chotia was thereafter flawless. Appeal in the District Court and a second appeal filed in the High Court failed. This appeal has been brought by special leave, Mr. Hardev Singh in arguing the appeal referred to the provisions of S. 85 of the Indian Evidence Act which provides that a Court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public was duly executed and authenticated. He contended that authentication of the power of attorney had to be in a particular form, and that it was not sufficient that a witness should have signed the document, be he a Notary Public or any other. It ought to have been signed by the persons named in s. 85 and should have been authenticated properly. He admitted that there was no prescribed form of authentication, but he relied upon a ruling of the Allahabad High Court reported in Wali Mohammad Choudhari and others v. Jamal Uddin Chaudhari(1) where it is stated that authentication means that the person who

authenticates must satisfy himself about the identity of the person executing or making the document. He argued that the authentication should have shown on its face that the Notary Public had satisfied himself that Vernon Chotia was the real person who had signed the power of attorney before him. He contended, therefore, that the first power of attorney was invalid because it was not authenticated before any of the persons named in s. 85 and the second power of attorney was invalid, because it did not show on its face that the Notary Public had satisfied himself that it was Vernon Chotia who executed the document. He also contended that, in any event, the execution of the second power of attorney was ineffective after the expiry of four months during which registration had to be obtained and further that the act of Mr. Chawla in presenting the document for registration under the invalid first power of attorney, could not be cured by the execution of a second power of attorney.

Mr. Hardev Singh referred us to the provisions of ss. 32 and 33 of the Indian Registration Act. Under s. 32, it is provided that a document to be registered, whether the registration is compulsory or optional,' must be by the presentation at the proper registration office either by some person executing or claiming under the same or by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in the manner therein mentioned. His contention was (1) A.I.R. 1950 All. 524.

1Sup,CI (NP)/70-4 that for a proper registration, due presentation was a condition precedent and that presentation could only be either by the executant, that is the Principal who conveyed under the deed or a duly constituted representative under a power of attorney properly executed. He referred then to s. 33 which says that if the principal at the time of execution does not reside in India the power of attorney will be recognised only if it is executed before and authenticated by a Notary Public. In other words, his contention was that power of attorney for purpose of presentation of a document for registration as also for its execution must be a properly authenticated document and in the case of a person residing abroad, it must be a document executed by the Principal before the Notary Public and attested and authenticated by the Notary Public after due proof of the identity of the person making the document. He relied further upon the ruling in Dottie Karan and others v. Lachmi Prasad Sinha and others(1) and contended that if a power of attorney under which a document was presented and got registered, were found to be defective, then the registra- tion would be of no consequence, because the registering officer would lack jurisdiction to register the document. These are the stages by which Mr. Hardev Singh contended that registration in this case was ineffective, that the vendees derived no title and therefore they had no, title to claim redemption either under the Punjab Redemption of Mortgages Act or otherwise. These contentions were also raised in the High Court and the two courts below, but were concurrently rejected.

It is plain that presentation for registration could be, either by the Principal or by a duly constituted attorney. It is equally plain that a proper power of attorney duly authenticated as required by law had to be made before power could be conferred on another either to execute the document or to present it for registration. That indeed is the law. The short question in this case is whether Mr. Chawla possessed such a power of attorney for executing the document and for presentation of it for

registration. Now, if we were to take into account the first power of attorney which was executed in his favour on May 30, 1963, we would be forced to say that it did not comply with the requirements of the law and was ineffective to clothe Mr. Chawla with the authority to execute the sale deed or to present it for registration. Mat power of attorney was not authenticated as required by s. 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to (1) 58 I.A. 58.

show that he was a Notary Public. In any event there was no authentication by the Notary Public if he was one) in the manner which the law would consider adequate. The second power of attorney however does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that that power of attorney was also duly authenticated in accordance with our laws. The only complaint was that the Notary Public did not say in his endorsement that Mr. Chawla had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied him. self in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under s. 85 of the Indian Evidence Act and s. 33 of the Indian Registration Act.

The only question is whether the second power of attorney was effective to render valid the transaction of sale and the registration of the document both earlier than the power of attorney. In our judgment, it would be so. Mr. Hardev Singh does not read into this matter the fact of ratification by Vernon Seth Chotia of his earlier power of attorney. The second power of attorney states in express terms that the first power of attorney was defective and was being ratified. Vernon Seth Chotia also stated in the second power of attorney that the act of Mr. Chawla would be his act which included not only the making of the document but also the presentation of that document. Now the law is quite clear that ratification relates back to the original act provided there is a disclosed principal and this has been stated nowhere better than by Lord Macnaughton in Keiehley, Maxted and Co.v. Durant(1) quoting Tindal, C. J. in Wilson v. Tumman(2).

> "That an act done, for another, by a person though without any precedent authority whatever, becomes then act of the principal, subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by the act, whether it be for the detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by, and with all the consequences which follow from, the same act done by his previous authority. And so by a wholesome and convenient fiction, a person ratifying the act of another, who, without authority, has made a contract openly and avowedly on his behalf, is deemed to be, in fact he was not, a party to the contract."

(1) [1901] A.C. 241 at 246-47.

(2) 1843 6 M. &. G. at p. 242.

Relation back of an act of ratification was expressly accepted in this case. Other cases have been summarised in the manual of the Law and Practice of Powers of Attorney issued by the Council of the Chartered Institute of Secretaries. This follows from the maxim of law "Canis ratihabitio retrotrahitur at mandate priori sequiparatur"- that is to say, ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him. The learned authors quote the case of the House of Lords which we have above cited and add to it certain other cases with which we do not consider necessary to encumber this judgment.

It therefore follows that the second power of attorney was a valid document and it authorised Mr. Chawla to execute the document as well as to present it for registration. This being a document ratifying a former inconclusive act related back to the time when the first document was made and cured the illegality in the presentation for registration which had taken place.

The case of the Privy Council on which great reliance was placed, namely, 58 I.A. 58 (cit. supra) no doubt states that presentation by a person who is not properly authorised by a power of attorney is ineffective and the registration void, but there the Judicial Committee was not considering the case of a subsequent ratification. They were only concerned with an invalid document and nothing more. If there had been ratification, the other principle to which we have adverted here would have been taken note of and the decision would probably have been different.

In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary, in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by s. 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.

Further, this is obviously an unmeritorious suit on the part of the mortgagees. They are after all mortgages and redemption has been offered to them by a person who is the son of the original mortgagor and who has resorted to the quick remedy of the Redemption Act, for getting the mortgage redeemed. This mortgage took place as far back as 1923 and we are now in the year 1970. It is obvious that over the years this property must have appreciated considerably in value. The intention of the mortgagees is to retain the property as long as they can by raising technical objections in the way of the mortgagors seeking to redeem it. Further again the appellants as plaintiffs in the case joined the transferees from Vernon Seth Chotia but made no attempt to join Vernon Seth Chotia, the son of the original mortgagor. The suit could be only properly framed with all the parties before the Court. In our opinion, even if Vernon Seth Chotia was not a necessary party, he was at least a proper party. ,If he had been brought before the court, we would have known from him whether he had given the authority to execute the document and he could have adopted the act of Sardar Chawla by ratifying it again. The suit was not properly framed. For all these reasons, the appeal has no merits and it fails and will be dismissed with costs.

We are surprised to note that the learned Judge in the High Court did not award costs. Normally costs should follow the event and it is not the rule that costs should be left to be borne to the parties. Here a case was decided against one of the parties in a contentious matter, and costs should have been awarded.

Y.P. Appeal dismissed.