

CIVIL REVISION APPLICATION NO.1854 & 1859 OF 1996.

Date of decision: 28.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. M. B. Gandhi, advocate for petitioners in both matters.

Mr. K. R. Raval, advocate for respondent in both matters.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain ,J.

-----

February 28, 1997

Oral judgment:

Since both the applications are arising from an order passed in same suit and involving identical questions of law and facts and as parties are also common, are disposed of by this common judgment.

Petitioners/plaintiffs filed Civil Suit No. 164 of 1996 in the Court of learned Civil Judge (J.D.)., Borsad, against the respondent/defendant for declaration and

injunction. The suit was filed by one Patel Bhagwatprasad Maganbhai as power of attorney holder of the petitioners. The respondent/defendant challenged maintainability of suit contending that the person who signed the plaint has no legal and valid authority i.e., power, to institute suit therefore the institution of suit itself being ab-initio illegal, the plaint be rejected. Accordingly, the learned Judge upholding the contention of the respondent/defendant, rejected the plaint vide order dated 7.11.1996. In view of the rejection of plaint, application Ex.5 for interim relief was also rejected as having become infructuous. Aggrieved by the said order, the petitioners/plaintiffs have filed Civil Revision Application No. 1854 of 1996 challenging the order of rejection of plaint and Civil Revision Application No. 1859 of 1996 challenging the order passed below application Ex.5.

On perusal of record it transpires that said Patel Bhagwatprasad Maganbhai has filed the suit on the basis of Ex.3/13, power of attorney dated 9.9.1996. The authority is captioned as "Special Power of Attorney". In paragraph 4 thereof, it has been stated that the respondent has initiated tenancy proceedings No.35 of 1976 under Sections 32 (G) and 32 (FF) and 70 (MB) of the Bombay Tenancy Act therefore authority is given to look after the said land, sow, cultivate, reap and to dispose of the agricultural product, to initiate civil and criminal proceedings as false cases have been initiated, to initiate criminal proceedings against any person whosoever has filed false affidavit, prepared false bills, to take actions for compensation and damages, to protect possession and initiate civil proceedings in court. The said authority has been executed on a stamp paper of Rs.10/-. Interpreting this power of attorney, that it is given for a particular purpose of defending tenancy proceedings only and it is a 'special power of attorney' hence has no authority to file suit for declaration and injunction.

As a cardinal rule, the nature of document has not to be judged by the title or caption which it bears. In order to gather intention of the parties, the document has to be read as a whole and not in isolation. Similarly, execution of document in a particular form and payment of stamp fees, would not be much relevant consideration for deciding nature of document. In this case, it is true that power of attorney, Ex.3/13, bears title as "Special Power of Attorney" and the same is executed on a stamp fee of Rs.10/- But merely because it is titled as "Special Power of Attorney" and it is executed on a stamp

paper of Rs.10/- does not become a special power of attorney. The words "Special Power of Attorney" suggest that the power is given for a specific particular act only. In this case, on reading paragraph 4, it appears that the power is given for doing so many acts and deeds which are general in nature. It is true that the authorities given are in background of the tenancy case instituted by the defendant/respondent but nonetheless can be construed to have given for doing particular act. Reference to tenancy case simply suggests the cause giving rise to giving of power and authority.

In this case authorities given suggest that the attorney is authorised to sow, cultivate, reap and dispose of agricultural product, to initiate civil and criminal proceedings for the protection of the property as well as against all concerned who have filed false cases, false affidavits, etc.. Thus, the nature of authority suggests that it is given for executing multiple acts, general in nature. This includes initiation of every and any kind of legal proceedings, may be civil or criminal.

Affixing of stamp fee on a particular document does not decided the nature of document but on the contrary, the nature of document and intention of parties would decide the stamp fees to be affixed. If in a given case it is found that the document is insufficiently stamped then proper course would be to impound and direct the party to pay proper stamp fees in accordance with law. Keeping in mind the contents of document, the court may decide the nature interpreting the provisions of law and on interpretation if it is found that the document is insufficiently stamped then the court shall impound the document and take appropriate action as per law. In case where insufficient stamp fee is paid it is not proper for the court to interpret the document according to the stamp fee. While doing so, the court would be acting de hors the provisions of law.

In my view, in the facts and circumstances of the case, the interpretation given by the court below to the document Ex.3/13, power of attorney dated 9.9.1996, is not proper and is de hors the settled principles of law therefore the impugned order is required to be quashed and set aside.

In the result, the civil revision applications are allowed. The impugned order dated 7.11.1996 rejecting the plaint and Ex.5 is set aside. The power of attorney, Ex.3/13 dated 9.9.1996, is to be treated as "General Power of Attorney". As regards proper stamp fees, the

court would be at liberty to initiate appropriate proceedings under the Bombay Stamp Act. As a consequence of this order, the suit and application Ex.5 shall stand restored. The court below is directed to proceed further in accordance with law from the stage where the litigation was terminated by virtue of impugned order.

Rule is made absolute. No order as to costs.