

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

## **JUDGMENT**

(Ram Bilas **VS.** Addl. Court No.3,  
Jodhpur & Anr.)

D.B. SPECIAL APPEAL (WRIT) NO.135/2006  
against the judgment dated 13.1.2006  
passed in S.B. Civil Writ Petition  
No. 6901/2005.

Date of judgment : 29<sup>th</sup> March, 2006

## PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA  
HON'BLE MR. JUSTICE R.P. VYAS

Mr. R.R. Chacha for the appellant.  
Mr. Suresh Shrimali for the respondents.

BY THE COURT : (PER HON'BLE RAJESH BALIA, J.)

Having heard learned counsel for the appellant, we are of the opinion that the appellant, who is defendant in rent suit is in pursuit to non-suit the plaintiff on hyper technical issues at the initial stage and it is apparent that he has more than once approached this Court against the interim orders at every

level to delay the progress of suit and protracted the litigation.

Having perused the material on record, we are satisfied that the power of attorney filed along with the plaint in favour of Deepak Parihar executed by Shri Govind Singh Parihar in respect of his rented property for authorising him to collect rent and doing all necessary managements including filing of suit, was rectified by executing a supplementary document and presented after raising of the objection by the appellant pointing out that the power of attorney filed along with the plaint did not include the property of which he was tenant. Annex.R/4 filed along with the reply to the writ petition shows that subsequent power of attorney only rectified an apparent error in the first power of attorney executed in favour of the attorney holder Shri Deepak Parihar. It was necessitated on account of fact that in the narration of property in power of attorney a mistake occurred as a result of bona fide typography error. It was stated in the power of attorney that in the original power of attorney, the blocks A, B, C & D had been

mentioned in para 2 of the original power of attorney, as the property described by A B C & D acquired through sale deed from Jugal Kishore Malani and Ram Kishore Malani HUF in the year 1990, situated opposite Sahakari Bazar, Station Road, Jodhpur whereas the described property in the original power of attorney block C had wrongly been described inasmuch as block C was the property of the said Deepal Parihar himself and no power of attorney in respect thereof was required to be executed in his favour by the plaintiff Govind Singh. In fact, Shri Govind Singh Parihar acquired the land A, B, E and F through sale deed from Shri Jugal Kishore Malani during the year 1991 and consequently, rectified the mistake that the said deed was executed by him in respect of the four blocks owned by Govind Singh Parihar. Clearly, it was a case of wrongful inclusion of somebody else property and wrongful exclusion of executant's own property in the authorisation of power of attorney due to bonafide typographical error.

Learned counsel for the appellant urged that the original power of attorney was not in

respect of the property in question and new power of attorney was executed in favour of Shri Deepak Parihar only after filing of the suit. Even if the suit may be continued on the basis of subsequent power of attorney, it should be deemed to have been filed on the date the subsequent power of attorney was produced in the Court.

We are not impressed with this contention. *Prima facie*, we are satisfied that the subsequent power of attorney was only a supplemental document to original and for rectifying a bonafide typographical error in the principal document in respect of narration of different blocks of properties owned by plaintiff and in respect of which alone power of attorney was executed in favour of Shri Deepak Parihar.

The other objection of the learned counsel was that the learned trial judge has wrongly observed that defendant has not denied the averments in the plaint that power of attorney holder of Deepak Parihar was authorised to collect the rent and the defendant was paying the rent to the power of attorney holder. This

contention is also not well founded.

Prima facie it appears that in response to the plaint averments at least it has been admitted by the defendant that he has paid the cheque to Deepak Parihar while admitting that the plaintiff Govind Singh is his landlord.

In view of these glaring facts, no interference could have been made even if the order dated 16.8.2005 would have come before this Court in appeal.

The learned counsel for the appellant has relied on number of instances which for this purpose cannot be considered necessary to refer inasmuch as they do not have any bearing on the issue raised before us at this juncture.

The scope of interference by invoking extra-ordinary jurisdiction ordinarily cannot be exercised to correct errors in passing orders within the jurisdiction of subordinate courts as a court of appeal. The jurisdiction under Article 227 is primarily exercised for correcting

the error in jurisdiction or if a procedure which has been adopted tentamounts to result in failure of justice.

We are not inclined to interfere with the order under appeal is, therefore, dismissed.

[ R.P. VYAS ], J.

[ RAJESH BALIA ], J.

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