

ORISSA HIGH COURT: CUTTACK

W.P.(C) Nos.19205 and 19204 of 2011

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

W.P.(C) No. 19205 of 2011

Sri Anup Kumar Dhirsamant *Petitioner*

-Vs-

Sri Chaturbhuja Naik & others *Opp. Parties*

For Petitioner : M/s. B.Baug & S.Rath

For Opp. Parties : M/s. D.K.Sahoo & D.K.Behera
(For opposite party No.1)
M/s. M.Kanungo, S.Das, P.R.Singh,
S.K.Mishra, L.N.Rayatsingh
(For opposite party Nos. 2 to 4)

W.P.(C) No. 19204 of 2011

Sri Anup Kumar Dhirsamant *Petitioner*

-Vs-

Smt. Laxmipriya Das & others *Opp. Parties*

For Petitioner : M/s. B.Baug & S.Rath

For Opp. Parties : M/s. D.K.Sahoo & D.K.Behera
(For opposite party No.1)
M/s. M.Kanungo, S.Das, P.R.Singh,
S.K.Mishra, L.N.Rayatsingh
(For opposite party Nos. 2 to 4)

P R E S E N T :

THE HONOURABLE KUMARI JUSTICE S.PANDA

Date of Judgment : 27.06.2014

S.Panda, J. Petitioner in W.P.(C) No. 19205 of 2011 has challenged the order dated 8.7.2011 passed by learned Civil Judge (Sr.Divn.), Angul in Interim Application No. 76 of 2010 arising out of C.S. No. 250 of 2010 ignoring the power of attorney executed in favour of the petitioner.

Petitioner in W.P.(C) No. 19204 of 2011 has challenged the order dated 8.7.2011 passed by learned Civil Judge (Sr.Divn.), Angul in Interim Application No. 105 of 2010 arising out of C.S. No. 314 of 2010 ignoring the power of attorney executed in favour of the petitioner.

Petitioner in both the writ petitions being one and as common question of law and facts involved in both the writ petitions are same, they are heard together and disposed of by this common order.

2. The facts leading to the present writ application are as follows:-

Opposite party No.1 as plaintiff filed the suit for specific performance of contract i.e. the agreement of sale dated 31.3.2001 executed by opposite party No.2- Mira Pradhan along with one Snehalata Rout through their general power of attorney as given in favour of the present petitioner dated 20.10.1993. He has also prayed for permanent injunction. Plaintiff has pleaded that the aforesaid two persons executed an irrevocable general power of attorney in favour of the present petitioner with creation of interest for development and construction of house over the suit schedule land. After getting the power of attorney, the petitioner has developed the lands and made number of sub-plots. He has also constructed M.I.G. houses and sold some plots and houses to some purchasers. Plaintiff further pleaded that while the petitioner dealing with the lands as such he has entered into a sale agreement on 31.3.2001 with the plaintiff to sale the

suit lands at cost of Rs. 5,90,000/- and received part consideration and delivered possession of the suit lands accordingly. As the petitioner did not execute the sale deed, he has filed the suit. Plaintiff impleaded son of Snehalata Rout as defendant No.2 since she died in the meantime. Plaintiff also impleaded one Anup Kumar Dhirsamant (present petitioner) as defendant No.3 who is alleged to be the power of attorney holder of Mira Pradhan. Plaintiff has also filed Interim Application No. 76 of 2010 for grant of temporary injunction restraining the defendants from transferring the suit land and to dispossess the plaintiff from the suit land and not to change the nature and character of the suit lands. The court below has granted ad-interim order of status quo in the said application.

3. One Minakshi Rout wife of defendant No.2 appeared in the interim application as the general power of attorney holder of defendant No.1 Mira Pradhan and filed an application for accepting her appearance and to accept the show cause for defendant No.1 along with defendant No.2. In her application she has stated that defendant No.1 executed a general power of attorney in her favour in respect of the suit land on 20.3.2006. The present petitioner has filed his objection to such application and specifically contended that under no circumstances she can appear for defendant No.1 as the general power of attorney holder as because the present petitioner is the power of attorney holder of defendant No.1 on the basis of a registered general power of attorney which creates interest in him. Therefore, the second general power of attorney is void one. The court below after hearing the parties by order dated 1.3.2011 allowed the application filed by said Minakshi Rout with a finding that after death of Snehalata Rout the registered general power of attorney executed by Mira Pradhan and Snehalata Rout in favour of the present petitioner cannot be held to be the power of attorney for defendant No.1. Challenging the same petitioner has filed W.P.(C) No. 11193 of 2011 before this Court. This Court while disposing of the aforesaid writ petition on 4.5.2011 remitted the matter to the court below for fresh hearing. After remand the application was

re-heard and the impugned order was passed permitting the said Minakshi Rout to represent defendant No.1.

4. Learned counsel for the petitioner submitted that the finding of the court below that on execution of second general power of attorney in favour of Minakshi Rout the earlier general power of attorney executed in favour of the petitioner was cancelled which is an error apparent on the face of the record as the power of attorney executed in favour of the petitioner was irrevocable with the terms and conditions stipulated therein and as such the same is still continuing and therefore the same cannot be cancelled unilaterally. He further submitted that the parties have not stated that the said power of attorney was cancelled rather the defendant No.1 executed another power of attorney in favour of Minakshi Rout without indicating the description of the immovable properties to identify the same by ignoring the provision of Section 21 of the Registration Act. After death of Snehalata Rout, who was a party to the power of attorney executed in favour of the petitioner and no fresh power of attorney executed in respect of her interest over the suit schedule land in favour of any other person. Therefore the said intervenor cannot represent Snehalata's interest over the suit property and the court below has ignored the said fact as such the impugned order is perverse and is liable to be interfered with.

5. On the other hand, learned counsel appearing for the opposite party Nos. 2, 3 and 4 i.e. defendant Nos. 1, 2 and intervenor submitted that petitioner is a builder and developer filed the writ petition suppressing many facts. He further submitted that plaintiff is the employee of the petitioner filed the suit for sale of an area Ac.0.40 dec. out of Ac.1.44 dec. of land. Snehalata Rout died on 10.4.2005 leaving behind her only son defendant No.2 and after the death of Snehalata petitioner assured the plaintiff to execute the registered sale deed after getting the power of attorney from the legal heir. However the fact remains that after death of Snehalata defendant No.1 Mira Pradhan who residing at Noida in the district of Gaziabad executed a registered general power of

attorney in favour of the intervenor to deal with her movable and immovable properties and assets within the State of Orissa on 20.3.2006. However petitioner has suppressed such facts and taken a plea that the power of attorney executed in favour of the intervenor is an unregistered one. The registered power of attorney was produced before the court below and after hearing the parties, the court below passed the impugned order. He further submitted that petitioner has also filed a collusive suit in order to get decree fraudulently by manufacturing the document through his employees and sister who has filed C.S. No. 314 of 2010 with similar prayer like the plaintiff to avoid payment of court fee in order to grab the valuable property. The power of attorney executed in favour of the petitioner for the purpose of development of landed property of the principal by investing money from the sources of principal and therefore the power of attorney holder has no right to deal with the property including sale. After the death of Snehalata, the petitioner is ceased to be the power of attorney holder and the power of attorney has lost its legal sanctity and the court below has rightly passed the impugned order which need not be interfered with.

6. Considering the rival submission of the parties and after going through the record of the present writ petitions, it is to be determined on the following two issues viz.

(i) whether the registered irrevocable general power of attorney executed in favour of the petitioner in the year 1993 subsists and is in operation and if so whether the same can be ignored by execution of another power of attorney by one of the principal without description of the property in the second general power of attorney; and

(ii) Whether a general power of attorney in respect of immovable properties can be registered without description of property in the said document and if registered what will be its effect ?

Admittedly defendant No.1 and one Snehalata Rout executed the power of attorney which was registered in respect of the suit property in the year 1993. One of the Principal died in the year 2005. Section 207 of the Contract Act deals with how the document is to be cancelled and when it is irrevocable power of attorney. Sections 201 and 202 of the Contract Act deal with revocable and irrevocable document. Further

Section 21 of the Registration Act specifically stipulates that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same which has not been dealt with by the trial court. Sections 201 to Section 207 of the Contract Act deal with revocation of authority including termination of agency along with where the agent has an interest with the subject matter when principal may revoke agent's authority and revocation where authority has been partly exercised and notice of revocation or renunciation etc.

7. In the present case, the earlier irrevocable power of attorney was executed by two persons, out of whom, one was dead and so far as her interest in the said property has not been dealt with in the subsequent power of attorney executed in favour of the intervenor. In such a situation, whether the power of attorney executed in favour of the petitioner in the year 1993 can be ignored as held by the court below ?

8. In view of the above, this Court sets aside the impugned orders passed by the court below and remits the matter back to the trial court to hear and dispose of both the suits as expeditiously as possible. This Court further directs the court below to deal with the two issues formulated by this Court at the first instance and thereafter proceed with the suits on the basis of the findings arrived at. Status quo shall be maintained by the parties till disposal of the suits.

With the aforesaid observation and direction both the writ petitions stand disposed of.

.....
S.Panda, J.