

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION No.1512 2023

Between:

P. Pratap Reddy

.....Petitioner

And

Azmat Ali (died) and 24 others

.....Respondents

Date of Judgment pronounced on : 08-09-2023

HONOURABLE SRI JUSTICE T.VINOD KUMAR

1. Whether Reporters of Local newspapers : Yes/No

May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : **Yes**

to Law Reporters/Journals:

3. Whether His Lordships wishes to see the fair copy : Yes/No

Of the Judgment?

T. VINOD KUMAR, J

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION No.1512 2023

% 08-09-2023

P. Pratap Reddy

..... Petitioner

Versus

\$ Azmat Ali (died) and 24 others

..... Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for the Petitioner : Sri. Jalli Kanakaiah, learned senior counsel appearing for Sri. Narender Jalli, learned counsel for the petitioner

^Counsel for the respondents : Sri Dantu Srinivas, learned counsel for respondent No.25, Sri. Umesh Singh, learned counsel for respondent No.19

? Cases referred

¹ (2016)3SCC296

² [1969] 1 SCR 122 : AIR 1969 SC 73

³ AIR 1985 AP 30

THE HON'BLE SRI JUSTICE T. VINOD KUMAR**CIVIL REVISION PETITION No. 1512 of 2023****ORDER:**

1. This Civil Revision Petition is filed aggrieved by the order dated 24.04.2023 in E.A. No.14 of 2022 in E.P. No.727 of 2022 (previously numbered as E.P. No.18 of 2020) passed by the II Addition Senior Civil Judge, Medchal-Malkajgiri District, at Malkajgiri.

2. Heard Sri. Jalli Kanakaiah, learned senior counsel appearing for Sri. Narender Jalli, learned counsel for the petitioner, Sri Dantu Srinivas, learned counsel for respondent No.25, Sri. Umesh Singh, learned counsel for respondent No.19 and perused the record.

3. The respondent No.19 herein had filed E.P. No.727 of 2022 for payment of enhanced compensation granted in O.P. No.43 of 1997. Thereafter, the respondent No.19 herein filed the underlying E.A. No.14 of 2022 under Section 151 of the Code of Civil Procedure, r/w. Rule 232 of the Civil Rules of Practice.

4. The Court below allowed the said application with the following direction:

“...address a letter to the Principal Senior Civil Judge Court, R.R. District, at L.B. Nagar to issue a cheque in favour of this petitioner for a sum of Rs.34,38,234/- and to credit the same to his account no. 621965237563, State Bank of India, Keesara Branch, Medchal Malkajgirik, towards part payment of decree amount or else to transfer the E.P. amounts to the account of the Principal Senior Civil Judge Court, M.M. District for futher action.”

5. The present revision is preferred aggrieved by the said order.
6. Learned senior counsel appearing for the petitioner herein contends that the respondent No.19 is his father; and that he had executed a registered Irrevocable General Power of Attorney *vide* Doc.No.17932 of 2005 dated 17.11.2005 in his favour. It is further contended that in furtherance of the said irrevocable General Power of Attorney, the petitioner herein had represented the respondent No.19 in L.A.O.P. No.43 of 1997 and had also obtained the Occupancy Rights Certificate under the Inam Abolition Act, 1955.
7. It is further contended that since, the said Irrevocable General Power of Attorney was unilaterally cancelled by the respondent No.19 herein, the petitioner herein filed O.S. No.230 of 2022 before the Family Court-cum-Principal District Judge, Medchal-Malkajgiri, at Malkajgiri seeking cancellation of the same; and that the same is pending adjudication. Thus, it is

contended by the petitioner that respondent No.19 cannot now file the underlying E.A. No.14 of 2022 in his own capacity.

8. *Per contra*, learned counsel for respondent No.19 contends that the said Irrevocable General Power of Attorney was cancelled as the petitioner herein had acted adverse to the respondent No.19's interests. He further contends that the petitioner herein neither had any share nor claim to the compensation payable to him.

9. I have taken note of the contentions urged.

10. The sole issue falling for consideration in the present revision is whether the power of attorney executed in favour of the petitioner is an irrevocable power of attorney. Consequently, whether a Principal can act on his own behalf after executing a power of attorney.

11. The Hon'ble Supreme Court in ***Kasthuri Radhakrishnan and Ors. Vs. M. Chinnian and Ors***¹, held that an agent under a power of attorney always acts in the name of his principle and that

¹ (2016)3SCC296

any document executed by the agent is as if the principal has executed himself. The relevant paragraphs are as under:

“42. The law relating to power of attorney is governed by the provisions of the Power of Attorney Act, 1982. **It is well settled therein that an agent acting under a power of attorney always acts, as a general rule, in the name of his principal. Any document executed or thing done by an agent on the strength of power of attorney is as effective as if executed or done in the name of principal, i.e., by the principal himself.** An agent, therefore, always acts on behalf of the principal and exercises only those powers, which are given to him in the power of attorney by the principal. Any act or thing done by the agent on the strength of power of attorney is, therefore, never construed or/and treated to have been done by the agent in his personal capacity so as to create any right in his favour but is always construed as having done by the principal himself. **An agent, therefore, never gets any personal benefit of any nature.** Applying the aforesaid principle, this Court in Suraj Lamp and Industries Private Limited (2) v. State of Haryana and Anr. MANU/SC/1222/2011 : (2012) 1 SCC 656 held in paragraphs 20 and 21 as under:

20. **A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property.** The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). **It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.**

21. In State of Rajasthan v. Basant Nahata MANU/SC/0547/2005 : (2005) 12 SCC 77, this Court held: (SCC pp. 90 & 101, paras 13 & 52)

13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. **A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable.** The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.”

12. From a reading of the above, it is seen that a power of attorney is not a contract but a conveyance and that unless made irrevocable under law, a power of attorney is revocable. The Court further opined that even an irrevocable power of attorney does not have the effect of transferring title, it merely creates an interest in the property.

13. Further, the Supreme Court in *Loon Karan Sethiya Vs. Ivan E. John and Ors*², held that where an interest is created in the agent and power is conferred under the general power of attorney to secure such interest, only such instruments are called irrevocable power of attorney. The relevant observations are as under:

² 1. [1969] 1 SCR 122 : AIR 1969 SC 73

“8. There is hardly any doubt that the power given by the appellant in favour of the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. **It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked..**”

14. Thereafter this Court in *M. John Kotaiah Vs. A. Divakar and Ors*³, through *Justice. M. Jagannadha Rao*, (as his Lordship then was) held that merely if a declaration of giving an irrevocable power to the agent is present in the instrument, such an instrument does not become irrevocable. The Court further held that for an instrument to become irrevocable, an interest should be created in the agent and the power granted in the instrument should be to protect such interest created. The relevant observations are as under:

“11-12. In Bowstead on Agency, 14th Edition, page 423 it is stated as follows:-

"(I) Where the authority of an agent is given by deed or for valuable consideration, for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest. But it is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in, or lien for advances upon, the subject matter of it, the authority not being given expressly for the purpose of securing such interest or advances;

³ AIR 1985 AP 30.

(ii) Where a power of attorney, whenever created is expressed to be irrevocable and is given to secure a proprietary interest of the donee of the power, or the performance of an obligation owed to the donee, then, so long as the donee has that interest, or the obligation remains undischarged, the power is irrevocable;

(iii) Authority expressed by this article to be irrevocable is not determined by the death, insanity or bankruptcy of the principal, norwhere the principal is an incorporated company, but its winding up or dissolution, and cannot be revoked by the principal without the consent of the agent." (Emphasis.....)

The author thereafter points out that the mere fact that a power is declared in the instrument granting it to be irrevocable does not make it so. Irrevocability requires something further. It must satisfy the requirements mentioned above and then it is then called a power coupled with an interest. The mere right to earn commission is not an interest rendering a grant of authority irrevocable nor is an agent's lien. **The fact that the agent subsequently acquires an interest in the property is irrelevant, to be irrevocable. The authority must be conferred as protection of the agent's interest.**

13. It will therefore be seen that in cases where the principal owed some money to the agent and for the purpose of discharge of that amount conferred a right on the agent to recover a debt payable to the principal by a third party and assigned the right - to collect such debt from the third party to the agent, the agent acquires an interest in the debt so assigned and the power granted to the agent is to be irrevocable. Similarly, in cases where the principal becomes liable to a third party and has also to get some monies from his debtors or others owing money to him he can appoint an agent for remuneration and direct him to collect the monies due to him and pay to his creditors. In such a contingency the agent becomes an agent not only for the principal but also for the third party who has to get monies from the principal. The agent acquires a right in respect of the monies due to the principal from his debtors or others and thereby the power becomes an irrevocable power of attorney. These contingencies are clearly explained in the decision of the Delhi High Court in Harbans Singh's case (ILR (1977) 2 Delhi 649). **It was pointed out in that case that the interest created under an irrevocable power of attorney does not necessarily amount to an interest in the property which is the subject matter of the power of attorney.** Unless the document itself created a right in immovable property thereby attracting S. 17 of the Registration Act there is no question of the power of attorney becoming compulsorily registrable. But at the same time it may still create an interest sufficient to make the power of attorney irrevocable for purposes of S. 202 of the Contract Act."

15. In the light of the enunciation of law as above, the perusal of the Doc.No.17932 of 2005 dated 17.11.2005 titled as irrevocable power of attorney reveals the following:

- i. Though the respondent No.19 claims to have assigned his rights to his attorney who is entitled to claim compensation, the next paragraph states that he is appointing the petitioner herein as his agent to claim compensation on his behalf.
- ii. Thereafter clauses 1 to 6, grant power to the petitioner herein to appear before any court, authority or income tax departments, etc; file statements, written statements, petitions, counters, etc; prosecute and defend O.P.'s, appeals, etc; to settle, compromise, contest all claims relating to the lands mentioned therein, with rival claimants, L.A.O. or any other person, etc; to receive compensation, etc; and carry out all such other lawful acts necessary for the purpose of claiming compensation on behalf of the respondent No.19.
- iii. The concluding paragraph clearly states that all acts, things lawfully done by the petitioner herein shall be construed as

acts and things done by the respondent No.19 herein and that the respondent No.19 undertakes to ratify and confirm all things done by the petitioner herein for the respondent No.19 by virtue of the powers given to him under the said conveyance deed.

16. From the above observations, it is clear that the General Power of Attorney conferred *vide* Doc.No.17932 of 2005 dated 17.11.2005 though termed as 'irrevocable POA' is not irrevocable in its strict sense as neither any interest is created on the petitioner herein nor any powers are conferred with a view to secure the interest so created.

17. Therefore, as per the law laid down by the Apex Court in ***Kasthuri Radhakrishnan's*** case (supra), the petitioner herein having acted on behalf of the respondent No.19 at all times, cannot claim any right or interest to compensation by virtue of the said document.

18. The above observation by necessary implication would mean that the respondent No.19 is not barred to file E.A. No.14 of 2022 by himself without relying on his agent *i.e.*, the petitioner herein.

19. However, considering that the petitioner herein has filed O.S. No.230 of 2022 before the Family Court-cum-Principal District Judge, Medchal-Malkajgiri, at Malkajgiri seeking cancellation of the revocation deed, it is clarified that the observations made in the present revision are confined to the limited purpose of dealing with the issue involved herein.

20. In the light of the aforesaid discussion, the present revision is devoid of merit and is liable to be dismissed.

21. Accordingly, this Civil Revision Petition is dismissed. The order dated 24.04.2023 in E.A. No.14 of 2022 in E.P. No.727 of 2022 (previously numbered as E.P. No.18 of 2020) passed by the II Addition Senior Civil Judge, Medchal-Malkajgiri District, at Malkajgiri, is sustained.

22. Consequently, miscellaneous petitions pending if any shall stand closed. No order as to costs.

T. VINOD KUMAR, J

Date: 08.09.2023

Note: L.R. copy be marked.

B/o
VSV/MRKR

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 1512 of 2023

08.09.2023

VSR/MRKR