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IN THE CITY CIVIL AND SESSIONS COURT AT AHMEDABAD

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CIVIL SUIT NO. 841 OF 2015

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ORDER BELOW EXH.73

1. The present withdrawal purshis is filed by the original complainant Arvindbhai Babarbhai Bhatiya himself which was produced in the Court, The present withdrawal purshis if filed after the case taken on board. The suit is filed through the power of attorney holder Mr. Jhonmark Ravikant Kant. Therefore, it is brought notice to the said power of attorney holder of the plaintiff.

2. It is the case of the plaintiff that his own property is adjoining to suit of the defendants property, both the properties are situated in survey No. 78/4/1 TP No. 7 final plot No. 116/1, its city survey No. 3434 and the property of the plaintiff is 116/1/1 and the property of the defendant is plot No. 116/1/2. The plaintiff has filed the present suit through his power of attorney holder Mr. Jhonmark Ravikant Kant, the copy of the said power of attorney is produced with the plaint and the powers given in favour of Mr. Jhonmark Ravikant Kant is limited and its totally without interest in the property and its a special power of attorney. Neither the power of attorney is general power of attorney and nor it is irrevocable power of attorney. The power of attorney is given for the property Nilambar total plot ad-measuring about 673 sq.yds. and in the said plot ad-measuring about 120 sq.yds. as per final plot No. 116/1, Khokhra, Ahmedabad in TP Scheme No. 7 in City Ahmedabad at Taluka Ahmedabad City register Sub-district Ahmedabad-

5 (Naroda) of District Ahmedabad, Ahmedabad City Survey No. 3437. In the said power of attorney the plaintiff has clearly mentioned that he has residing out of India and he has absolute right to purchase the open land of Anantbhai Babarbhai Bhatiya i.e. the defendant's land and therefore, to obtain those rights he executed this power of attorney and he has also mentioned that by the act of the will of his later father Babarbhai Bhikhubhai Bhatiya, the property is shared between three brothers, the will has been written in 2 parts, the first part of will pertains to 2 brothers of the 3 and prescribes that the right to purchase, the sale of the any of the share of act of will through of the 2.

3. Now, after hearing the Notice for Motion, the Court has passed the order of injunction against the defendant No. 1 and in favour of the plaintiff. Thereafter the issues were framed and matter came for recording of the evidence, meanwhile the plaintiff has prayed for the matter taken on the board as he wanted to withdraw the suit as per order passed at Exh.71. The matter was taken on board and withdrawn purshis with signature of the original plaintiff i.e. Arvindbhai Babarbhai Bhatiya is produced and the defendant has endorsed that the defendant has no objection if the suit is withdrawn. The signature of plaintiff is identified by the learned Advocate Mr. M.S. Vohra, the present purshis at Exh. 73 is accompanied by the passport of the original plaintiff i.e. Arvindbhai Babarbhai Bhatiya, which shows that at the time of filing of this purshis i.e. on 04/09/2017, he is not in India. This fact is not challenged by the defendant or power of attorney holder that, original

plaintiff i.e. Arvinabhai Babarbhahi Bhatiya was not in Ahmedabad on the date of filing of the present purshis. The present purshis is accompanied by the Vakalatnama of learned Advocate Mr. M.S. Vohra on which the learned Advocate Mr. K.R. Patel have made endorsement of seen.

4. Learned Advocate Mr. K.R. Patel is the Advocate of the plaintiff through his power of attorney. Now, the said purshis was kept for hearing as the suit is filed through power of attorney holder and on the dated of withdrawal, neither he was present nor learned Advocate was present. After service of notice learned Advocate Mr.K.R.Patel has filed objection on behalf of the Jhonmark Ravikant Kant that, in his adjournment application at Exh. 75 in which he has stated that the original complainant has not informed the power of attorney holder or learned Advocate Mr. K.R.Patel, that he is going to withdraw the suit and original plaintiff has no right to withdraw the suit without revocation the power of attorney on behalf of the Jhonmark Ravikant Kant and therefore, the withdraw purshis is required to be filed.

5. Thereafter, the battle between Jhonmark Ravikant Kant previous power of attorney holder and original plaintiff Mr. Arvindbhai Babarbhahi Bhatiya and their later power of attorney holder and real brother Rasinbhai Babarbhahi Bhatiya and new third power of attorney holder Vinay Harbanskumar Arora. The letters through courier and by email, the original plaintiff or someone from the plaintiff side has send letters to the Court. Neither this practice is identified by the any law or rule and

when they have engaged their lawyers, they should have filed application or whatever they wanted to file through attorney. Therefore, the said letters were not filed as per rule.

6. Now, some facts which are not under the challenge is that, the suit is filed through power of attorney holder i.e. Jhonmark Ravikant Kant on behalf of the plaintiff. It is also not disputed that the present suit is a suit for right of pre-emption. It is also not disputed that the suit is between 2 brothers, none of them are residing in Indian. Thirdly the property adjoining to suit which is own by the plaintiff is sold by register sale deed on 04/08/2017 vide register sale deed No. 4975. It is also not in dispute that the power of attorney holder of the plaintiff i.e. Jhonmark Ravikant Kant has filed one HRP suit No. 374/2017 against the original plaintiff i.e. Arvinabhai Babarbhai Bhatiya through his power of attorney holder and another person Vipul Ravjibhai Patel. It is also not disputed that the power of attorney holder of plaintiff Mr. Jhonmark Ravikant Kant has filed the suit for cancellation of the register sale deed and cancellation of memorandum of understanding which was executed by the original plaintiff i.e. Arvinadbhai Babarbhai Bhatiya.

7. Now, it is very clear from the document of power of attorney holder that the original plaintiff Arvinabhai Babarbhai Bhatiya has given the power of attorney without interest in the property and this is the special power of attorney, therefore, the power of attorney holder can not object if the power of attorney is revoked by the

principle. The relation between the power of attorney holder and the executor of power of attorney is same of relation between the agent and the principle respectively. Now, when the power of attorney holder has filed the suit against the executor i.e. principle than it is clear conflict of interest in the carrying out the act. This conflict is fatal to the instrument of power of attorney. The present power of attorney holder i.e. Jhonmark Ravikant Kant has filed HRP Suit No. 374/17 against the original plaintiff i.e. Arvindbhai Babarbhai Bhatiya.

8. Now it is argued by the learned Advocate for the Jhonmark Ravikant Kant, Mr. K.R.Patel that Arvinabhai Babarbhai Patel was not in condition to withdraw the suit, he was not in a position to understand what was going on. For the shake of argument even if it is believed that the Jhonmar Ravikant Kant himself has produced one copy of email latter of Arvinvbhai Babarbhai Bhatiya vide Mark 81/2, he has relied upon the said document. Looking to the contention of the said document the Arvindbhai Babarbhai Bhatiya has stated that he cannot revoked the power of attorney of Jhonmark Ravikant Kant and hereby withdraw and declared cancellation the notice/letter of revocation of power of attorney dated 28/09/2017, which have been issued under my thumb impression.

9. Now, from this letter only the original plaintiff has made clear that he has revoked the power of attorney in favour of the Jhonmark Ravikant Kant on 28/09/2017. Now, once the power of attorney is already been revoked

and the plaintiff himself has executed two documents one memorandum of understanding between 3 brothers and 1 another, present copy of which produced by the plaintiff vide mark 85 and the registration sale deed dated 28/09/2017, the act of the original plaintiff Arvinabhai Babarbhai Bhatiya is shows that he has revoked the power of attorney in favour of Jhonmark Ravikant Kant, if the power of attorney has filed the suit for cancellation of the said document or memorandum of understanding has not effect in the present suit. Now it is also seems from the documents that power of attorney which was executed in favour of the Jhonmark Ravikant Kant is revocable, the said letter which was produced by the Jhonmark Ravikant Kant at Mark 81/2 that once Arvindbhai Babarbhai Bhatiya has revoked and given notice for revocation of power of attorney holder to Jhonmark Ravikant Kant and once it is already been revoked than without execution of new power of attorney the said power of attorney cannot be continued. It is also come on the record that after the notice of revocation Arvindbhai Babarbhai Bhatiya has given power of attorney in favour of one Vinay Harbanskumar Arora, meanwhile one another power of attorney of Arvinabhai Babarbhai Bhatiya is also come on the record.

10. The said power of attorney in favour of the real brother Rasinbhai Babarbhai Bhatiya of the plaintiff is produced alongwith Exh.78. Therefore, it seems that Arvinabhai Babarbhai Bhatiya has revoked the power of attorney in favour of Mr. Jhonmark Ravikant Kant, even this Jhonmark Ravikant Kant has joined the Rasinbhai Babarbhai Bhatiya as a power of attorney of Arvindbhai

Babarbhair Bhatiya in HRP Suit No. 374/2017 before the Small Cause Court. Therefore, the Jhonmark Ravikant Kant himself treated Rasinbhair Babarbhair Bhatiya as power of attorney holder of the Arvindbhair Babarbhair Bhatiya, at the time of filing of the said suit. Therefore, its very clear that now he has a right to stand has power of attorney of the Arvinabhair Babarbhair Bhatiya and even otherwise the suit is for right of per-emption. Plaintiff himself has already sold his land therefore, the said right is not remains as right of per-emption and therefore even on this ground the suit is not maintainable. The learned Advocate for the defendant has given an application under Order 7 Rule 11 of the Civil Procedure Code and there is no cause of action is in the suit is remains.

11. Now, looking to the ration laid down by the Hon'ble Supreme Court in the landmark case of **Maria Margadia Sequeria vs. Erasmo Jack de Sequeria, reported in (2012) 5 SCC 370**, when there is no cause of action is survived and even in present suit, issues were framed but the original plaintiff Arvinabhair Babarbhair Bhatiya has not for called for the evidence and the has given withdrawal purshis than his suit is required to be permitted to withdraw. Otherwise is required to be disposed of as there is no cause of action remains. Hence it is better to permit the plaintiff to withdraw the suit hence, the following order.

::: ORDER :::

The objection from the power of attorney Mr. Jhonmark Ravikant Kant is hereby dismissed and the suit is permitted to withdraw. Interlocutory

injunction granted against the defendant is hereby vacated.

No order as to costs.

Dictated and pronounced in the open Court on 25th November, 2017.

Date :25/11/2017
Place :Ahmedabad.

(N. C. Raval)
Additional Sessions Judge,
City Civil Court No. 09,
Ahmedabad City.
(Unique ID Code: GJ00370)

bkpandya