

1952

Present : Nagalingam S.P.J. and Pulle J.

BASTIAM PILLAI, Appellant, and ANNA FERNANDO,
Respondent

S. C. 39—D. C. Negombo (Inty.) 15,480

*Power of attorney—Must be construed strictly—Construction of general words therein—
Recitals control operative part—Civil Procedure Code, s. 25 (b).*

The recitals in a power of attorney stated that as the principal could not look after the landed properties or manage or collect their income she was desirous of conferring that power on the attorney. The operative part, however, contained general words which purported to confer unrestricted powers. In an action instituted by the agent in the principal's name to vindicate ownership against a trespasser and to recover damages from him for alleged encroachment on certain premises belonging to the principal—

Held, that a power of attorney must be construed strictly and that the special terms in the recitals controlled the general words in the operative part. The agent, therefore, had gone beyond her authority in instituting the action when, in fact, her power was limited only to the management of the properties of the principal.

APPEAL from an order of the District Court, Negombo.

S. J. V. Chelvanayakam, Q.C., with *C. Chellappah*, for the defendant appellant.—The question is whether the power of attorney given by plaintiff to her attorney is sufficient to maintain this action. Where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power it is necessary to show that, on a fair construction of the whole instrument, the authority in question is to be found within the four corners of the instruments, either in express terms or by necessary implication—*Bryant, Powis and Bryant, Ltd. v. La Banque Du Peuple*¹. A power of attorney is construed strictly. The recitals govern the whole purpose of the power—*Danby v. Coutts*². The special terms of a power of attorney prevent general words from having an unrestricted general effect—*Harper v. Godsell*³. In the present case the attorney was given specific powers, namely, to manage and collect the income of plaintiff's property in the Negombo District. The power to sue was given only in respect of the matters specifically authorised. It did not extend to include the institution of an action to vindicate ownership against a trespasser.

E. B. Wikramanayake, Q.C., with *M. I. M. Haniffa* and *M. Markhani*, for the plaintiff respondent.—Sections 24 and 25 of the Civil Procedure Code are applicable to the present case. The only question is whether the power of attorney is a "general power" within the meaning of section 25 (b). The cases cited for appellant apply to special powers of attorney. All that section 25 (b) requires is a general power of attorney to appear in Court. See *Lanka Estates Agency, Ltd. v. W. M. P. Corea*.⁴

S. J. V. Chelvanayakam, Q.C., replied.

Cur. adv. vult.

June 27, 1952. PULLE J.—

This action instituted on the 17th October, 1949, comes up in appeal on a preliminary point raised by the defendant that the action is not properly constituted. The allegation against the defendant, who is the appellant, is that he encroached on premises No. 89, Main Street, Negombo, belonging to one Anna Pearl Fernando and caused damage. One of the defences raised was that the attorney of Anna Pearl Fernando, one G. Alice Fernando, who purported to file the action in the name of her principal had no authority to do so.

Defendant's counsel conceded before the trial Judge that the terms of the power of attorney in favour of G. Alice Fernando were wide enough to enable her to institute the action, but submitted that, as Anna Pearl

¹ (1893) A. C. 170.

² (1885) 29 Ch. D. 500.

³ (1870) L. R. 5 Q. B. 422.

⁴ (1951) 52 N. L. R. 477; 45 C. L. W. 33.

Fernando was in Ceylon, the attorney could not act under that power. The submission was rejected and the preliminary issue was answered against the defendant. At the hearing of the appeal learned Queen's Counsel appearing for the defendant confined himself to the argument that upon a proper interpretation of the power of attorney G. Alice Fernando did not have any authority under it to institute the action.

Recitals in a power of attorney control its operative part, *Danby v. Coultts*¹. There are three recitals in the power which read as follows :

“ Whereas I am the owner of several landed properties at Negombo.

“ And whereas I am unable to look after the said properties personally, as I am at present living at Lindula.

“ And whereas I am desirous of appointing a fit and proper person to manage the said properties and to collect their income.”

The intention of the principal which one can gather from the recitals alone is that as she personally could not look after the landed properties or manage them or collect their income, she was desirous of conferring that power on the attorney. The operative part contains several clauses of which it is not necessary to take note of more than two. The first of these provides,

“ To appear for me before any court or courts of justice in the said Island either as plaintiff, defendant or intervenient and to sign and grant all necessary proxy or proxies to any Proctor or Proctors and prosecute or defend any suit or other proceedings now or hereafter to be brought by or against me”. The second reads,

“ Generally to do, execute and perform all such further and other acts, deeds, matters and things whatsoever which my said attorney shall think necessary or proper to be done in and about or concerning my business, estates, lands, houses, debts or affairs as fully and effectually to all intents and purposes as I might or could do if I were personally present and did the same in my proper person, it being my intent and desire that all matters and things respecting the same shall be under the full management, control and direction of my said attorney.”

Now the law applicable to the construction of general words in a power of attorney is laid down in the cases of *Harper v. Godsell*² and *Bryant v. La Banque du Peuple*³ cited at the argument and is conveniently summarised in Article 36 of *Bowstead on Agency*, 9th edition, p. 59.

“ General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging special powers when necessary, and only when necessary, for that purpose.”

¹ (1885) 29 Ch. D. 500.

² (1870) L. R. 5 Q. B. 422.

³ (1893) A. C. 170.

In the former case Blackburn J. said at p. 427,

“ The special terms of the first part of the power prevent the general words from having an unrestricted general effect. The meaning of the general words is cut down by the context in accordance with the ordinary rule of *ejusdem generis*.”

Was it necessary for the proper management of the landed properties of Anna Pearl Fernando that her attorney should bring the present action? The word “ management ” could hardly be extended to include the institution of proceedings in a Court of law by the attorney in the principal’s name to vindicate ownership against a trespasser and to recover damages.

The contention on behalf of the respondent is that G. Alice Fernando came within the class who are described in section 25 (b) of the Civil Procedure Code as “ persons holding general powers of attorney ” and that the power of attorney in question answered the description of a general power, even though it did not in terms or by necessary implication authorize the institution of the action. Reliance was placed on a passage in the judgment of Gratiaen J., in the case of *Lanka Estates Agency, Limited v. W. M. P. Corea*¹ which reads,

“ I do not think that section 25 (b) of the Civil Procedure Code was intended to refer only to persons who hold general powers of attorney authorising them to represent the principal in every conceivable kind of legal proceedings.”

This observation was made in a case in which it was not disputed that the power of attorney authorized the agent to institute an action for the ejection of a tenant. The point taken on behalf of the tenant was that the power of attorney was a special power and not a general power within the meaning of section 25 (b) of the Code. This does not, in my opinion, help the respondent. An agent who wishes to sue in the name of the principal must first satisfy that he has the authority to sue under the power of attorney. This is essentially a question of interpretation of the document. However wide may be the extent of the powers and the range of subjects to which those powers relate, if, applying the rules of construction of powers of attorney, one cannot read into the document an authority to institute the particular suit in question, then such a suit must fail.

Applying the proper tests and especially the test that a power of attorney must be construed strictly I come to the conclusion that the agent has gone beyond her authority in instituting the action.

The order appealed from should be set aside and the action dismissed with costs here and below payable by the attorney.

NAGALINGAM S.P.J.—I agree.

Appeal allowed.

¹ (1951) 52 N. L. R. 477 ; 45 C. L. W. 33.