THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1309 of 2007

JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') by the unsuccessful defendant is directed against the decree and judgment dated 31.08.2007 passed in A.S.No.607 of 2004 by the learned X Additional Chief Judge, (Judge, Fast Track Court), City Civil Court, Hyderabad, whereby the learned Additional Chief Judge while dismissing the said appeal had confirmed the decree and judgment dated 06.11.2004 of the learned II Junior Civil Judge, City Civil Court, Hyderabad passed in O.S.No.603 of 2001 filed by the sole plaintiff/respondent for eviction of the defendant/appellant from the Mulgi bearing Municipal No.6-3-668/12 & 13, situated at Punjagutta Main Road, Hyderabad more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned senior counsel for the appellant/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. When this Second Appeal was admitted on 16.11.2007, the following substantial questions of law were framed.

> **1) Whether the suit for eviction can be decreed without plaintiff entering the witness box?**
> **2) Whether the alleged GPA of the plaintiff can depose on behalf of the plaintiff for the acts done by her?**
> **3) Whether the Court can consider a person to sign different signatures at different points of time?**
> **4) Whether the Court can still draw presumption under Section 85 of the Indian Evidence Act as to the execution, attestation and authentication by the public notary of a foreign country when the signature of the GPA apparently differs from the signature of the executant with that of the admitted signature?**
> 5) **Whether the Court can draw a presumption under Section 85 of the Indian Evidence Act as to the attestation and authentication of the said document without there being reference in the document itself and**

when a provision of the document is deleted?

On the above substantial questions of law which were formulated, the submissions of the learned senior counsel for the defendant and the learned counsel for the plaintiff were heard.

5. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to state, in brief, the admitted facts and the pleadings of both the sides, which are relevant:

6. Admitted and undisputed facts: "The plaintiff, Sofia Hasan, is the landlady and the owner of the suit schedule property. The defendant is a tenant in occupation of the said schedule mulgi of the plaintiff. He is carrying on his business under the name and style 'PIKNIC BAKERY' in the said mulgi. The notice dated 08.12.2000 terminating the tenancy as per the provisions of Section 106 of the Transfer of Property Act was served on the defendant. Thereafter, the suit was brought for eviction and for recovery of arrears of rent @ Rs.1,440/- per month from 01.06.2000 to 30.12.2000 and for mesne profits @ Rs.3,000/- per month from January, 2001 till the date of delivery of possession, as the defendant had failed to comply with the demands made in the quit notice."

7. The suit was brought by the plaintiff represented by her General Power of Attorney holder – Zulfekar Alam as she is stated to be a resident of Chicago, Illinois, U.S.A.

8. The defendant having filed a written statement resisted the suit, *inter alia,* contending as follows: 'The landlady never instructed the defendant to pay the rents to her said agent Zulfequar Alam (hereinafter referred to as 'agent' for short). The so called agent has no authority to issue the quit notice and, as such, the termination of tenancy by him does not arise and there is no valid termination of the lease. When the said agent had demanded for payment of rents to him, the defendant had demanded him to produce a document showing his authority to demand and collect rents from the defendant; and on that there was a threat of forceful dispossession of the defendant from the schedule mulgi; and, for that reason the defendant had filed the suit O.S.No.6914 of 2000 on the file of the learned II Junior Civil Judge, City Civil Court, Hyderabad against the plaintiff represented by the said person who was styling himself to be an agent of the plaintiff. And, for abundant caution the defendant was depositing the rents to the credit of the said suit; and, there are no arrears of rents to be paid. This defendant had issued a reply on 21.12.2000 to the quit notice. The plaintiff has no cause of action. The instant suit for eviction and other reliefs was brought as the defendant did not agree for the illegal demand made by the so called agent to pay the rents to him.'

9. After full fledged trial and on merits, the trial Court had decreed the suit of the plaintiff and directed the defendant to vacate and deliver vacant possession of the schedule mulgi to the plaintiff within two months from the date of the judgment and had further directed him to pay Rs.18,400/- towards the arrears of rent within two months and awarded interest @ 6% per annum on the said amount till date of payment or realization and further declared that the plaintiff is entitled to file an application under Order 20 Rule 12 of the Code for determination of the mesne profits payable for the period from February, 2001 till the date of the delivery of the possession of property to the plaintiff by the defendant. As already noted, the first appeal preferred by the defendant was dismissed. Therefore, the defendant is before this Court.

10. In this back drop of factual milieu and the chronology of events, it is necessary to refer to the contentions of the parties.

10.1 The learned senior counsel for the defendant would contend as follows:

The name and the address of the landlady are being misused by the so called agent, who is nothing to do with the suit schedule property. The so called deed of General Power of Attorney is fabricated for the purpose of filing the above suit and it is a bogus document. No power is conferred by the landlady on any one including the so called agent, Zulfequar Alam. This defendant had never acknowledged the receipt of any letter as alleged by the

plaintiff. Since the General Power of Attorney is a fabricated document it does not have any sanctity and the so called agent has no authority to issue the quit notice. Therefore, the question of the termination of the tenancy does not arise. There is no termination of tenancy much less valid termination of tenancy as the quit notice was issued by a stranger and as the alleged power of attorney holder is not a duly constituted agent and the power of attorney appointing him as agent has no sanctity. The so called notice terminating the tenancy was issued with a *mala fide* intention to harass the defendant as the defendant had refused to come to terms and agree for the illegal demand of the so called agent to pay rents to him. For abundant caution the defendant is depositing monthly rents to the credit of the suit O.S.No.6914 of 2000 on the file of II Junior Civil Judge, City Civil Court, Hyderabad. The defendant was and is a tenant of the suit schedule mulgi. And he is under a legal obligation to protect the interest in the mulgi of the landlady, who is in USA and is not in touch with the defendant. The General Power of Attorney alleged to have been executed by the landlady in favour of the so called agent-Zulfequar Alam is a fabricated and a bogus document; and the same is not valid as the same has not been duly executed, attested and authenticated in accordance with law. In the absence of proper authentication by the notary public in the manner in which the law would consider adequate, the deed of general power of attorney is invalid under law and, therefore, the so called agent is not a duly constituted agent; and, under the said invalid power of attorney no power is conferred on the agent to act on behalf of the landlady.
The quit notice issued by the agent is itself invalid; and, the suit instituted by him without having a valid and effective power as per the provision of the Section 33 of the Indian Registration Act is not maintainable. Therefore, the decrees and judgments of the Courts below decreeing the suit are vitiated by error of law and are liable to be set aside and the second appeal deserves to be allowed.

10.2 *Per contra*, the learned counsel for the plaintiff would contend as follows:

The plaintiff is the owner of the mulgi and that she is the landlady and that the defendant is a tenant are all admitted and undisputed facts. The defendant had paid rents till April, 2000 to the earlier authorized agent and the power of attorney holder of the plaintiff by name Syed Amair Asad. Subsequently, the plaintiff had revoked and cancelled the said GPA in favour of the above said agent and had thereafter, appointed the present agent Zulfequar Alam as her true and lawful attorney and the said fact is intimated to the defendant on 17.07.2000. The defendant having acknowledged the receipt of the letter had failed to pay the monthly rents since May, 2000. Though the said agent of the plaintiff had constantly demanded the defendant to pay the rents, the defendant had withheld the payment of rents purposely and had also failed to pay the property tax and water consumption charges. Therefore, a notice dated 08.12.2000 was issued in accordance with the provision of Section 106 of the Transfer of Property Act terminating the tenancy of the defendant by the end of the tenancy month i.e., December, 2000 and calling upon the defendant to vacate and handover the peaceful possession and pay the arrears of rent. The defendant did not comply with the demand in the said notice, but, had issued a reply notice dated 21.12.2000. Hence, the suit is filed for eviction, recovery of arrears of rents and mesne profits. Both the Courts below on consideration of the pleadings and the evidence in proper perspective had rejected all the contentions of the defendant including the contentions that the power of attorney is a fabricated and bogus document and that it is not duly executed, attested and authenticated as required under law and had recorded concurrent findings of fact in favour of the plaintiff on the issue of truthful nature and validity of the General Power of Attorney executed in favour of the plaintiff's agent Zulfequar Alam. All the contentions in regard to the truthful nature of the General Power of Attorney under exhibit A1 executed by the plaintiff in favour of her agent-Zulfequar Alam and the due attestation and authentication of the same and the authority of the agent to terminate the tenancy by issuance of the quit notice and to institute the suit for eviction etcetera are not questions of law much less pure questions of law or substantial questions of law. The said contentions at any rate are mixed questions of fact and law. On all the said contentions, the Courts below had recorded concurrent findings of fact;

there are no substantial questions of law involved in this second appeal. Therefore, the second appeal is devoid of merit and is liable to be dismissed.

11. Therefore, from the hub of the contentions and the core of substantial questions raised, the vital questions that emerge for determination are -

> **Whether exhibit A1 -General Power of Attorney said to have been executed by the plaintiff in favour of her Agent Zulfequar Alam is true and valid?**
> **Whether it is authenticated by the notary public in the manner in which the law would consider adequate?**
> **Whether, in any view of the matter, there are facts and circumstances brought out on record to hold that the agent of the plaintiff was a duly authorised agent?**
> **And, whether the act constituting Zulfequar Alam as the agent of the plaintiff was vouchsafed by the plaintiff; and, whether the constitution of the said agent was ratified by the plaintiff/the principal?**
> **Whether the said agent was competent to issue the quit notice, institute the suit and give evidence on behalf of the plaintiff and whether the suit seeking the relief of eviction and other ancillary reliefs can be decreed?**

11.1 The learned counsel for the plaintiff on one hand contends that after the cancellation and revocation of the earlier power of attorney executed by the plaintiff in favour of her earlier agent by name Syed Amair Asad, the plaintiff had executed the exhibit A1 power of attorney in favour of the present agent-Zulfequar Alam and that therefore, the said agent is her true and lawful attorney and the said fact is already intimated to the defendant by a letter dated 17.07.2000 and the said letter was acknowledged by the defendant. On the other hand, the case of the defendant is that Mr Jaleel was the earlier authorized agent and that he having collected rents up to May, 2000 had disappeared and that subsequently several persons had approached the defendant for collection of rents and that all such persons could not show any authorization or power of attorney executed by the plaintiff and that in the said circumstances, the defendant for abundant caution had filed a suit and was and is depositing rents to the credit of that suit and that the present agent Zulfequar Alam had also demanded the defendant to pay the rents to him without producing a title deed in his favour or any valid document like a power of attorney or authority to collect the rents and that the said agent having failed to show his authority to the defendant had got issued the alleged quit notice with *mala fide* intentions to harass the defendant and that the alleged GPA under exhibit A1 in favour of the Zulfequar Alam is not true and that it is a fabricated and bogus document and it is not duly authenticated as required under law and that therefore, it has no sanctity in law and hence, the notice issued by such an agent, who is not a validly constituted agent is not sufficient to terminate the tenancy and that the suit instituted by such an agent is not maintainable.

11.2 The plaintiff's said agent-Zulfequar Alam was examined as PW1 and he had deposed in line with the pleaded case of the plaintiff. Exhibits A1 to A11 were exhibited on the side of the plaintiff. PWs 2 and 3 were also examined to establish that the plaintiff had earlier executed exhibit A10 power of attorney in favour of her brother Syed Amir Asad and that the same was later cancelled by a revocation deed under exhibit A9. PW1 also spoke about the issuance and the service of the quit notice. The power of attorney holder of the defendant was examined as DW1 and he had deposed about the payment of rents by the defendant and about the suit filed by the defendant and the deposit of rents being made to the credit of the said suit. He had asserted the defence that PW1 is not the lawfully constituted agent of the plaintiff. DW2, a GPA holder of a neighbour of the defendant, was also examined to support the pleaded defence of the defendant. No documents were exhibited on the side of the defendant.

11.3 The learned senior counsel for the defendant would contend that the content of the exhibit A1-power of attorney said to have been executed by the plaintiff in favour of her agent-PW1 is not adequate to show that there is due execution and authentication as required under law. Before going further, it is necessary to refer to Sections 32 and 33 of the Indian Registration Act and Section 85 of the Indian Evidence Act, which are relied upon and which read as under:

Section 32:

32. Persons to present documents for registration.—Except in the

cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office:--
(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
(b) by the representative or assign of such a person, or
(c) by the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Section 33:

33. Power-of-attorney recognizable for purposes of section 32.—(l) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—

(a) if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in Court.

Explanation.—In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897 (10 of 1897).
(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the

principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.
(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.
(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Section 85 of the Indian Evidence Act.

Presumption as to powers-of-attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, [Indian] Consul or Vice-Consul, or representative of the [Central Government], was so executed and authenticated.

Section 32 of the Indian Registration Act deals with the persons competent to present documents for registration and section 33 of the said Act deals with the powers of attorney recognizable for the purposes of Section 32 of the Act. Therefore, Section 33 of the said Act deals with the powers of attorney recognizable for the purposes of the registration of the documents. Certain documents are compulsorily registerable; and the parties may opt for the registration of certain documents though such registration is not required under law. As per the said provisions, if the principal at the time of executing the power of attorney does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government shall alone be recognized for the purpose of presentation of any document for registration at the proper registration office. In the case on hand, the power of attorney is not given for the purposes of execution of any registered document by the agent on behalf of the principal/the plaintiff. Therefore, the said provisions have no direct application to the facts of the case. Section 85 of the Indian Evidence Act lays down that every document purporting to be a power of attorney and which was executed before an authenticated by a Notary Public shall be presumed to have been so executed and authenticated.

11.4 On this aspect, the learned senior counsel for defendant had placed reliance on the following decisions.

(i) **Damodaran Suran v. kesavan Meenaksity** (LAWS (KER) 1983-9-9= KERLT-1983-0-1013)). The facts of the case and the ratio may be stated as under:

> Exhibit A5 Power of Attorney, on the authority of which Exhibit A2 sale deed was executed by PW2, was purported to have been executed by one Nanu in the presence of the Commissioner for Oaths of the Federation of Malaysia at Kuala Lumpur. The commissioner for Oaths has attested that Nanu had affixed his signature in his presence and that the signature contained in the document is the true signature of Nanu. The signature of the Commissioner for Oaths, who had attested exhibit A5 Power of Attorney is attested by the Assistant Secretary, Consular Division, Ministry of Foreign Affairs. There is also a seal of the Ministry of Foreign Affairs, Malaysia. Exhibit A5 is not authenticated by any of the authorities mentioned in Section 85 of the Indian Evidence Act. Section 32 of the Registration Act, 1908 empowers an agent of the executant of the document or his representative or assign, duly authorised by power-of attorney executed and authenticated in the manner referred to in Section 33 to present documents for registration. Since the power-of-attorney Exhibit A5 is not executed before or authenticated 'by any of the authorities mentioned in clause (c) of Section 33, it was found that PW2 was not competent to present exhibit A2 document for registration and that presumption under Section 85 of the Indian Evidence Act of due execution and authentication of Exhibit A5 power-of-attorney is also not available. Further, apart from the document, there is no other evidence of the execution and authentication of exhibit A5 power-of-attorney. Considering these materials, it was held that the courts below are perfectly right in holding that Exhibit A2 executed on the authority of Exhibit A5 does not convey title to the plaintiffs.

The facts of the case thus reveal that the question is not about due authentication, but about competency of the person, who had attested the said document and total absence of authentication by a competent authority mentioned in the provision of law. The document in the cited case was attested by the Commissioner of Oaths and Assistant Secretary to Consular Division whereas the requirement of law is that the power of attorney must have been executed before and authenticated by a notary public or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government. Since obviously the above said persons, who have attested are not covered by the authorities mentioned in Clause (c) Section 33 of the Act, the Court had proceeded to hold that the power of attorney is not valid.

(ii) In **Wali Mohammad Chaudhari and others v. Jamal Uddin Chaudhari** (AIR (37) 1950 Allahabad 524) the High Court of Allahabad while dealing with the presumption under Section 85 of the Indian Evidence Act had held as follows:

> The authentication is not merely attestation, but something more. It means that the person authenticating has assured himself of the identity of the person who has signed the instrument as well as the fact of execution. It is for this reason that a power of attorney bearing the authentication of a notary public or an authority mentioned in Section 85 is taken as sufficient evidence of the execution of the instrument by the person who appears to be the executant on the face of it. The presumption, no doubt, is rebuttable. But unless rebutted the presumption stands and the document can be admitted in evidence as a document executed by the person alleged to have executed it without any further proof: vide Haggitt v. Ineff, (1855) 24 L. J. Ch. 120 : (3 W. R. 141) and Performing Right Society Ltd. v. Indian Morning Post Restaurant, A. I. R. (26) 1939 Bom. 347: (I. L. R. (1939) Bom. 295).

There is no dispute with the legal preposition that authentication means not merely attestation and that it means that the person authenticating had assured himself of the identity of the person who has signed the instrument as well as the fact of execution.

(iii) Mohanshet Purushottam Gujar v Jayashri Vasantrao Mahaaonkar (AIR 1979 BOMBAY 202). In this decision, while referring to the above cited decision of the Allahabad High Court, it was held as follows:

> "It is indicated in the aforesaid decision that, a power of attorney

must show that the person authenticating has not merely certified that it is executed before himself but that he has further assured himself of the identity of the person who has signed the instrument. In this connection my attention was drawn by the learned advocate for the respondent to a decision of the Supreme Court in **Jugraj Singh v. Jaswant Singh**. (AIR 1971 SC 761). In para 7 of the report it has been observed that if a power of attorney is endorsed by a notary public, the fact that the notary does not say in his endorsement that the executant has been identified to his satisfaction is immaterial and it would flow from the fact that he had endorsed the document that it had been subscribed and sworn before him. Reliance was placed on the presumption of regularity of official acts, and the Supreme Court was pleased to hold that it was satisfied that the notary must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. Accordingly it was held that the power of attorney with which it was dealing was valid and effective both under Section 85 of the Evidence Act and S. 33 of the Indian Registration Act."

In this cited case, as far as the identity of the executant is concerned, the Magistrate in fact had indicated that he is personally unaware of the executant but put his signature on the basis of the identification made by an advocate. Having regard to the said fact, it was held as follows: "It is true that such identification by the advocate is mentioned in the rubber stamp and one may presume that it is on the basis of such identification that the Magistrate proceeded to put the rubber stamp. But will this amount to authentication by the Magistrate?

Section 85 contains a presumption, a presumption which may operate in favour of the party relying on a document and to the prejudice of the party alleging that the document is not a genuine one. For the purpose of such presumption to operate, particularly in the background of the facts above ascertained, the authentication must be clear, specific, more decisive and bereft of the features which I have indicated earlier. If there is the slightest doubt, then the Court must be loathe to rely on the presumption contained in S.85 and must be equally loathe in applying such presumption in favour of the party relying on the document. In my opinion this was a case in which the Presumption under S.85 should not have been raised in favour of the respondent."

Thus, the decision was rendered ultimately on the facts peculiar to the case.

(iv) In **M/s Electric Construction and Equipment Co. Ltd., V M/s Jagjit Electric Works, Sirsa (Haryana)** (AIR 1984 DELHI 363) the question that was involved was – Whether the suit has been signed, verified and filed by a duly authorised person. Having regard to the facts and the legal position, it was held as follows:

> It is useful to note that Section 85 raises a presumption about the execution of a Power of attorney provided two conditions are satisfied. Firstly, it must be executed before a Notary Public and secondly, it must be authenticated by a Notary Public. In this case, there is no authentication at all. …
> ….. However, it does not state that it was executed before a Notary Public and nor does it bear any authentication by a Notary Public regarding the manner of execution, etc. It is, therefore, very essential to stress the two ingredients which are contained in Section 85 of the Evidence Act, viz., execution before the Notary Public and the authentication by the Notary Public. The words are "executed before, and authenticated by". Both these conditions must be satisfied. It appears that neither condition is satisfied in this case because the common seal was affixed on 27th November, 1973, and there is merely an attestation by a Notary Public on 13th December, 1973. There is no authentication at all. So, Section 85 of the Evidence Act does not apply to raise any presumption in favour of this power of attorney."

Therefore, after stating the law, the decision was rendered having regard to the facts of the case.

(v) **Citibank N.A., New Delhi V Juggilal Kamalapat Jute Mills Co. Ltd., Kampur** (AIR 1982 DELHI 487) was relied upon in support of the proposition that for raising a presumption under Section 85 of the Indian Evidence Act, the twin requirements to be fulfilled are that (1) the document in question must purport to be a power of attorney and (2) that it must purport to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Indian Consul, or Vice-Consul, or representative of the central Government, and that the authentication is not merely attestation, but something more, and that unless both these requirements stand fulfilled the presumption does not arise.

(vi) **Jugraj Singh and another V Jaswant Singh and others** (AIR 1971 SC 761) was relied upon in support of the proposition that the notary public, who has attested the power of attorney must also say in his endorsement that the executant had been identified to his satisfaction and that of a power of attorney in case of a person residing abroad must be a document duly executed by the principal before a notary public and attested and authenticated by the notary public after due proof of the identity of the person making the document.

(vii) In **National and Grindlays Bank Ltd., v M/s World Science News and others** (AIR 1976 DELHI 263) it was held as follows:

> "If the interpretation of notary public is limited to notaries public appointed in this country only, it will become impossible to carry on commerce with foreign countries. Surely, Section 57 of the Indian Evidence Act enjoins upon the Courts to take judicial notice of seals of notary public. Such judicial notice cannot be limited to Notaries appointed in India only. This seems clear if the entire sub-section is read. Once, this conclusion is reached, there is no reason to limit the meaning of the expression "Notaries Public" in Section 85 of the Indian Evidence Act to Notaries appointed in India only."

A reading of the ratio would show that the provision of Section 85 of the Indian Evidence Act need not be limited to the Notaries appointed in India only.

(viii) In **Raj Kumar Gupta and others v. Des Raj and others** (AIR 1995 HIMACHAL PRADESH 107) it was held as follows:

> 'The mere fact that the document (power of attorney) had not been drafted or typed out by the executant and typed matter duly signed by the executant was presented before the Notary Public, does not in any way, militate the presumption as to the execution and authentication of the power-of-attorney.' Thus, the facts of the case disclose that the contents of the power of attorney were read over and explained to the executant and that after the executant had admitted the contents to be correct, the same was attested by the Notary public and that an endorsement in the form of certificate has been appended to the document showing that it was presented by the executant before the Notary Public.

11.4 I have thus carefully gone through the legal position which is undisputed. Since the pleadings, the contentions and the legal position are now summed up, it is necessary to refer to the crucial document i.e., exhibit A1 and answer the substantial questions in regard to its truth and validity and also its due execution by the plaintiff and authentication by the Notary Public and consequently the power of PW1 to represent the plaintiff. I have carefully gone through the contents of the exhibit A1-the General Power of Attorney. Apart from the other terms and contents, the introductory part of the said document would show that it was executed on 15.04.2000 at Chicago, Illinois, USA by Sofia Hasan, i.e., the plaintiff-landlady appointing, constituting and nominating the PW1-Zulfequar Alam as her lawful attorney to do the acts mentioned therein. A perusal of exhibit A1 discloses that it was signed on each page by the said Sofia Hasan, who is said to be the executant/principal. It was not attested by any witness. But it was signed by the Notary Public, Dennis R. Hutera, and also contains his official seal which reads as under:

OFFICIAL SEAL
DENNIS R. HUTERA
NOTARY PUBLIC. STATE OF ILLINOIS.
MY COMMISSION EXPIRES ON 8-27-2003.

Above the executant's signature, on the last page of the document, the following sentences appear.

> **"I do hereby state and declare that I will and shall ratify the acts, deeds and things done by my attorney in the true spirit of these presents as if I was personally present and done.**
>
> **In witness whereof I have executed and delivered this presents on the day and year as above written"**

11.5 Now as already noted, the only and core question is: whether exhibit A1 power of attorney is duly executed and authenticated? And, if so, whether Zulfequar Alam (PW1) is the duly constituted agent of the plaintiff? Reverting to the evidence and other allied facts, what is to be noted is that apart from exhibit A1-power of attorney, the plaintiff had also filed exhibit A4 letter said to have been addressed by the plaintiff to the defendant. On a perusal, the said letter would show that the plaintiff had personally addressed that letter to the defendant informing him that the present agent Zulfequar Alam has been appointed by her as her GPA in respect of her property in the occupation of the defendant and also requesting him to pay rents to the said agent or his nominee from time to time. This letter-exhibit A5 is also attested by the same notary public Dennis R.Hutera on 15.06.2000. The said letter contains an endorsement 'received copy' with a signature/initial and date. Admittedly, this letter was not signed by the defendant and in the cross examination PW1, the agent of the plaintiff, had stated that it is the signature of one Siraj Ali the office bearer of the defendant, but not of the defendant. If the power of attorney itself is not properly authenticated the mere intimation of the appointment of the PW1 as the agent of the plaintiff under the said power of attorney would be of no avail. However, in this letter the plaintiff affirmed that she had executed the power of attorney under exhibit A1. Therefore, the question that still remains is as to whether the exhibit A1 power of attorney is duly authenticated and whether the PW1-Zulfequar Alam is a duly constituted and appointed agent of the plaintiff.

11.6 Firstly, a clause at sl.no.10 of the power of attorney under exhibit A1 was removed from the contents by making it to disappear and by not striking it down is by itself no ground to doubt the truthful nature of exhibit A1, as this contention was for the first time raised before this court and PW1 was not cross-examined about this aspect of the document. I have referred to supra the last few lines and the seal of the Notary Public on exhibit A1. The contention is that the Notary public did not say by making an endorsement about the executant signing before him and about his satisfaction in regard to the identity of the executant. However, there is a presumption of regularity of official acts and therefore, it can be accepted that he must have satisfied himself in the discharge of his duties that the person who was executing the power of attorney was the proper person. Therefore, this Court is satisfied that the power of attorney under exhibit A1 is valid and effective under law.

11.7 Further, the law is well settled that though the power of attorney executed constituting a person as an agent of the principal is found to be defective, the principal can always validate the acts and the transactions done by ratification and such ratification can be done even after the transactions or acts were done under the defective power. Thus, the law is quite clear that ratification by the principal relates back to the original acts/transactions done by the agent. In the case on hand, the first appellate Court had come to notice that an affidavit of Sofia Hasan, the plaintiff, was filed under Rule 33 of the Civil Rules of Practice and had therefore, referred to the same in the judgment impugned. Before referring to the contents of the said affidavit, it is necessary to refer to Rule 33 of the Civil Rules of Practice, which reads as follows:

> **Rule 33: (old 17) Signing or verification by agent:-**
>
> **"If any proceedings, which under any provision of law or these rules, is required to be signed or verified by a party, is signed or verified by any person on his behalf, a written authority in this behalf signed by the party shall be filed in court, together with an affidavit verifying the signature of the party, and stating the reason of his inability to sign or verify the proceedings, and stating the means of knowledge or the facts set out in the proceeding of the person signing or verifying the same and that such person is a recognized agent of the party as defined by order III, Rule 2 of the Code and is duly authorized and competent so to do.**

11.8 Now dealing with the affidavit of the plaintiff, it is worthy to note that the said affidavit of the plaintiff was also attested by a notary public besides Consulate General of India at Chicago, USA. It appears that the said affidavit was sent to the agent Zulfequar Alam-PW1 through a courier by name FedEx Express and the said documents namely the notarised affidavit of the plaintiff and the cover in which the affidavit was received were filed into the Court with a memo on 28.02.2003 before the court below to substantiate that the power was duly executed and is true and valid. To countenance this aspect of the case of the plaintiff, the learned senior counsel for the defendant would contend that the trial Court did not make a reference to this affidavit in its judgment and it is unexplained as to how and when this affidavit has come on record. However, the learned counsel for the plaintiff would contend and point out that the said affidavit not only contains the photograph of the plaintiff but also date stamp of the trial Court showing that it was filed into the trial Court. By this affidavit, the plaintiff had affirmed and stated that she had executed exhibit A1- General Power of Attorney in favour of Zulfequar Alam

(PW1), her agent, and that she had appointed him under the said power as her duly constituted agent and that therefore, her agent has rightly got issued a notice terminating the tenancy calling upon the defendant to vacate and handover the suit schedule property and that the General Power of Attorney holder had rightly instituted the suit for eviction and that she undertakes to ratify the acts done by her attorney and that her GPA had acted as per her directions. In the concluding portion of her affidavit, she had stated that GPA dated 15.04.2000 was executed by her in favour of Zulfaquar Alam and it is subsisting and the said agent is authorized to act and perform all acts on her behalf in respect of the suit schedule property. This affidavit was attested by a notary public Sara Guyton, State of Illinois, on 28.02.2003 and bears the seal of Consulate General of India, Chicago, USA. This affidavit not only affirms the truthful nature of exhibit A1 power of attorney, but also sets at rest any doubt as regards the due execution of the power of attorney by the plaintiff and its due authentication by a notary public.

11.9 Having regard to the facts of the case and the reasons assigned supra, this court finds that there is no merit in the contentions that the power of attorney was not duly executed and duly authenticated and that the agent (PW1) is not the duly constituted and nominated agent of the plaintiff. On an analytical examination of the facts and evidence brought on record, this court finds that in the facts and circumstances of the case, both the courts below are justified in holding against the defendant and upholding the contention of the plaintiff that her agent PW1 is a duly constituted and appointed agent.

12. When once this court and the courts below have come to the conclusion that PW1 is a duly constituted and appointed agent of the plaintiff, it follows that the quit notice got issued by him on behalf of the plaintiff and as her agent terminating the tenancy cannot be said to be a notice not issued by an authorised agent. The fact of the matter is that the agent Zulfequar Alam, who had issued the quit notice terminating the tenancy and who had brought the suit for eviction of the tenant/defendant is a duly constituted agent and therefore, the notice got issued by him terminating the tenancy can be held to be valid and as a sequel, it must also be held that the suit filed by him for eviction and other reliefs is also maintainable and is liable to be decreed in the absence of any valid and legally acceptable defence. Coming finally to the contention that the agent-PW1 is not competent to depose in regard to the matters about which the principal alone has got personal knowledge, there is no dispute in regard to the proposition that an agent cannot depose in regard to matters about which the principal alone has got personal knowledge. But, in the case on hand, the power of attorney was held to be true and duly authenticated and that PW1 is a duly constituted and appointed agent. He having issued the quit notice on behalf of the principal and having brought the suit as an agent of the plaintiff deposed about the issuance of a quit notice and the matters, which are relevant and which are within his personal knowledge as the agent of the plaintiff and therefore, the contention that PW1 is not competent to depose in the suit is also devoid of merit.

13. Viewed thus, this Court finds that the substantial questions of law raised on behalf of the defendant have no substance and are devoid of merit and that therefore, the second appeal is liable to be dismissed.

14. In the result, the second appeal is dismissed. There shall be no order as to costs. The defendant is granted four months time from today for vacating and delivering vacant possession of schedule property to the plaintiff. On failure of the defendant to vacate the property within the time now granted, the plaintiff shall be at liberty to obtain delivery of vacant possession of the schedule property by following the procedure established by law.

Miscellaneous petitions, if any, pending in this second appeal shall stand closed.

M. SEETHARAMA MURTI, J

29th July 2015
kvrm