

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.12.2015

DATE OF DECISION: 4.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.33462 of 2014
and M.P.Nos.1 and 2 of 2014

Asset Reconstruction Company (India) Limited,
represented by its Manager,
Mr.Nirav Parek
The Ruby, 10th Floor,
Senapati Bapat Marg,
Dadar (West), Mumbai - 400 028. Petitioner

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028,
igregn@tnreginet.net
2. The Sub-Registrar-Alandur,
12 1st Main Road,
Nanganallur Co-operative Society Limited,
Nanganallur, Chennai - 600 061,
sroalandur@tnreginet.net,
3. K.S.Deenadayalu Reddy
4. K.Venkatakrishnan
5. S.P.Velayutham,
6. Amar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records of the 2nd respondent culminated in the sale deed dated 5.7.2007, which has been registered as document No.2179/07 Book No.1 registered with S.R.O., Alandur, Chennai and quash the same and consequentially direct the 2nd Respondent to remove the entry made as Document No.2179 of 2007 in Book I in office of the Sub-Registrar, Alandur, Chennai.

For Petitioner : Mr.AR.L.Sundaresan, Sr.Counsel
for M/s.BFS Legal

For Respondents : Mr.V.Subbiah, Spl.Govt.Pleader
for RR.1 and 2
Mr.R.Muthukumaraswamy, Sr.Counsel
for Mr.R.Thiagarajan for RR.5 and 6
No appearance for RR.3 and 4

ORDER

The petitioner, being a Company incorporated under the Companies Act, 1956 and Securitisation Company under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and also a financial institution under Section 2(h)(ia) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDB Act'), has come forward to file this writ petition seeking to set aside the sale deed dated 5.7.2007 registered as Document No.2179 of 2007 Book 1 registered by respondent No.2 at the instance of respondent No.5 in favour of respondent No.6 with a consequential prayer to remove the entry made therein.

Brief Facts:-

2. As the issues involve apart from locus standi of the petitioner, several facts, a proper narration is imperative.

3. The Indian Bank, Chennai, in the year 1992, had extended financial facilities in favour of borrowers/guarantors known as MVR Group of Companies. In the years 1995 and 1996, the documents of mortgage were executed qua immovable properties for approximate extent of 120 grounds in favour of the Indian Bank. Needless to state that the borrowers/guarantors did not repay the loan.

4. Original Applications have been filed in the year 1996 for recovery of money under RDDB Act including sale of mortgaged assets. Thereafter, notice under Section 13(2) of the SARFAESI Act was issued by M/s.Indian Bank on 15.12.2004. It was followed by a demand notice dated 27.1.2005. The possession notice was issued on 30.3.2005. The procedure contemplated under the SARFAESI Act has been followed for the above said action.

5. At that point of time, respondents No.3 and 4 (not appearing before this Court despite the notice having been served) executed a registered power of attorney in document No.2115 of 2006 dated 23.8.2006 in favour of respondent No.5. The said power deed does not assign right of alienation or encumbrance without the written consent of the principal. The relevant portion of Clause 7 of the power deed is extracted hereunder for better appreciation.

'7. To negotiate with any third party/s claimant/s including broker/s and also the Banks and other financial institutions claimant/s if any in the schedule mentioned properties and to settle such claims and on this behalf our attorney is empowered to do all acts, deeds and things. To enter upon the schedule mentioned properties for the survey of the same. The power agent herein appointed shall have no power to encumber the Schedule mentioned properties without the written consent of us.'

6. According to respondents No.4 and 5, it was nothing but an oversight/mistake. Thus, a subsequent power deed dated on 7.6.2007 has been executed, though unregistered, duly authorised to get over the same. Following is the relevant recitals in the subsequent deed said to have been executed by respondents No.3 and 4:

'AND WHEREAS, under the said General Power of Attorney Deed though we have intended to confer power including to sell the Schedule mentioned properties under clauses of the said General Power of Attorney Deed, by inadvertence and over sight the said clause relating to power to sell the Schedule mentioned properties was omitted to be included therein;

AND WHEREAS, now our Agent Mr.S.P. Velayutham has found the said mistake and requested for execution of additional and supplemental General Power of Attorney Deed empowering him to sell the schedule mentioned properties and to receive the sale consideration therefor in continuation of the earlier General Power of Attorney Deed dated 23.08.2006 referred to above;

AND WHEREAS, we as the Principals under the General Power of Attorney Deed dated 23.08.2006 are satisfied with the mistake pointed out by our Agent and accordingly we also agreed to execute this General Power of Attorney Deed and as such we are appointing Mr.S.P. Velayutham, son of Sabapathy, Hindu, aged about 50 years, residing at No.5, Sabari Street, Madipakkam, Chennai - 600 091 as our General Power of Attorney to do the following acts, deeds and things relating to the properties detailed in the Schedule hereunder:-

1. To do all deeds, acts and things relating to the schedule mentioned properties as mentioned in Clauses (1) to (12) of the General Power of Attorney Deed dated 23.08.2006 registered as Document No.2115/2006 at the Office of the Sub-Registrar, Velachery.

2. To sell the schedule mentioned properties either

in one lot or in part or parts in favour of the Purchaser/Purchasers on receipt of sale consideration and issue receipt for the same....''

7. This unregistered document has been placed before this Court for the first time along with the averment in the counter affidavit filed by respondent No.4 sworn in the month of January, 2015. This document is disputed by the petitioner. The registered power deed dated 23.8.2006, though admittedly did not assign the power of alienation or encumbrance, a sale deed dated 5.7.2007 was executed in document No.2179 of 2007 by respondent No.5, purportedly being the agent of respondents No.3 and 4 in favour of respondent No.6.

8. It is pertinent to note that though it is alleged by respondent No.5 that there exists an unregistered power deed dated 7.6.2007 to get over the anomalies/mistakes in the earlier one dated 23.8.2006, the sale deed dated 5.7.2007 only makes a reference to the first power deed duly registered.

9. It is not in dispute that respondent No.5 is the father of respondent No.6. For the properties governed in the document dated 5.7.2007, any one with the common knowledge living in the city of Chennai would know that they would throw huge amount of money. However, a valuation of Rs.5 Crores, being the consideration, was mentioned in the sale deed. It appears that thereafter a stamp duty of Rs.20 Crores has been paid on the market value of the said properties.

10. On 7.12.2007, a deed of assignment was executed by M/s.Indian Bank in favour of the petitioner. Clause 2.1 speaks about the assignment between the parties. It is apposite to reproduce the relevant clauses of the assignment deed, which reads as under:

''2.1 Assignment

2.1.1 The Parties hereto acknowledge that the conditions precedent set forth in Sections 3 (Conditions Precedent) have been fulfilled or waived by the Purchaser, as the case may be, and in consideration of the Purchaser, paying the Purchase Consideration to the Seller, and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Seller as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby unconditionally and irrevocably sells, assigns, transfers and releases to and unto the Purchaser all the Loans forever, pursuant to Section 5(1)(b) of the SARFAESI to hold the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Purchaser pursuant to the Ancil-AARF-1-2 Trust, and the Trust Deed TO THE END AND

INTENT THAT the Purchaser shall hereafter be deemed to be the full and absolute legal owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances known to the Seller and disclosed in Schedule hereunder, and to recover and receive all Amounts Due, including the right to file a suit or institute, defend such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Loans, in its own name and right and as an assignee, and not as a representative or agent of the Seller and to exercise all other rights of the Seller in relation thereto.

2.1.2 The Seller hereby further assigns in favour of the Purchaser, all its rights, title and interest in the Financing Documents and all collateral and underlying Security Interests and/or pledges created to secure and / or guarantees issued in respect of the repayment of the Loans, which the Seller is entitled to. The Purchaser shall have the right to enforce such Security Interests pledges and/ or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Seller in relation to such Security Interests, pledges and/ or guarantees. The Seller shall transfer/ deliver or cause to be transferred/ delivered or hold for and on behalf of the Purchaser, all such original documents, deeds and/or writings including but not limited to the Financing Documents, and produce the same promptly upon any request by the Purchaser.'

11. The sale notice was issued by the petitioner under SARFAESI Act on 5.8.2008 to the mortgagors/borrowers. Thereafter, the 6th respondent, being the son of the 5th respondent, executed a settlement deed for the very same properties by a registered document dated 13.10.2008.

12. A Complaint was given and registered against respondent No.3 and others in Crime No.41 of 2009 dated 18.4.2009 on the file of Chennai Sub Urban Police Station Central Crime Branch, which was followed by another complaint dated 13.11.2009. The proceedings under Section 145 of the Criminal Procedure Code was also initiated. Number of proceedings on the Criminal Side were initiated, pending and apart from some being concluded between the parties. The petitioner challenged the proceedings under Section 145 of the Criminal Procedure code. The Apex Court in S.L.P(Crl) No.838 of 2015 dated 27.2.2015 passed an Order after hearing the petitioner and respondent No.5, the relevant portion of which reads as under:

''. According to the learned counsel for the petitioner, findings on title and possession have been recorded in the order passed by the Magistrate on

1.4.2010, and they would prejudice the petitioner in all judicial proceedings. Having given our thoughtful consideration, and keeping in mind the mandate contained in Section 145(4) of the Cr.P.C., it is apparent, that the determination of the Magistrate is without reference to merits of the claims of any of the parties. Even, learned counsel representing the caveator states, that he has no objection if an order is passed to the effect, that the order passed by the Magistrate on 1.4.2010 would not be treated to be an order on merits either on the question of possession or on the question of title. We affirm the aforesaid legal position by clarifying, that the observations recorded by the Magistrate in the order dated 1.4.2010, will not be treated as a binding determination on the issues pertaining to possession and title.

In view of the above, we are satisfied that the interests of the petitioner were fully protected by the High Court, by relegating the petitioner to seek the redressal of its grievance, before a competent civil court.'

13. Now, the present writ petition has been filed by the petitioner on the sole ground that the registration affected by the 2nd respondent is one without authority of law, as admittedly the sale deed dated 5.7.2007 in document No.2179 of 2007 speaks only about the registered power deed dated 23.8.2006, which did not authorise the 5th respondent to act as an executant on behalf of respondent Nos.3 and 4, being the alleged Principal. Accordingly, the petitioner has sought for the aforesaid relief.

14. The original borrowers/guarantors of M/s.Indian Bank are also said to have filed a suit against the private respondents herein. It is also stated that the petitioner has filed an impleading application in the suit and it was returned for certain compliance.

15. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.V.Subbiah, learned Special Government Pleader appearing for respondents No.1 and 2 and Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for respondents No.5 and 6. Despite the notice having been served and names printed in the cause list, respondents No.3 and 4, being the alleged vendors of respondent No.6, are conspicuous by their absence.

Submissions of Petitioner:-

16. The learned Senior Counsel appearing for the petitioner submitted that it is a case of lack of jurisdiction on the part of respondent No.2. When admittedly the document relied upon by

respondent No.5 did not have the valid authorisation, respondent No.2 ought not to have registered the document. Such a registration is void ab initio and thus non est in the eye of law. The petitioner, having got the right in pursuant to the deed of assignment dated 7.12.2007, is a person interested and has locus. Sections 32 to 34 of the Registration Act have to be read together along with Rules 22 and 55. The Standing Order No.533 of the Tamil Nadu Registration Manual will not apply to the case on hand. Even as per the Counter Affidavit filed by respondent No.2, it is clear that there is no verification of the power deed. A power deed has to be construed strictly. Therefore, the writ petition will have to be allowed. In support of his contentions, the learned Senior Counsel made reliance upon the following decisions:

1. Konda Anthiah Vs. Madan Rao and another, (AIR 1969 AP 211);
2. Sekar Mudaliar Vs. Shajathi Bi and another, (AIR 1987 Madras 239);
3. Mary Joyce Poonacha (Mrs) Vs. K.T.Plantations Pvt.Ltd and others (1995 Supp (2) SCC 459);
4. Devkubai N. Mankar and others Vs. Rajesh Builders and others, (AIR 1997 BOMBAY 142);
5. G.Ayyakonar Vs. Inspector General of Registration, Chennai and Others, ((2006) 4 MLJ 1257);
6. G.D.Subramaniam Vs. The Sub-Registrar, Office of Konur Sub-Registrar, Sidco Nagar, Chennai-49 and others, (2009(1) CTC 709);
7. Mrs.A.S.Elangode Vs. A.Palanichamy and others, (2009(4) CTC 627);
8. Suraj Lamp and Industries Private Limited (2) through Director Vs. State of Haryana and another, ((2012) 1 SCC 656);
9. Church of Christ Charitable Trust and Educational Charitable Society, represented bty its Chairman Vs. Ponniamman Educational Trust represented by its chairperson/Managing Trustee, ((2012)8 SCC 706); and
10. State of Madhya Pradesh Vs. Surendra Kori, ((2012) 10 SCC 155).

Submissions of respondents:-

17. Learned counsel appearing for respondents led by Senior Counsel for respondents No.5 and 6 submitted that the petitioner has to approach the Civil Court and thus cannot invoke the discretionary remedy under Article 226 of the Constitution of India. Having filed the application for impleadment in the civil suit, though returned, the petitioner cannot come forward to file this writ petition. The assignment deed dated 7.12.2007 does not convey any right to the petitioner. In view of the decision rendered by the Apex Court in S.L.P.(Crl) No.838 of 2015 dated

27.2.2015 also, the writ petition is liable to be dismissed. Sections 32 and 33 are not meant for the person executing the document but only for presentation for registration. Similarly, Section 34(3)(C) also does not have any application to the case on hand. The petitioner is trying to convert a civil dispute as a public law remedy before this Court. There is no error in the jurisdiction of respondent No.2. Therefore, no interference is required. To buttress their arguments, learned Senior counsel made reliance upon the following decisions:-

- '1. Yanala Malleshwari & Others Vs. Ananthula Sayamma and others, ((2007 (1) CTC 97) (Full Bench decision of Andhra Pradesh High Court);
2. S.Ganesan Vs. Bharathirajan (2009(5) CTC 558);
3. Rajni Tandon Vs. Dulal Ranjan Ghosh Dastidar and another, ((2009) 14 SCC 782);
4. Thota Ganga Laxmi and another Vs. Government of Andhra Pradesh and others, ((2010) 15 SCC 207; and
5. M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammal and others, (2011-1-L.W. 673) - Full Bench decision of Madras High Court.'

Discussion:-

(i) Locus Standi:

18. Before going to the merits of the case, it is imperative to decide the question of locus standi of the petitioner. The facts, as narrated above, are not disputed except qua the introduction of unregistreed power deed dated 7.6.2007 in favour of the 5th respondent. While considering the issue of locus standi, this Court is concerned with the existence of a right as against the extent. Thus, what is required to be seen by this Court is, the availability of right. A writ proceeding cannot be treated like a Civil Suit. The petitioner has acquired the right to take action in pursuant to the assignment deed dated 7.12.2007. Clauses 2.1.1 and 2.1.2 of the said assignment deed would make the position of the petitioner very clear. It is to be seen that the petitioner has given complaints subsequently and there were litigations between the petitioner on the one hand and the private respondents on the other hand. Whether a right acquired subsequently would enable the party to challenge an order passed earlier is not an issue with respect to locus is concerned. The position remains the same. In the case on hand, the petitioner merely stepped into the shoes of M/s.Indian Bank. Similarly, the fact that there was a suit filed by the mortgagors/borrowers cannot be a ground to non-suit the petitioner from seeking the relief before this Court. Useful reference can be had to the decision of the Apex Court in Ayaabkhan Noorkhan Pathan Vs. State of Maharashtra and others, (2013) 4 Supreme Court Cases 465, which has been taken note of by the Division Bench of this Court in D.Jagannathan Vs. S. Sattanathan, ((2013) 6 CTC 129), wherein it was held as under:

'8.4. In a recent pronouncement, the Honourable Apex Court in Ayaabkhan Noorkhan Pathan Vs. State of Maharashtra and others, (2013) 4 Supreme Court Cases 465, has considered in extenso the scope and ambit of a 'person interested' and 'locus standi'. The following passages are apposite.

'Person aggrieved:

9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one whose right or interest has been adversely affected

or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

11. In Anand Sharadchandra Oka v. University of Mumbai, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In A. Subhash Babu v. State of A. P. , AIR 2011 SC 3031, this Court held:

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

.....

16. In Ghulam Qadir v. Special Tribunal & Ors., (2002) 1 SCC 33, this Court considered a similar issue and observed as under:- "There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds.----- In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi." (Emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury.

Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

Locus standi of respondent no.5 :

18. As respondent no.5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribes candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether respondent no. 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever.

19. This Court in Ravi Yashwant Bhoir v. District Collector, Raigad & Ors., (2012) 4 SCC 407, held as under:

"58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

18. A similar view has been re-iterated by this Court in K. Manjusree v. State of Andhra Pradesh & Anr., (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non-maintainability, alone.

(ii) Maintainability of the Writ Petition:-

19. Learned counsel appearing for respondents also raised the question of maintainability in other aspects. According to them, the petitioner ought to have filed a Civil Suit. The Order passed by the Apex Court would debar the petitioner from filing this writ petition and having filed impleading petition in the civil suit, the petitioner cannot seek the relief in this writ petition. All the three submissions are liable to be rejected. The petitioner does not want to canvass any disputed questions of fact before this Court, though the unregistered power deed is disputed. On the contrary, the petitioner's case is qua the registration of the document based upon the power deed, which did not authorise such an act. Therefore, there is no necessity for the petitioner to file a civil suit. Similarly, the issue involved before the Apex Court in S.L.P.(Crl) No.838 of 2015 dated 27.2.2015 is totally different. The Law is quite settled that an issue, which is not consciously considered and decided, would not partake the character of a binding decision. The mere fact an application for impleadment has been filed in a suit by a third party, also for the aforesaid reasons, would not disentitle the petitioner from filing the writ petition, more so, when the official respondents herein are not parties in the said proceedings, In any case, these issues cannot be raised by the petitioner in the said suit, being at best, it only becomes a party defendant. Furthermore, even as per the submissions of the learned counsel for respondents, the application filed for impleadment has been returned.

(iii) Indian Evidence Act:-

20. Yet another submission has been made by the learned Senior Counsel for respondents that a writ petition would not lie to set aside the sale deed. This contention also cannot be accepted for the reason the petitioner is more concerned with the role of respondent No.2. When once it has come to know that the 2nd respondent has no jurisdiction or exceeded the same, then the registration would be bad in law. In other words, the document would not become bad but the act of registration would become. A document, inter se party is a private document. By mere

registration, it would not become a public document. But the records pertaining to the registration available with the 2nd respondent would become public documents under Section 74 of the Indian Evidence Act. Similarly, a registration creates a presumption that it has been done as per law under Section 114(e) of the Indian Evidence Act. Useful reference can be had to the decisions of State of Madhya Pradesh Vs. Surendra Kori, ((2012) 10 SCC 155); State of Haryana Vs. Ram Singh, ((2002) 2 LW 3), Ishwar Dass Jain (dead) through L.Rs. v. Sohan Lal (dead) by LRs. (AIR 2000 SC 426= (2000) 1 SCC 434), G.Devadasan v. A.Sundarapandy (died) and 9 Others ((2007) 5 MLJ 100) and Backim and Another v. Krishnan ((2000) TNLJ 304). Therefore, it is mandated on the part of respondent No.2 to perform its official duty as per law. When once the record of the 2nd respondent pertaining to a document registered becomes a public document coupled with the presumption attached to it, then in a given case, the writ petition would be maintainable, especially, when only legal issues are to be determined by this Court. After all, the object of registration as held by the Privy Council in Jambu Parshad Vs. Mohd.Aftab Ali Khan (AIR 1914 PC 16) is to prevent commission of frauds. Such a challenge to an official action is certainly maintainable before this Court without warranting any finding on the inter se dispute between the private parties. Therefore, this Court is unable to countenance the submissions made by the learned counsels for the respondents in this regard.

(iv) Power of Attorney:-

21. A power of attorney is governed by the Powers of Attorney Act, 1882. There are two parties involved in a power deed, being donor and donee. Under the deed, the donor gives authority to the donee, which will have the effect of the actions of the donee, being that of the donor. Thus, an action of the donee is the action done in the name and signature of the donor. The donor merely acts through agent. A power deed has to be construed strictly. What is to be taken is the confirmation of the power either expressly or by necessary implication. For that purpose, the recitals would become relevant. The power deed is nothing but an act of convenience. It is not an instrument of transfer qua right, title or interest in an immovable property. Therefore, the agent is meant to act only within the deed and not beyond. Thus, an immovable property can only be legally transferred/conveyed through a proper power deed. Resultantly a deed of conveyance registered without authority would become void. Such a deed of conveyance would neither convey any title nor create any interest in immovable property. As the registration is mandatory under Sections 17 and 49 of the Indian Registration Act, the very act of Registration without being a valid power would become void.

22. Considering the scope of power deed, it has been held by the Supreme Court in Suraj Lamp and Industries Private Limited (2) through Director Vs. State of Haryana and another, ((2012) 1

SCC 656) in the following manner:

'Scope of power of attorney

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 authorizes 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 1A 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 vs. Basant Nehata - 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.

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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.

Scope of Will

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

23. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank - 94 (2001) DLT 841*, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to

deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.''

23. In the subsequent decision of Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its chairperson/Managing Trustee, ((2012) 8 SCC 706), it was held by the Apex Court as under:

"Power of attorney

19. Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, only authorizes certain specified acts but not any act authorizing entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.

20. In a recent decision of this Court in Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Another (2012) 1 SCC 656 = (2012) 1 SCC (Civ) 351, the scope of power of attorney has been explained in the following words: (SCC pp. 666-67, paras 20-21)

"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, (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."

21. It is clear that from the date the power of attorney is executed by the principal in favour of the agent and by virtue of the terms the agent derives a right to use his name and all acts, deeds and things done by him are subject to the limitations contained in the said deed. It is further clear that the power of attorney holder executed a deed of conveyance in exercise of the power granted under it and conveys title on behalf of the grantor."

24. Therefore, a valid power is a fundamental requisite to execute the document. In the case on hand, even according to respondent No.5, there was some mistake in the earlier power deed. As narrated earlier, though it is alleged in the counter affidavit filed that there was a subsequent unregistered deed, there is no explanation for mentioning only earlier power deed dated 23.8.2006 in the sale deed dated 5.7.2007, which admittedly did not authorise a sale by the agent. What is to be seen in this case is that before respondent No.2 only the power deed dated 23.8.2006 must have been available. It was the only document mentioned in the sale deed. Even as per the counter affidavit filed by respondent No.2, it was not verified. This would

certainly go to the root of the matter. This Court is not concerned with the manner in which the subsequent unregistered power deed is sprouted before this Court. Suffice it is to state that respondent No.2 has not performed his role by failing to verify the power deed mentioned in the sale deed dated 5.7.2007 authorising respondent No.5 to execute the said document. It is further to be noted that the registered power deed dated 23.8.2006 in specific terms did not authorize respondent No.5 to indulge in such an act. Thus, while it is expressed in not extending the authorisation by implication also, the consequential act cannot be approved. Accordingly, this Court holds that there is no power deed at all in the eye of law for the purpose of executing the sale on behalf of respondents No.3 and 4 by respondent No.5 in favour of respondent No.6 and hence non-verification of the power deed would vitiate official act of respondent No.2.

(v) Registration Act:-

25. The object of the registration is not merely meant to collect revenue. There will not be valid transfer in the eye of law without due registration qua an immovable property. It is also meant to avoid fraud in transactions. Thus, it becomes part of a public policy. A title would not pass without due registration, as mandated by law. A party to the deed also cannot seek a right based upon unregistered document over immovable property requiring registration.

26. Section 32 of the Registration Act speaks of presentation of the document for registration. It speaks of two different categories of persons for the purpose of this case. The first category is person executing the documents. The second one is the agent requiring due registration by a power of attorney for presentation to register. Section 33 deals with the power of authority which can be exercised for the purpose of Section 32. This Section is meant for recognising the power deed for the purpose of authorising the presentation of the document for registration. Therefore, Section 33 is not meant for person executing the document. When we speak of person executing the document, it can be the principal or agent in whose favour a right to execute the document is given.

27. Section 34 deals with enquiry before registration by the Registering Officer. If one goes through Section 34 carefully, it again broadly classifies the persons into two groups, one is a person executing the document and the second is the person claiming through him including an agent. Therefore, what is mandatory is, that the registering authority will have to satisfy about the person executing the document. To put it differently, if the person executing the document is not the owner or duly authorised agent, then there cannot be any registration. For that purpose alone, he has to come before the Registering Officer.

The Section mandates such a person to appear before the Registering Officer for the purpose of enquiry. If we test the said provision with a case where a power deed does not authorise a person to execute, then he will not become a person executing the document of sale. To put it differently, when the person executing the document is not the agent of the principal for that purpose, then, his execution would become a nullity. In that case, there is neither principal nor an agent. Thus, there will not be any person executing the said document in the eye of law. When that is a position, such a person in the capacity of duly executing the document cannot seek registration also. Therefore, for registration, what is important is a valid execution when executed by the agent on behalf of the principal through appropriate power deed. This alone would entitle him to present the document for registration. Otherwise, Section 34 would lead to absurdity if one holds that enquiry has to be restricted only to the agent presenting the document for registration alone. When even for presenting document an authorisation by way of power deed is required, by no stretch of imagination it can be said that by a wrong or invalid power deed without authorisation, a sale deed can be executed and thereafter presented for registration. Therefore, Sections 32, 33 and 34 of the Registration Act, 1908 are to be read in consonance with each other. The enquiry in such a case need not be exhaustive but only in the realm of a verification or check up. In other words, what the registering authority is required to do so is, to verify the power deed that authorises an executant to sign the sale deed on behalf of the principal. What is required is only a cursory glance or look on the relevant documents. That is the object of the appearance of the parties before the Registering Officer. If one see Section 35 of the Act, it provides for a procedure for admission or denial of execution. The Registering Officer has to satisfy that the persons are personally known to him and they are the persons they represent themselves to be, apart from admitting the execution of document. Considering the scope of Sections 32 and 33, it has been held by the Apex Court in *Rajni Tandon Vs. Dulal Ranjan Ghosh Dastidar and another*, ((2009) 14 SCC 782) in the following manner:

24. The words "executed and authenticated in manner hereinafter mentioned" in Section 32 (c) would mean the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads "for the purposes of Section 32, the following power-of-attorney shall alone be recognised". Section 32 refers to documents presented for registration by a holder of "power-of-attorney" in Clause (c) and it therefore follows that the procedure specified under Section 33 would be attracted where a document is presented by a person holding a "powers-of-attorney" of the persons mentioned in Clause (a) of Section 32.

25. The aforesaid position makes it explicitly clear that Section 32 of the Act requires the documents sought to be registered, to be presented, inter alia by the person executing it. In other words, the said expression requires presence of the actual person executing the document. The basic principle underlying this provision of the Act is to get before the Sub-Registrar the actual executant who, in fact, executes the document in question. In fact, the ratio of the decision in Ram Gopal as reported in AIR 1960 Punjab 226 has laid down a similar proposition on the conjoint reading of Section 32 and Section 33 of the Act and after referring to all the judgments noted hereinbefore. Same view has been expressed earlier by the Bombay High Court in Ratilal Nathubhai and Anr. v. Rasiklal Maganlal and Ors., AIR 1950 Bombay 326.

26. It is important to bear in mind that one of the categories of persons who are eligible to present documents before the registration office in terms of Section 32 of the Act is the "person executing" the document. The expression "person executing" used in Section 32 of the Act, can only refer to the person who actually signs or marks the document in token of execution, whether for himself or on behalf of some other person. Thus, "person executing" as used in Section 32 (a) of the Act signifies the person actually executing the document and includes a principal who executes by means of an agent. Where a person holds a power of attorney which authorises him to execute a document as agent for some one else, and he executes a document under the terms of the power of attorney, he is, so far as the registration office is concerned, the actual executant of the document and is entitled under Section 32 (a) to present it for registration and get it registered.

.....

34. In the instant case, Indra Kumar Halani executed the document on behalf of Shri N. L. Tantia under the terms of this power of attorney. He then presented it for registration at the Registration Office and it was registered. The plea taken by the Respondents that in order to enable him to present the document it was necessary that he should hold a power of attorney authenticated before the Sub-Registrar under the provisions of Section 33 is thus not supported by the language of Section 32. The provisions of Section 33 therefore only apply where the person presenting a document is the general attorney of the person executing it, and not where it is presented for registration by the actual executant, even though he may have executed it as agent for some one else. In

this case, the presentation is by the actual executant himself and is hence is entitled under Section 32 (a) to present it for registration and to get it registered.....''

28. It is to be noted that in paragraph No.26 of the above decision, it has been specifically held that ''a person holding a power of attorney, which authorise him to execute a document is an agent for some one else'', which means valid authorisation is the principal requisite, which in turn, has to be verified by the registering officer.

29. After all, the object of the provisions contained in Sections 32 to 35 of the Registration Act is to avoid acts of fraud by means of registration. This Court, in Sekar Mudaliar Vs. Shajathi Bi and another, (AIR 1987 Madras 239), while dealing with the case under Sections 32 and 33 of the Registration Act, 1908, was pleased to hold that a valid authorisation is a must and failure would result in lack of jurisdiction on the part of the registering authority. Similar view was also taken by this Court in a subsequent decision of G.Ayyakonar Vs. Inspector General of Registration, Chennai and Others, ((2006) 4 MLJ 1257) as well. The following would be the relevant passage in the case of Sekar Mudaliar(supra):

''8. In the instant case, according to the petitioner and the 5th respondent, the entire property is situated at Arasiarpatti Village. While so, the power of attorney was registered in the Office of the Sub Registrar Office, Kovilpatti, whereas the sale deed executed by the 6th Respondent in favour of 7th respondent was registered in the Office of the Sub Registrar, Kelarajakula Raman. It is not the case of the parties that the property is situated partly in one jurisdiction and others in another jurisdiction. Section 32 of the Act deals with persons to present documents for registration. It means that every document should be presented by a person who is claiming the property or executing the document. The Registration Act has imposed several conditions regulating the presentation of documents for registration and it is of great importance that those conditions framed with a view to meet the legal circumstances, should not be weakened or strained on the ground that it appears to be strict. The power and jurisdiction of the Registrar will come to play only when they are invoked by a person having a direct relation to the deed. The Registrar, after hearing the parties and after satisfying himself, gets it right to register. The words in Sections 32 and 33 of the Act are imperative for presentation of document for registration by a person who is entitled to do so. If a document is presented for registration by a person who

is not entitled to do so, under Section 32 of the Registration Act, it is invalid. Improper presentation is not a mere defect in procedure falling under Section 18 of the Act, but this error is of more radical in nature. The provisions of the Act are very carefully designed to prevent forgeries and the procurement of conveyance by fraud or undue influence and though it may be somewhat technical, the Registering authority has to insist upon exact compliance with the provisions of the Act. It is necessary to do so.

9. In Jambu Prasad Vs. M.A.Alikhan reported in (28 IC 422), their Lordships of the Privy Council observed that executants of a deed who attend the Registrar's Office or Sub Registrar's Office are not merely to admit the execution and it cannot be treated as presentation for the purpose of Section 32 of the Act as presenting the deed for registration as they would exist to the registration but that could not be sufficient to come to the Registrar's jurisdiction. When the presentation itself is unauthorized, there cannot be any registration. It is also a case of the power of attorney holder presenting the document for registration."

30. Thus, when the presentation on the face of it is unauthorised, it can never be any registration giving an iota of recognition through the official act. Rule 22 of the Registration Rules under Chapter VII deals with presentation and examination of documents. When we speak about examination of document, the registering officer will have to examine its contents as stated therein. Similarly, Rule 55 speaks about enquiry before registration. Such an enquiry is not to be made only on title, but must necessarily include the verification of the facts as stated in the document sought to be registered. Though Rule 55 derives power under Section 35 of the Registration Act, it throws light on the scope and power of the Registering Officer. Therefore, what is required is only examination of the contents of the document, which would also include the source for executing the document. The source, being a power deed, such an examination would not be construed as one of title. It is only to check as to whether the document, which forms the basis of execution of the sale deed, empowers the executant to do so or not. After all, there is no dispute since the title and execution are not denied as the executant seeks registration based upon that document alone. When there is no valid execution, the deed becomes void as there is no executant. Thus, registration of such a deed also would become void.

(vi) Standing Order No.533:-

31. Much reliance has been made in the counter affidavit filed by respondent No.2 on the Standing Order No.533 of the Tamil Nadu Registration Manual. It is the stand of the said respondent that

there is no need to verify the power deed prior to the Circular dated 29.10.2009 issued by the 1st respondent. Such a stand can never be accepted in the eye of law. A Circular is only a clarification. Standing Order No.533 has to be seen with respect to the power deed as prescribed under Section 33 of the Registration Act. As the said Section is meant for authorisation for presentation alone and not for executing a sale deed, no reliance can be placed upon the same. Even on a perusal of the said Standing Order No.533, it is clear that it deals with the power deed as prescribed under Section 33 of the Act.

Conclusion:-

32. In view of the fore-going reasons, this Court is of the view that the writ petition as filed will have to be allowed and accordingly, the same is allowed as prayed for. However, it is made clear that this order will not stand in the way of the parties in approaching the appropriate forum, as only the legal issues are dealt with. The question of entitlement of the private respondents in getting the stamp duty payable is also not considered in this writ petition, since no issues have been raised. However, liberty is given to the private respondents to take appropriate action as per law in this regard including the submission of representations to the official respondents, if so advised. Respondent No.2 is granted eight weeks time from the date of receipt of copy of this order to carry out the order passed aforesaid. No costs. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-

Assistant Registrar (Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

usk

To

1. The Inspector General of Registration,
No.100, Santhome High Road,
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W.P.No.33462 of 2014

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