IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

L. P. A. No. 647 of 2016

Date of Decision: 26th - 9 – 2017

Ganesh Dass **.....Appellant**

v.

Smt. Amina and others **.....Respondents**

***

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

***

Present: Mr.Puneet Bali, Sr. Advocate with
Mr.Vibhav Jain, Advocate
for the appellant.

***

RAJ SHEKHAR ATTRI, J.

This Letters Patent Appeal has been directed against the judgment dated 4.2.2016 passed by the learned Single Judge in Civil Writ Petition No.5573 of 2008 setting aside order dated 28.11.2007 passed by the Registrar Mewat, District Nuh, vide which registered sale deed No.2284 dated 20.8.2007 has been cancelled.

The facts of the case are in a narrow compass. Present appellant Ganesh Dass was a co-sharer in the land covered by said sale deed No.2284 dated 20.8.2007. He agreed to sell the aforesaid land to Smt.Ameena to the extent of 1/4th share; Smt.Farida to the extent of 1/4th share (petitioners in Civil Writ Petition No.5573 of 2008); Smt.Sahidan to the extent of 1/4th share; and Smt.Samsa (proforma respondents no.5 and 6 in Civil Writ Petition No.5573 of

2008) to the extent of 1/4th share for a total sale consideration of Rs.37,25,000/-. He had received a sum of Rs.9,50,000/- vide Bank pay order (Annexure-P1) on 1.8.2007. He had again received a sum of Rs.27,75,000/- on 10.8.2007 and executed general power of attorney (Annexure-P2) in favour of Shaukat Ali and Hamidulla. Both the above said power of attorneys had executed the said sale deed which was duly registered at No.2284 dated 28.8.2007 by the Sub Registrar Nuh.

The record reveals that subsequently an application (Annexure-A4) was submitted before the Sub Registrar, Karnailganj on 16.11.2007 seeking verification with regard to the genuineness of the general power of attorney No.1297 dated 10.8.2007 registered in the office of Sub Registrar Karnailganj, District Gonda (Uttar Pradesh). In response to said letter, the Sub Registrar had reported that the general power of attorney No.1297 of 2007 is not registered in the office of Sub Registrar, Karnailganj. On receipt of this report, the Registrar Mewat held an inquiry and ordered cancellation of sale deed No.2284 dated 20.8.2007 vide his order dated 28.11.2007 on the ground that the same has been registered on the basis of a forged and fabricated power of attorney No.1297 dated 10.8.2007.

Feeling aggrieved by the order of cancellation, two of the vendees Smt.Ameena and Smt.Farida preferred Civil Writ Petition No.5573 of 2008 for setting aside the impugned order dated 28.11.2007 on the grounds that the Registrar has no jurisdiction to cancel a registered document and that the allegations of fraud have not been proved and also on the ground that no notice was served upon the vendees, thus the same violates the principle of natural justice.

Upon notice, respondents No.1 to 3 (before the writ court) have contested the writ petition on the grounds, inter alia, that above said Shaukat Ali and Hamidulla have forged and fabricated the general power of attorney and that on the basis of the same, they have executed said sale deed. It is also added in the reply that the Registrar Mewat sought verification from the Sub Registrar Karnailganj, District Gonda of the said general power of attorney and it was reported that it has not been registered with Sub Registrar, Nuh, thus the same is forged and fabricated document; that the Registrar Mewat had conducted an inquiry wherein, real owner, namely, Ganesh Dass (appellant herein) moved application to the effect that he never appointed Shaukat Ali and Hamidulla as general power of attorneys, therefore, a false and fabricated power of attorney has been procured. According to these respondents, the cancellation order is fully legal and valid and the same has been passed after conducting an inquiry.

Respondent No.4 - Ganesh Dass also contested the writ petition on the grounds, inter alia, that he never appointed above said Shaukat Ali and Hamidulla as general power of attorneys, therefore, above said sale deed is illegal, null and void and has been rightly cancelled by the Registrar Mewat.

The learned Single Bench allowed Civil Writ Petition No.5573 of 2008 and order dated 28.11.2007 passed by Registrar Mewat has been set aside. This order of learned Single Judge has been assailed through this intra court appeal.

We have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellant has vehemently contended that the above said general power of attorneys were not competent to present the document for registration in terms of Sections 32 and 33 of the Registration Act, 1908 (hereinafter to be referred to the `Act of 1908'); that the Registrar had conducted a thorough inquiry and found that the power of attorney No.1297 dated 10.8.2007 was a forged and fabricated document; that the same was never executed by

Ganesh Dass nor it was ever registered with the office of Sub Registrar Karnailganj. According to him, the Sub Registrar has ample jurisdiction under the provisions of Section 68 of the Act of 1908 to cancel a document registered by a Sub Registrar but the learned Single Bench failed to appreciate these facts and wrongly allowed the writ petition. In support of his contentions, he has placed reliance upon the following case law:-

1. **Thota Ganga Laxmi v. Government of Andhra Pradesh**, 2011(4) R.C.R. (Civil) 78.
2. **Chandra Singh and others v. State of Rajasthan and another**, (2003)6 SCC 545.
3. **Ramniklal N. Bhutta and another v. State of Maharashtra and others**, (1997)1 SCC 134.
4. **S.P.Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others**, (1994)1 SCC 1.
5. **Shri Ajay Loothra and others v. The Deputy Commissioner-cum-Registrar, Gurgaon and others**, 2011(4) PLR 540.
6. **Jodh Singh v. Registrar (Deputy Commissioner), Ambala**, 1999(1) R.C.R. (Civil) 441.
7. **Yanala Malleshwari & Ors. v. Ananthula Sayamma & Ors.,** 2007 (5) R.C.R. (Civil) 609.
8. **Nyadarsingh v. Chensingh**, AIR 1955 Madhya Bharat 205.
9. **Hussain Ali Shah v. Sardar Ali Shah and others,** AIR 1933 Lahore 786.

We have given our thoughtful consideration to the contentions raised before us and have gone through the paper book.

Section 17 of the Act of 1908 deals with documents which require compulsory registration. A sale deed is one of such document referred to in

Section 17(1)(b). In the case in hand, it is an admitted fact that above said sale deed No.2284 dated 20.8.2007 has been duly registered by the Sub Registrar, Mewat and none has raised any objection at that time with regard to its registration.

The Act of 1908, unlike the Transfer of Property Act, strikes only at the documents and not at transactions. The role of the Sub-Registrar/Registrar stands discharged, once the document is registered. There is no express provision in the Act of 1908 which empowers the Registrar to recall registration of a document. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In the absence of any express provision in that behalf, it is not open to assume that the Registrar would be competent to cancel the registration of the documents in question.

However, at the pre-registration stage, the Registrar has ample powers to hold an inquiry with regard to :-

(a) the proper presentation of a document;

(b) competency of the persons to present the document; and

(c) the identification of the parties to the document.

Section 32 describes the competency of persons to present a document. This section reads as under:-

> "32. **Persons to present documents for registration.-** Except in the cases mentioned in 24[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 assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned."

Thus, a careful examination of above said provisions makes it clear that Section 32 imposes a duty on the Registering Officer to satisfy himself as to whether the person presenting a document falls within any of the categories mentioned under Clause (a) to (c) of this section.

Section 34 authorizes the Registering Officer to hold inquiry before registration of a document and also with regard to the identification and the competency of the persons presenting the documents which read as under:-

> **"34. Enquiry before registration by registering officer.-** (1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:
>
> Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered.
>
> (2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such persons so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders."

If we go through the above referred provisions, then it transpires that the persons executing such documents or their representatives or agents must be present before the Sub Registrar, otherwise the Sub Registrar has power to refuse registration unless the personal appearance of the executant has been exempted under different provisions provided under this statute.

Sub-section (3) of Section 34 (supra) casts a duty on the Registering Officer to satisfy himself as to whether the document has been properly executed by the parties with their free consent. It is his duty to inquire whether parties know the nature and contents of the document presented for registration. Secondly, he has to satisfy himself with regard to identification of the persons appearing before him for the purpose of registration of a document, whether in person or through a representative, assign or agent. The Registering Officer has to satisfy whether these persons are competent to present a document for registration. These inquiries are essential but to be conducted only at the pre-registration stage and the Registering Officer has absolutely no power to conduct such an inquiry after the registration of a document.

Sub-section (3) of Section 35 authorises the Registering Officer to refuse the registration. The scope of enquiry under this section is highly limited and the same is applicable only in three situations, namely:-

(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c)if any person by whom the document purports to be executed is dead, and his representative or assignee denies its execution.

If any of the three situations is prevalent, then the registering officer shall refuse to register the document as to the person so denying, appearing or dead. Albeit, under the provisions of Section 71, the registering officer is duty bound to assign reasons for refusal to register a document except that he has no territorial jurisdiction.

It has also been argued before us that the general power of attorney is not recognized under the provisions of Section 33 of the Act of 1908. This Court has considered the contention but the same is sans merit because Section 33 of the Act of 1908 describes about the power of attorney recognized under law as under:-

"33. Power-of-attorney recognizable for purposes of Section 32.-(1) 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-or-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 the Court.

(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."

A bare perusal of the above quoted provisions makes it abundantly clear that Section 33 of the Act of 1908 deals with three distinct situations. The first one when the document has been executed in any part of India in which the Act of 1908 is for the time being enforced and secondly where the person resides in any part of India in which this Act is not enforced; and the third, when the person does not reside in India. This Court is concerned with first situation and this provision states that if principal executant at the time of execution of the power of attorney resides in any part of India in which this Act of 1908 is for the time being enforced, a power of attorney executed before and authenticated by the Registrar or Sub Registrar within whose district or sub-district the principal resides. In the case in hand, a bare perusal of the general power of attorney (Annexure P2) makes it abundantly clear that the principal, namely, Ganesh Dass, has been residing in India and not the concerned district. But these questions are not relevant at this stage because the said power of attorney has been accepted by the Sub Registrar at the time of registration of sale deed No.2284 dated 20.8.2007 (Annexure A1) and the only way this fraud can be tested is before the civil court.

Thus, from the close study of the various provisions of the Act of 1908, it is clear that the Registering Officer can refuse to register a document on the grounds, inter alia, if he is not satisfied with the conditions imposed under Sections 32 to 35 (supra). However, he is duty bound to record the reasons for his refusal. The party, aggrieved by such a refusal has the power to prefer an appeal before the Registrar under the provisions of Section 72.

The Registering Officer is further empowered to commence prosecution for the persons committing offences under Sections 82 and 83 and other provisions of this Act. These Sections reads as under:-

"**82. Penalty for making false statements delivering false copies or translations, false personation, and abetment. -**Whoever -

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b) intentionally delivers to a registering officer in any proceeding under Section 19 or Section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act;

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

...

83. Registering officer may commence prosecutions.-(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, [***] the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class."

However, in the case in hand, no prosecution has been lodged by the

Sub Registrar or the Registrar.

It has been strenuously argued before us that a fraud has been played by the vendees-ladies in connivance with their respective husbands (respondents herein) by forging and fabricating general power of attorney (Annexure P2). To substantiate this plea, reliance has been placed upon the verification issued by the Sub Registrar, Karnailganj and the Registrar, Gonda. This Court has considered these contentions but the same do not provide any help to the case of the appellant. Surprisingly two certificates issued by the same Sub Registrar have been placed on record which are inter se contradictory. Annexure P4 is the certificate-cum-verification issued by the Sub Registrar, Karnailganj, District Gonda dated 25.9.2007 which makes it abundantly clear that general power of attorney No.1297 dated 10.8.2007 executed by Ganesh Dass in favour of Hamidulla has been registered in said office. This certificate was issued on the query of Sub Registrar, Nuh vide letter No.40 dated 20.8.2007. But contrary to it, the Registrar, Mewat had relied upon the verification report vide letter submitted by the Sub Registrar, Karnailganj vide letter No.40 dated 20.8.2007 and letter No.42 dated 30.8.2007 vide which it had been reported that the said general power of attorney was not registered with the Sub Registrar, Karnailganj.

In view of the allegations of the forgery of a document and the contradictory verification reports, this Court is of the opinion that there must be a regular trial before the civil court.

Learned counsel for the appellant has further submitted that the Registrar, Mewat has conducted an inquiry and when he was satisfied that no such power of attorney was registered with Sub Registrar, Karnailganj, only then he ordered the cancellation of power of attorney (Annexure P2). We have considered this contention but the same is without a foundation. The Registrar has no jurisdiction to conduct such an inquiry after registration of a document by a Sub

Registrar. The powers bestowed on the Registrar under the statute are merely administrative. He has no jurisdiction to cancel or set aside a duly registered document. Besides this, the alleged inquiry contemplated by the Registrar is farcical.

The main question before the Full Bench of Andhra Pradesh High Court, in the case of **Yanala Malleshwari's case (supra)** was as to whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.

Apart from it, the view taken by the Full Bench of Andhra Pradesh High Court in **Yanala Malleshwari's case (supra)** stands over ruled by Hon'ble Supreme Court in **Thota Ganga Laxmi's case (supra)**. In fact the Andhra Pradesh High Court, while following the ratio decidendi laid down by the Full Bench in **Yanala Malleshwari's case (supra),** dismissed the Writ Petition No.8518 of 2006 titled as Thota Ganga Laxmi v. Government of Andhra Pradesh. The petitioners in the writ petition filed Civil Appeal before the Supreme Court which was allowed and the judgment of Andhra Pradesh High Court in Thota

Laxmi's case was set aside. In this view of the matter, the view adopted by the Full Bench stands impliedly overruled by the Apex Court.

The principle of law laid down in **Chandra Singh's case (supra)** and in **Ramniklal N. Bhuta and another's case (supra)** is neither in dispute herein nor it provides any help to the case of the appellant.

However, the facts of the cased in **Ajay Loothra's case (supra), Jodh Singh's case (supra), Nydarsingh's case (supra)** and **Hussain Ali Shah's case (supra)** are distinguishable.

As a result, this appeal is devoid of any merit and the same is hereby dismissed, with no order as to costs. However, in case the appellant pursues the civil remedy, in that eventuality, he would be entitled to take the benefits as contained in Section 14 of the Limitation Act, 1963.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

September 26th, 2017

RC

Whether speaking/reasoned : Yes

Whether reportable : Yes