

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.414 of 2004**

1-A. Beladevi, W/o Late Shri Gayadeen, aged about 81 years.

1-B. Arun Kumar Jaiswal S/o Late Shri Gayadeen, aged about 61 years.

1-C. Anil Kumar Jaiswal S/o Late Shri Gayadeen, aged about 48 years.

1-D. Smt. Usha Gupta, W/o Jitendra Narayan Gupta, D/o Late Shri Gayadeen, aged about 58 years, R/o Mohan Niwas (Hazariwaga), Bihar

1-E. Smt. Nirmala Devi, W/o Ram Prakash Jaiswal, D/o Late Shri Gayadeen, aged about 56 years, R/o Naubathpur, Chandoli,

1-F. Smt. Geeta Jaiswal, W/o Late Shri Prabhat Kumar, D/o Late Shri Gayadeen, aged about 54 years, R/o Lane No.2, Gandhi Nagar, Kanke Road, Ranchi (Jharkhand).

1-G. Smt. Gayatri Devi W/o Rakesh Kumar Jaiswal, D/o Late Shri Gayadeen, aged about 52 years, R/o Jamalpur, Jhonpur,

1-H. Smt. Manorama Devi, W/o Chandraprakash Gupta D/o Late Shri Gayadeen, aged about 40 years, R/o NCL Colony, Veena Sonbadra.

1-I. Smt. Chanchal Jaiswal W/o Chandrabhan Jaiswal, D/o Late Shri Gayadeen, aged about 46 years, R/o Village and Post Kuntupur, Jhonpur.

1-J. Smt. Sapna Jaiswal, W/o Dr. Mahendra Kumaw Jaiswal, D/o Late Shri Gayadeen, aged about 43 years, R/o Pandeyhaweli, Varanasi (U.P.)

2. Kripashankar Jaiswal, S/o Ramnarayan Prasad Jaiswal, R/o Lalpur, District Ranchi, C/o Ramvrish Prasad, S/o Gayadhar Prasad, Aged about 35 years.

---- Appellants/Plaintiffs

Versus

1. Ramjanak, S/o Dhannu, Aged about 60 years, R/o Village Vadrafnagar.
2. Ramlakkhan, S/o Triveni Prasad Jaiswal, Aged about 50 years, R/o Vadrafnagar.
3. Ramkumar, S/o Bandhu Koyir, Aged about 45 years, R/o Village Kotarkhi, Tahsil Wadrafnagar.

4. Ramprasad, S/o Ramdular Koyir, Aged about 55 years, R/o Karamdiha, Tahsil Wadrafnagar.
5. Tipanchandra Vishon, S/o Jaykaran Vishon, Aged about 40 years, Muhalla Navapara, Ambikapur.
6. Ramadhar Kushwaha, S/o Dhannuram Kushwaha, Aged about 45 years, R/o Vadrafnagar.
7. Vijay Kumar Singh Document Writer, Aged about 50 years, R/o Ambikapur.
8. State of Madhya Pradesh (Now State of Chhattisgarh), Through: The Collector, Sarguja, Ambikapur

---- Respondents

For Appellants/Plaintiffs	:	Mr.B.D.Guru, Advocate
For Res.No.1/Defendant No.1:		Mr.Manoj Paranjape, Advocate
For Respondent No.8	:	Mr.Salim Kazi, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

10.07.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the appellants/plaintiffs is as under:-

“Whether the First Appellate Court was justified in reversing finding of the well reasoned judgment and decree of the trial Court by recording a finding which is perverse to the record on the question of power of attorney Ex.D-1 ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The appellants herein/plaintiffs filed a suit for declaration of title and for recovery of possession pleading inter-alia that the suit land

bearing Khasra No.385/4, area 1.294 hectares was owned by the plaintiffs and that land was used for business/residential purpose. Defendant No.2 taking advantage of the plaintiffs as they were staying outside city of Wadrafnagar, District Surguja got power of attorney executed in his favour on 10.10.1979 (Ex.D/1) and he allegedly executed sale deed dated 7.3.1980 (Ex.P/2) in favour of defendant No.1 and defendant No.1 got his name mutated in revenue records. Therefore, it be declared that they are owners of the suit land and they are also entitled for recovery of possession.

3. Defendant No.1 filed his written statement controverting the allegations made in plaint clearly stating that the plaintiffs had executed power of attorney in favour of defendant No.2 on 10.10.1979 (Ex.D/1) and on the strength of said power of attorney, he has executed sale deed in favour of defendant No.1 after receiving full amount of consideration, as such, the suit deserves to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 7.11.1998, came to the conclusion that power of attorney dated 10.10.1979 (Ex.D/1) executed by the plaintiffs in favour of defendant No.2 is forged and fabricated and further held that power of attorney (Ex.D/1) was not authenticated/registered under Section 33(1)(a) of the Registration Act, 1908 (hereinafter called as "the Act of 1908") and therefore, sale deed dated 7.3.1980 (Ex.P/2) executed by defendant No.2 in favour of defendant No.1 is null and void. Feeling

aggrieved and dissatisfied with the judgment and decree of the trial Court, defendant No.1 preferred first appeal under Section 96 of the CPC. The first appellate Court reversed the judgment and decree of the trial Court and dismissed the suit holding that power of attorney was duly executed by the plaintiffs in favour of defendant No.2 and on the strength of said power of attorney, defendant No.2 has executed sale deed in favour of defendant No.1 and allowed the appeal. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.B.D.Guru, learned counsel for the appellants/plaintiffs, would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned finding of the trial Court by recording a perverse finding on the question of power of attorney (Ex.D/1) as there is sufficient evidence on record to hold that Ex.D/1 is a forged document and it was never executed by the plaintiffs in favour of defendant No.2 and therefore, sale deed dated 7.3.1980 (Ex.P/2) executed by defendant No.2 in favour of defendant No.1 is void document, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.
6. Mr.Manoj Paranjape, learned counsel for respondent No.1/defendant No.1, would submit that the first appellate Court has

rightly reassessed the entire evidence available on record and came to the right conclusion that power of attorney (Ex.D/1) was rightly executed by the plaintiffs in favour of defendant No.2 and on the strength of said document, sale deed dated 7.3.1980 (Ex.P/2) has rightly been executed in favour of defendant No.1. The finding recorded by the first appellate Court is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record, as such, the appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
8. It appears from the record that power of attorney (Ex.D/1) is said to have been executed by the plaintiffs on 10.10.1979 in favour of defendant No.2 and further defendant No.2 has executed sale deed dated 7.3.1980 (Ex.P/2) in favour of defendant No.1 on the basis of said power of attorney. Defendant No.2 proposed the sale deed in favour of defendant No.1 and the Sub-Registrar of the concerned Tahsil permitted to execute sale deed in favour of defendant No.1 dated 7.3.1980 (Ex.P/2) and thereafter, name of defendant No.1 also got recorded in the record vide Ex.P/1 dated 22.12.1980 and the suit was filed on 23.1.1989.
9. The trial Court framed as many as 11 issues for deciding the lis between the parties and held that power of attorney dated 10.10.1979 (Ex.D/1) is a forged document and sale deed executed by defendant No.2 in favour of defendant No.1 is illegal. The trial

Court granted decree in favour of the plaintiffs on two counts. Firstly, power of attorney dated 10.10.1979 (Ex.D/1) is a forged document and secondly, Ex.D/1 does not fulfill the requirement as contained in Section 32(c) read with Section 33(1)(a) of the Act of 1908, which the first appellate Court did not agree and reversed those findings. The trial Court has held that since sale deed dated 7.3.1980 (Ex.P/2) was executed by power of attorney holder i.e. defendant No.2 in favour of defendant No.1, therefore, by virtue of the provisions contained in Section 32(c) of the Act of 1908, it was required to be authenticated/registered under Section 33(1)(a) of the Act of 1908, but it was not authenticated/registered, therefore, sale is invalid, which the first appellate Court has not addressed while reversing the decree of the trial Court.

- 10.** Section 32(c) and 33(1)(a) of the Act of 1908 provides as under:-

“32. Persoris 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) xxx xxx xxx

(b) xxx xxx xxx

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

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;”

- 11.** The Supreme Court in the matter of Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and another¹ has held that 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. It was observed as under:-

“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 hold a power of attorney which authorises him to execute a document as agent for someone 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.

33. Where a deed is executed by an agent for a principal and the same agent signs, appears and presents the deed or admits execution before the Registering Officer, that is not a case of presentation under Section 32 (c) of the Act. As mentioned earlier the provisions of Section 33 will come into play only in cases where presentation is in terms of Section 32 (c) of the Act. In other words, only in cases where the person(s) signing the document cannot present the document before the registering

1 (2009) 14 SCC 782

officer and gives a power of attorney to another to present the document that the provisions of Section 33 get attracted. It is only in such a case, that the said power of attorney has to be necessarily executed and authenticated in the manner provided under Section 33 (1) (a) of the Act.”

12. The proposition of law enunciated by the Supreme Court in Rajni Tandon (supra) has been followed by the Kerala High Court in the matter of C.P. Ashok Kumar v. Sub Registrar². It was observed as under:-

“7. In the instant case, the sale deed is proposed to be executed on behalf of the vendor by the petitioner, who is authorised for such purpose by the power attorney constituted as per Ext.P1. Therefore, where the actual executant of the sale deed and the presenter is the power of attorney, then the provisions in Clause (a) of Section 32 will get attracted and therefore, the provision contained in Clause (a) of Section 33 (1) of the Registration Act requiring the authentication of the said power of attorney before the Registrar/Sub Registrar concerned will not apply as held by the Apex Court in Rajni Tandon's case (supra). Therefore, the stand taken by the 1st respondent in Ext.P2 that Ext.P1 notarized power of attorney cannot be utilized for execution and presentation for registration of sale deed on behalf of the petitioner's brother as the same has not been authenticated by a notified Registrar or Sub Registrar in terms of Section 33(1) (a) is not tenable, so long as the executant and presenter of the sale deed on behalf of the petitioner's brother is the petitioner, who is the power of attorney constituted as per Ext.P1. So the impugned view taken by the 1st respondent SRO in the impugned Ext.P2 order is illegal and ultra vires. Hence, Ext.P2 order will stand set aside.”

13. The proposition of law enunciated in Rajni Tandon (supra) has also been followed by the Bombay High Court in the matter of Matadin Surajmal Rajoria v. Ramdwar Mahavir Pande³.
14. Similarly, the Madhya Pradesh High Court in the matter of

² 2018 SCC OnLine Ker 4114

³ 2018 SCC OnLine Bom 2184

Sardar Paramjeet Singh v. Prabhat Kumar Shrivastav⁴ has held

as under:-

“11. It is clear from the law that a person may execute a document and may himself present it for registration or he may execute the document and may authorise an agent by power of attorney to present it for registration. The interpretation of Sections 32 and 33(1)(a) arises only in the second and third alternatives where a person authorises some body to present a document for registration or authorises a person to execute and present the document for registration. In my opinion, Section 33(1)(a) does not apply at all when the agent himself is the executant of the deed pursuant to the authority given to him by the principal and presents the document for registration. In such a situation, he himself is the executant though in the capacity of the agent of the principal. A successful reliance can be placed on the judgment of this Court in the matter of Ramrao Palkar v. Padmavatibai, 1993 R. N. 397. After considering the entire case law, this Court has held that a person who holds the power of attorney to execute a document and also to present it for registration is competent in every case. It has even been held in that case that the power of attorney is a document which a notary may verify, authenticate, certify or attest the execution under Section 8 of the Notaries Act, 1952. Considering the various judgments and placing reliance on the language of the Act, it has been held that the power of attorney was executed by Ganpatrao in favour of Narayanrao, duly notarised and the sale deed was executed by Narayanrao in the capacity of general attorney of Ganpatrao. The High Court further held that the deed could not have been held to be invalid by resort to the provisions contained in Section 33(1)(a) of the Registration Act. Not only this, from the language of Section 33(1)(a), it is clear that it does not apply at all when the agent himself is the executant of the deed, pursuant to the authority given to him by the principal to present the document for registration. He himself being the executant could present the document for registration.”

15. Applying the principle of law laid down by the Supreme Court and three High Courts in the above-stated judgments (supra) to the facts of the present case, it is quite vivid that sale deed (Ex.P/2) has

⁴ 1996 M.P.L.J. 339

been executed by power of attorney holder-Ramlakhan, defendant No.2 in favour of defendant No.1 and he proposed the sale deed to be executed on behalf of the plaintiffs, which he was entitled to do so under Section 32(c) of the Act of 1908. Since he has signed the sale deed on behalf of a principal i.e. plaintiffs and he will be the “person executing” as used in Section 32(c) of the Act of 1908, therefore, the provisions contained in Section 33(a) of the Act of 1908 would not be attracted and that document is not required to be authenticated/registered under Section 33(a) of the Act of 1908 as held by Their Lordships of the Supreme Court in Rajni Tandon (supra) followed by High Courts, as such, power of attorney dated 10.10.1979 (Ex.D/1) was not required to be authenticated/registered under Section 33(1)(a) of the Act of 1908.

16. The next contention of Mr.Guru relying upon the finding of the trial Court is that Ex.D/1 was a forged document and the finding of the trial Court is well reasoned finding and therefore, it could not have been reversed by the first appellate Court.
17. Two plaintiffs herein filed a bare suit for declaration of their title pleading inter-alia that power of attorney was never executed by them in favour of defendant No.2 and therefore, sale deed dated 7.3.1980 (Ex.P/2) made by defendant No.2 in favour of defendant No.1 is null and void and therefore, they are entitled for declaration of title and recovery of possession.
18. A careful perusal of plaint would show that the plaintiffs did not ask for relief that power of attorney allegedly executed by them in

favour of defendant No.2 be declared null and void and even they did not ask for further relief that alleged sale deed dated 7.3.1980 (Ex.P/2) executed by defendant No.2 in favour of defendant No.1 be declared null and void. In the considered opinion of this Court, in absence of seeking relief of declaration that power of attorney dated 10.10.1979 (Ex.D/1) and sale deed dated 7.3.1980 (Ex.P/2) are null and void, it has rightly held by the first appellate Court that the plaintiffs are not entitled for relief of declaration of title and recovery of possession.

19. The Supreme Court in the matter of **Jugraj Singh and another v. Jaswant Singh and others**⁵, held the suit to be barred by Section 42 of the Specific Relief Act, 1877, wherein plaintiff neither asked for cancellation of order of Collector nor sought for any injunction against that order. It was pertinently observed as under:-

“11.....We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.”

20. Very recently, the Supreme Court in the matter of **Murugan and others v. Kesava Gounder (Dead) Thr.Lrs. and others**⁶ has held that the alienations, which were voidable, at the instance of

5 AIR 1971 SC 761

6 2019 SCC OnLine SC 270

minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.

21. Reverting to the facts of the present case, in light of principle of law laid down in the above-stated judgments (*supra*), in absence of any challenge to the power of attorney (Ex.D/1) and sale deed (Ex.P/2) by the plaintiffs as the plaintiffs did not ask for any relief of declaration that both documents (Ex.D/1 and Ex.P/2) be declared null and void, the trial Court had committed grave legal error in embarking upon an enquiry as to whether those documents are null and void and reached to the wrong conclusion that those documents are null and void. The plaintiffs ought to have questioned those documents and they could have sought for declaration that those documents are be null and void. In absence of that express challenge by seeking declaration/cancellation of those documents, the trial Court was absolutely unjustified in declaring those documents to be null and void, which has rightly been corrected by the first appellate Court.

22. In view of the aforesaid legal analysis, the substantial question of law is answered against the plaintiffs and in favour of the defendants and the judgment and decree of the first appellate Court is affirmed but for the reasons assigned hereinabove. The second appeal is dismissed. The plaintiffs shall bear their own cost as well as cost of the defendants.

23. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-