

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 228 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 478 OF 2015**

Balkrushna Dattatray Modak	Appellant
V/s.	
Manoj Narayan Modak and Ors.	Respondents

* * * *

Mr. Sumit S. Kothari, Advocate for the appellant.

Mr. Vinayak Kumbhar i/by. Mr. Sagar Mane, Advocate for respondents no.1 to 3.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 13th February, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. I will refer the parties to this Appeal as “plaintiffs” and “defendants”, as per their status in the trial Court.

3. This Appeal is preferred by the plaintiff in Special Civil Suit No. 347 of 2005. The suit was for cancellation of the registered sale-deed dated 1st November, 2004 executed by the plaintiff's father in favour of defendants no.1, 2 and 3. The defendants are the cousin brothers of the plaintiff; whereas, defendant no.4 is the brother of the plaintiff.

4. The suit property is agricultural land being Gat No. 585. It is the plaintiff's case that, suit land was jointly purchased by him i.e. his brother, Ashok, who is defendant no.4. It is admitted fact that, plaintiffs' brother-defendant no.4 sold his share in the suit land to defendants no.1, 2 and 3 by registered sale-deed.

5. It is the plaintiff's case that, he had executed a Power of Attorney on 1st June, 1992 and appointed his father as his agent to do all such acts including, to negotiate and sell his share in the suit property to any person upon such terms and conditions as his father would think fit and proper. Plaintiff's father thus agreed to sell the suit land to defendants no.1 to 3 vide agreement to sell dated 1st January, 2000 for the consideration of Rs.2,00,000/-.

Rs.1,00,000/- were paid at the time of executing the agreement and balance consideration was payable on the execution of the sale-deed. On 1st November, 2004 the plaintiff's father executed registered sale-deed in favour of defendants no.1, 2 and 3. Alongwith the sale-deed, a copy of the Power of Attorney was also produced. I have perused the sale-deed and Power of Attorney dated 1st June, 1992 annexed thereto. The Power of Attorney is authenticated and attested by the Sub-Registrar as could be seen from the seal affixed thereon.

6. It is the plaintiffs' case that, on 14th May, 2001, he had cancelled the Power of Attorney vide "deed of cancellation of Power of Attorney". The plaintiff therefore would contend that, the sale-deed executed by his father on 1st November, 2004 is void, in as much as, his father had no authority or power to execute the sale-deed on his behalf.

7. The learned trial Judge dismissed the suit and the decree was confirmed in Appeal against which the present Appeal is preferred.

8. Learned Counsel for the parties, have taken me

through the evidence, oral and documentary.

9. It is submitted by the learned Counsel for the appellant that, the sale-deed is void since the Power of Attorney on the basis of which the sale-deed was executed by his father, was unregistered Power of Attorney. In support of his submission, he has relied on the provisions of Sections 32 and 33 of the Registration Act, 1908. He has also relied on the judgment of this Court in the case of **Ashok Kumar s/o. Dulichand Sharma Vs. Jethmal Motilal Jedia and Others** reported in 2009 (6) Mh.L.J. page 629. I do not agree with the submissions for the following reasons :

(i) Section 17 of the Registration Act, 1908 has been amended by the Maharashtra Act 10 of 2012 w.e.f. 1st April, 2013 whereby Clause (h) has been added after Clause (e) of sub-section (2) of sub-section (1) of Section 17 of the Registration Act. Clause (h) reads as under :

“(h) irrevocable Power of Attorney relating to transfer of immovable property in any

way, executed on or after the commencement of the Registration (Maharashtra Amendment) Act, 2010 (Mah.X of 2012).” -Maharashtra Act 10 of 2012, S.3 (w.e.f. 1-4-2013).

(ii). The Power of Attorney was executed on 1st June, 1992 and the sale-deed was executed on the strength of that Power of Attorney on 1st November, 2004. Thus, at the given point of time, the said Power of Attorney was not a document of which registration was compulsory in terms of Section 17 of the Registration Act, 1908.

(iii). Section 33 of the Registration Act, contemplates which Power of Attorney is recognisable for the purposes of Section 32. Clause (a) of Section 33 reads as under :

(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;

. Thus, the aforesaid Clause (a), regulates the manner in which the Power of Attorney is recognised for the purposes of presentation of documents for registration. The provisions of Sections 32 and 33 of the Registration Act, does not make registration of the Power of Attorney compulsory. That even otherwise, in the case in hand, Power of Attorney was presented at the time of registration of the sale-deed and the same was authenticated by the Sub-Registrar as could be seen from the seal and stamp of the Sub-Registrar thereon.

10. Thus, in my view, there was a substantial compliance of Clause (a) of Section 33 of the Registration Act, 1908.

11. That for the reasons aforesaid, the first contention of the learned Counsel for the appellant is

rejected. That after going through the evidence, the Courts below concurrently rendered a finding of fact that the evidence of a Notary Public before whom the Power of Attorney was falling short to prove deed of cancellation of Power of Attorney. I have gone through the evidence of the Notary Public who was examined as P.W.2, as well as, the evidence of the plaintiff. The Notary in his evidence has stated that, the original Power of Attorney dated 1st June, 1992 was not cancelled by him and he did not make any endorsement thereon. He admitted in cross-examination that, he did not know the plaintiff and his father personally, but they were identified by Advocate, Dharmadhikari. Admittedly, Advocate Dharmadhikari was not examined. Infact, Advocate Dharmadhikari is the brother-in-law of the plaintiff. Plaintiff admitted in evidence that, the Power of Attorney dated 1st June, 1992 could not be produced as it was lost, however, the evidence of the defendants shows that the Power of Attorney was in their custody and it was produced by them before the Court. Thus, taking into consideration, the evidence of the plaintiff and his

witnesses, both the courts declined to rely on the evidence and held that, as on the date of execution of the sale-deed, the father of the plaintiff was holding valid and subsisting Power of Attorney dated 1st June, 1992. It may also be stated that, defendant no.4 who is the brother of the plaintiff was a witness to the sale-deed and it bears his signature. He was examined by the defendants as his witness.

12. Thus, the Courts below have rendered a finding of fact consistent with the evidence on record.

13. Thus, in my view, the Appeal does not give rise to any substantial question of law. The Appeal is accordingly dismissed.

14. In view of dismissal of the Appeal, Civil Application No. 478 of 2015 does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)