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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9445/2017**

HARMOHINI SARNA AND ORS Petitioners

Through: Mr Ayushman Pandey, Mr
Ruchira Singh and Ms Deepanshi
Kumar, Advocates.

versus

GOVT OF NCT OF DELHI Respondent
Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **28.01.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 24.01.2017 passed by the Sub-Registrar, Vikas Sadan, DDA whereby the request of the petitioners for registering a Power of Attorney in favour of Ms Anjali Sarna (wife of petitioner no.2 and the daughter-in-law of petitioner no.1) was rejected. The petitioners also impugn an order dated 19.07.2017 passed by the District Magistrate and Registrar, whereby the petitioners' appeal under Section 72 of the Registration Act, 1908, preferred against the impugned order dated 24.01.2017, was rejected.

2. Admittedly, petitioner no.1 and petitioner no.2 are related inasmuch as petitioner no.1 is a mother of petitioner no.2. Both the

petitioners are desirous for executing a General Power of Attorney constituting Mrs Anjali Sarna (wife of petitioner no.2) as an attorney for doing certain acts in respect of the property bearing no. 15-C, Victoria Tower, 15th Floor in Raisana Residency, Sector-59, Village Ullahwas, Tehsil – Sohna, District Gurugram, Haryana (hereafter ‘the said property’).

3. By the impugned order dated 24.01.2017, the concerned Sub-Registrar declined to register the Power of Attorney on the ground that the said property was situated outside the jurisdiction of the concerned Sub-Registrar.

4. Aggrieved by the said order, the petitioner filed an appeal under Section 72 of the Registration Act, 1908 pointing out that the petitioners were resident in Delhi and, therefore, were entitled to execute a Power of Attorney in Delhi appointing Mrs Anjali Sarna (who is a blood relative) as their constituted attorney. The petitioners also referred to Section 33 of the Registration Act, 1908 and contended that the a power of attorney can be registered by the principal who, at the time of executing the power of attorney, is residing in any part of India.

5. However, said appeal was also rejected by an order dated 19.07.2017. According to the appellate authority, only a Special Power of Attorney could be registered in terms of the Minutes of the Meeting of the Deputy Commissioners/Additional District Magistrates, Sub Divisional Magistrates and Sub Registrars held on 13.06.2005; and it was not permissible to register a General Power of Attorney.

6. The relevant extract of the Minutes of the said Meeting held on 13.06.2005 are set out below:-

“5. Registration of Special Power of Attorney:

Deputy Commissioner (South) sought clarification as to whether Special Power of Attorney in case of blood relation and spouse can be registered for authorizing the attorney to sale the property located outside Delhi. Divisional Commissioner clarified that only Special Power of Attorney should be registered in respect of properties located outside Delhi and in no case General Power of Attorney should be registered. Necessary order/clarification in this regard will be issued.”

7. The import of the aforesaid Minutes is not to register the General Power of Attorney which, in fact, amount to transfer of title of the property. There is no bar in a person constituting an agency. There is no prohibition for registering a General Power of Attorney, which is not for any consideration and does not purport to create any interest in the property in favour of the constituted attorney.

8. At this stage, it is relevant to refer to Section 33 of the Registration Act, 1908, which reads 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 recognised, 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 of sub-district the principal resides;

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

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

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

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

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

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

Explanation.- In this sub-section "India" mean India, as defined in clause 28 of section 3 of the General Clauses Act, 1897 (10 of 1897).

(2) In the case of every such person the Registrar of 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 at least 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 fact of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.”

9. It is apparent from the provisions of clause (a) of sub-section (1) of Section 33 that the principal can register a Power of Attorney at a place where he resides. Plainly, administrative decisions cannot by any stretch be read to override the provisions of a statute (in this case, the Registration Act, 1908).

10. The learned counsel for the parties had also drawn the attention of this Court to a Circular dated 12.11.2014 (which was issued subsequent to the meeting held on 13.06.2005). Paragraph 10 of the said Circular also clarifies that the Power of Attorney should be executed in the office of the Sub-Registrar in whose jurisdiction the executants/principal resides irrespective of existence/or place of immovable property.

11. Paragraph 10 of the said Circular is set out below:-

“10) CLARIFICATION REGARDING POWER OF ATTORNEY

(I) JURISDICTION FOR REGISTRATION OF POWER OF ATTORNEY

A power of attorney may be executed in the office of Sub-Registrar in whose jurisdiction the executants / principal resides irrespective of existence / or place of immovable property

(ii) GPA IN NATURE OF SALE

a) The Sub Registrars should look into the contents

of the document presented for registration in order to ascertain the nature of document and stamp duty chargeable on the same. It has been noticed that people are presenting the documents which contain the contents of a Conveyance but, in order to evade the stamp duty payable, the document is prepared under the title of “General Power of Attorney”.

b) Such kind of practices can be stopped when the Sub Registrars look into the nature and contents of the document and stamp duty should be levied accordingly. If the document presented for registration is titled as “General Power of Attorney” but its contents contains 'the following clauses then the same shall be deemed to be in the nature of Conveyance and the Sub Registrar shall refer It to the concerned Collector of Stamps for-adjudication of adequate stamp duty payable on it (these are some, of the indicative clauses and not the exhaustive list of factors)

(a) The consideration has been paid for execution of the Power of Attorney.

(b) The Power of Attorney presented is Irrevocable in nature.

(c) The POA empowers Attorney to sell, gift, exchange or permanently alienate the immovable property & the consideration received thereof is receivable in the name of the executants.

(d) The possession of the property has been transferred to the Attorney through General Power of Attorney.”

12. As is apparent from the plain language of the abovementioned Circular, the Registering Authority is required to examine the contents of the General Power of Attorney to ascertain the nature of the document.

Clearly, parties cannot be permitted to register a General Power of Attorney as a camouflage for sale of immovable property. Thus, it is important to ascertain whether the Document sought to be registered purports to create any interest in the property in favour of the person appointed as a constituted attorney.

13. In the present case, the Power of Attorney is executed by the petitioners in favour of their close relative (daughter -in-law and wife); the same is not for any consideration; and does not create any interest in the said property.

14. In view of the above, the decision of the Sub-Registrar and the District Magistrate to decline the petitioners' request for registration of the General Power of Attorney, is unsustainable. The petition is allowed and the respondent is directed to register the Power of Attorney dated 24.01.2017 (a copy of which is annexed at page 21 of the present appeal) within a period of two weeks from today subject to the petitioners complying with all other formalities.

15. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 28, 2019
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