

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 15 OF 2020
WITH CA/426/2020 IN SA 15/2020

Mahendra s/o Balraj Potpulewal,
Age 67 years, Occ. Business,
R/o. Star Cold Drink, H. no. 3-5-8,
Sarafa Bazar, Aurangabad.

... Appellant
(Defendant No. 2)

VERSYS

- 1) Premsukh s/o Mansukh Sancheti,
Age 58 years, Occ. Advocate,
R/o. Kasari Bazar, Aurangabad.
- 2) Suryakant s/o Vithaldas Dhakkal,
Age 36 years, Occ. Business,
R/o. Kasari Bazar, Aurangabad.
- 3) Rajesh s/o Mohanraj Kankaria,
Age 36 years, Occ. Business,
R/o. Kasari Bazar, Aurangabad.
- 4) Madanlal W/O Ratanlal Varma
since deceased through his L.Rs.
- 4A) Sanjay s/o Madanlal Varma,
Age 50 years, Occ. Business.
- 4B) Gokuldevi w/o Madanlal Varma,
Age 81 years, Occ. Household,
Both r/o. Sarafa Bazar, Near Jain
Mandir, Aurangabad.
- 5) Rajendra s/o. Balraj Potpulewal,
Age Major, Occ. Business,
R/o. Star Cold Drink, H. No. 3-5-8,
Sarafa Bazar, Aurangabad.
- 6) Balraj s/o Buchyya Potpulewal,
died through L.Rs.
- 6A) Dharmendra s/o Balraj Potpulewal,
Age 50 years, Occ. Business,

R/o. Near head Post Office, Juna
Bazar, Aurangabad.

... Respondents
(Resp.N. 1 to 4 Plaintiffs
& Resp.No. 5 and 6A defts.
No. 1 and 3A).

...

Advocate for the Appellant : Mr. K. A. Ingle.
Advocate for the Respondent Nos. 1 to 3, 4A & 4B : Mr. P. F. Patni.

CORAM : **MANGESH S. PATIL, J.**
RESERVED ON : **15.02.2022.**
PRONOUNCED ON : **03.03.2022**

JUDGMENT :

This is an appeal by the defendant being aggrieved and dissatisfied by the concurrent findings and decisions of the Courts below holding the respondents/plaintiffs entitled to possession of the suit property based on title.

2. For the sake of convenience the parties will be referred according to their status before the trial court.

3. The sum and substance of the pleadings are to the effect that one Rampyaribai was the owner of the suit property which was described as property bearing C.T.S. No. 4670 corresponding to Municipal House No. 3-5-8 of Aurangabad, except the two shops from the ground floor which have been in possession of the defendants as tenants. According to plaintiffs, Rampyaribai had executed a power of attorney in favour of one Subhash and Ajay from whom they purchased it under a sale-deed. They averred that pursuant to the sale-deed they were put in possession of the suit property. However, the defendants clandestinely entered into possession. Hence they prayed for possession of the suit property based on title.

4. The defendants resisted the suit in toto. They admitted that Rampyaribai was owner of the suit property. They also admitted that they

were in possession of couple of shops from the ground floor. They further contended that they were also in possession of one more room from the upper floor. They denied that the respondents purchased the suit property from Rampyaribai through her power of attorneys. They contended that in fact the power of attorneys Subhash and Ajay had agreed to sell the suit property to them and even received some part of the consideration and they were put in possession. When they came to know about the misdeeds of the plaintiffs one of them approached Rampyaribai who was residing in Madhya Pradesh, who assured them to sell the suit property to them and disclosed that she was not agreeable to the sale effected by her power of attorneys and would do the needful. Thus, according to them they were put in possession of the suit property in part performance of the agreement and were entitled to protect the possession.

5. The learned advocate for the defendant No. 2 vehemently submitted that the respondents had miserably failed to prove the sale-deed. Rampyaribai was already dead before execution of the sale-deed. An attempt was made by the defendants to prove this fact by moving an application under Order XLI Rule 27 of the Code of Civil Procedure before the lower appellate court. Unfortunately, that request was turned down. For this reason alone, the power of attorney had ceased to exist and mere execution of sale-deed would not transfer the title. The learned advocate would further submit that the power of attorney was not a registered power of attorney and still the attorneys had presented the sale-deed for registration which was contrary to the provisions of Section 32 and 33 of the Registration Act. In support of his submission the learned advocate Mr. Ingale placed reliance on the decision of this Court in the matter of **Ashok Kumar s/o Dulichand Sharma Vs. Jethmal Motilal Jedia and others; 2009(6) Mh.L.J. 629.**

6. Per contra, the learned advocate Mr. Patni for the plaintiffs submitted that no substantial question of law arose in this second appeal. There are

concurrent findings of facts by the courts below and even an erroneous finding would not give rise to a substantial question. He would further submit that both the courts below have carefully scrutinized the evidence and have demonstrated as to how the plea of the defendants regarding existence of an agreement of sale was not sustainable under Section 53A of the Transfer of Property Act. Though the defendants are disputing the power in Subhash and Ajay to execute the sale-deed, even according to their own case and the testimony of their witness, they had approached the very same individuals and it is not their case that they had directly approached Rampyaribai before power of attorneys executed sale-deed on her behalf.

7. Mr. Patni would also submit that the sale-deed being a registered document it is not required by law to be attested under Section 54 of the Transfer of Property Act and Section 68 of the Evidence Act did not apply. Mr. Patni would, lastly, submit that there was no error in presentation of the sale-deed for registration by the power of attorney holders when they themselves were to execute the sale-deed and there was no violation of provisions of Section 32 and 33 of the Registration Act. He would place reliance on the decision in the case of **Rajni Tandon V. Dulal Ranjan Ghosh Dastidar and Anr.; 2009 A.I.R. SCW 5416.**

8. I have carefully gone through the record and proceeding as also the decisions cited at the Bar and considered the rival submissions. There is no dispute about the fact that Rampyaribai was the owner of the suit property. The defendants tentatively disputed the power of attorney executed by Rampyaribai in favour of Subhash and Ajay, who on her behalf as her power of attorney holders, executed the sale-deed. As is rightly pointed out by the lower appellate court, this attempt was lame in as much as, even according to their own case it is the very same individuals Subhash and Ajay who had agreed to sell the suit property to them. It is not their case that they had ever approached Rampyaribai directly and paid her some earnest money which according to them was paid to these two individuals Subhash and

Ajay.

9. Besides, the power of attorney that was produced on the record was a notarized document and carried a presumption under Section 85 of the Evidence Act which was correctly drawn by the courts below. Therefore, no error is committed by the courts below in appreciating the facts, circumstances and evidence to record a finding that there was no substance in the contention of the defendants questioning the authority of Subhash and Ajay to execute the sale-deed on behalf of Rampyaribai.

10. As regards the proof regarding sale-deed is concerned, as has been rightly pointed out by the lower courts, it is not a document which requires any attestation if one goes through the provisions of Section 54 of the Transfer of Property Act. Since Subhash and Ajay were the executants who had never disputed its execution and were not even called as witnesses by the appellants, no error can be found with the observation of the courts below in holding that since the plaintiff No. 1 was a person who had signed the sale-deed and was examined as a witness on behalf of the plaintiffs and had stated about execution of document and its registration, there was sufficient proof regarding its execution.

11. As far as the provisions of Section 32 and 33 of the Registration Act is concerned, as has been rightly pointed out by the learned advocate Mr. Patni, the decision in the case of **Rajni Tandon (supra)** can safely be relied upon to conclude that when Subhash and Ajay who were the power of attorney holders of Rampyaribai were themselves the executants of the sale-deed and had presented the document for registration, there was sufficient compliance. Therefore, there is no substance in the submission of learned advocate for the appellants that the registration of the sale-deed was faulty.

12. As far as the decision in the case of **Ashok Kumar (supra)** of a coordinate bench of this Court, true it is that it has been held that if the document is presented for registration by a power of attorney holder, such a

power of attorney must be registered one else the registration of the document at his instance would be void. However, this decision of the brother Judge can no longer be said to be laying down a correct proposition in view of the decision of the Supreme Court in the case of **Rajni Tandon (supra)**. While reversing a decision of the Calcutta High Court on the lines similar to the one in the matter of **Ashok Kumar (supra)** it has been laid down in **Rajni Tandon (supra)** that registration of a document by a power of attorney holder is not invalid on the ground of absence of registration of the power of attorney. It, therefore, needs to be concluded that the decision in the matter of **Ashok Kumar (supra)** stood impliedly overruled by the decision in the matter of **Rajni Tandon (supra)**.

13. The defendants also made a faint attempt to improvise their stand by contending that Rampyaribai was not alive when the sale-deed was executed and consequently the power in the executants of the sale-deed had ceased to exist. Admittedly, they sought to raise such plea before the lower appellate court by submitting an application under Order XLI Rule 27 of the Code of Civil Procedure but the application was turned down. The order was challenged before this court in Writ Petition No. 10068/2019 but by the order dated 13.08.2019 the Writ Petition was dismissed on merits and the decision has reached finality.

14. Besides, as has been correctly pointed out by the lower appellate court, it is the case of the defendants in their written statement that after becoming aware about the plaintiffs having purchased the suit property, one of them had approached Rampyaribai who denied to have authorized the power of attorney holders to sell the suit property and had assured him to sell it to the defendants. This clearly indicates that she was very well alive on the date of sale-deed which was executed by her power of attorney holders in favour of the respondents. Therefore, even for this reason, the contention of the appellants that Rampyaribai was not alive on the date of the sale-deed falls to the ground.

15. Considering all the aforementioned facts, circumstances and particularly the concurrent reasonings given by the courts below, no substantial question of law arises in this second appeal.

16. The second appeal is dismissed in limine. Pending Civil Application is disposed of.

(MANGESH S. PATIL, J.)

mkd/-