



C.R.P.(PD).No.2945 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2945 of 2024
and C.M.P.No.15761 of 2024

1. G.Indirani
2. Roopa
3. Deepa
4. Suresh

.. Petitioners

Versus

A.Naveen Kumar

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.1 of 2024 in O.S.No.62 of 2018 on the file of the Subordinate Court, Udagamandalam.

For Petitioners : Mr.Sam Jayaraj Houston
for M/s.Sarvabhauman Associates

For Respondents : Mr.J.Franklin

ORDER



C.R.P.(PD).No.2945 of 2024

WEB COPY

This Civil Revision Petition arises against the order of learned Subordinate Judge at Udagamandalam in I.A.No.1 of 2024 in O.S.No.62 of 2018.

2. O.S.No.62 of 2018 is a suit for title to declare that the petitioners/plaintiffs are absolute owners of the property and for permanent injunction restraining the respondent/first defendant and the second defendant therein from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the property.

3. The cause of action for the suit is that the plaintiffs alleged that the first defendant had created a forged and fabricated Power of Attorney, dated 15.02.2012 and on that basis, the respondent/first defendant executed a sale deed in favour of the second defendant on 15.02.2017. The suit is at the stage of trial.

4. The respondent/first defendant sought to mark the unregistered Power of Attorney said to have been executed by the petitioners/plaintiffs in his favour. This document was sought to be taken off the record by filing



C.R.P.(PD).No.2945 of 2024

WEB COPY

I.A.No.1 of 2024. The ground on which the petitioners/plaintiffs wanted the document to be removed was that it is compulsorily registrable by virtue of Section 17 of the Registration Act. The learned Subordinate Judge, after receipt of a counter from the first defendant, would have none of it and dismissed the petition. Against which, the present Revision arises.

5. Heard Mr.Sam Jayaraj Houston, learned Counsel for M/s.Sarvabhauman Associates for the petitioners/plaintiffs and Mr.J.Franklin, learned Counsel for the respondent/first respondent.

6. Mr.Sam Jayaraj Houston would submit that a Power of Attorney requires registration by virtue of Section 17(1)(h) of the Registration Act as it deals with immovable property. His second submission is that the Power of Attorney is a non-testamentary instrument which is covered under Section 17(1)(b) of the Registration Act and therefore, it requires compulsory registration. He would rely upon a judgment of the Karnataka High Court in ***Corporation Bank Vs. Lalitha H.Holla, I.L.R. 1993 KAR 3260*** and the judgment of this Court in ***S.Geethan C.Winson Vs. The***



C.R.P.(PD).No.2945 of 2024

WEB COPY

Inspector General of Registration, Santhome High Road, Chennai and Anr., 2012 SCC OnLine Mad 2419 in support of his contention.

7. Mr.J.Franklin, would submit that whether the Power of Attorney had been executed by the petitioners/plaintiffs in favour of the defendants is the matter in dispute. He would point out that it is a notarized Power of Attorney and therefore, entitled to the benefit of Section 85 of the Indian Evidence Act.

8. I have carefully considered the arguments on either side and perused the records of the case.

9. Insofar the argument that Section 17(1)(h) of the Registration Act is a bar for receipt of the Power of Attorney is concerned, I have to point out that the amendment to the Registration Act was made under Tamil Nadu Act 29 of 2012 with effect from 01.12.2012. The Power of Attorney is dated 12.11.2005. The amendment to the Registration Act is only prospective and not retrospective. To make it abundantly clear, the force of Section 17(1)(h)



C.R.P.(PD).No.2945 of 2024

WEB COPY

of the Registration Act will not effect Powers of Attorney executed prior to the date of the amendment to the Act. Hence, this submission is rejected.

10. Insofar as the second submission that Power of Attorney attracts Section 17(1)(b) of the Registration Act, is concerned, it is an extremely unique argument. Section 17(1)(b) of the Registration Act applies when any document creates, declares, assigns, extinguishes or otherwise limits the right of a party in present or in future, over an immovable property for a value of Rs.100/- and above. Section 17(1)(b) of the Registration Act has been incorporated in order to deal with right of a party over an immovable property. The manner of transfer of title is dealt with under the Transfer of Property Act. Power of Attorney continues to be in the realm of contract and is covered by the Indian Contract Act. By execution of the Power of Attorney, there is no transfer of title from the principal to the agent as is clear from the document of Power of Attorney, dated 12.11.2005. All that the document purports to do is authorise the respondent/first defendant as an agent to do such acts, as has been specified in the Power of Attorney, which the principals are entitled to do.



C.R.P.(PD).No.2945 of 2024

WEB COPY

11. As pointed out above, this continues to be in the realm of contract and nowhere comes within the realm of Transfer of Property Act. A Power of Attorney is not a document of title. Infact, the practice of sale through Power of Attorney has come down drastically after the judgment of the Supreme Court in ***Suraj Lamp and Industries Private Limited through Director Vs. State of Haryana and Anr., (2009) 7 SCC 363***. The judgment makes it clear that Power of Attorney is not a document of title. Section 17(1)(b) of the Registration Act deals with documents in the nature of sale deeds, settlement deeds, gift deeds etc., which have an effect on the immovable property. Furthermore, a principal is entitled to appoint more than one Power of Attorney for the purpose of doing the acts which he could have done himself.

12. In case, the argument of Mr.Sam Jayaraj Houston is accepted, if a Power of Attorney is executed by a principal, then, he will lose his right over the property. Such an interpretation of Section 17(1)(b) of the Registration Act will only lead to absurdity. This is because, a principal, while appointing a Power of Attorney, retains with himself the power to alienate the property dehors the power deed i.e., alienating the property by



C.R.P.(PD).No.2945 of 2024

WEB COPY

himself. If Section 17(1)(b) of the Registration Act is applied to a Power of Attorney, then, the principal will be barred from alienating the property. That is not the scope of the said section. Even today, the Power of Attorney which does not deal with an immovable property need not be compulsorily registered by virtue of Section 18 of the Registration Act. It is only optional at the hands of either the principal or the agent. Therefore, the submission of Mr.Sam Jayaraj Houston that it is covered under Section 17(1)(b) of the Registration Act deserves only an order of rejection and is accordingly rejected.

13. Now turning to the authorities, ***S.Geethan C. Winson***'s case (cited *supra*) was a situation where the petitioner filed a Writ Petition seeking for a Writ of Mandamus directing the Inspector General of Registration to give a circular in exercise of the powers vested under Section 69(1)(j) of the Indian Registration Act. A careful perusal of the judgment shows that the Power of Attorney, which had been executed in favour of the writ petitioner therein, had been cancelled on 12.02.2010. The learned Judge specifically finds that once the Power of Attorney is cancelled, there is no question of the agent continuing to act in that capacity on behalf of the principal. It was



C.R.P.(PD).No.2945 of 2024

WEB COPY

in the light of that discussion, the learned Judge had observed that it requires compulsory registration. That is not the situation in the case before me. In fact, the petitioners/plaintiffs have taken a stand that the Power of Attorney itself is fabricated and therefore, factually, the judgment is distinguishable.

14. Insofar as the judgment in **Corporation Bank's** case (cited *supra*) is concerned, that was a case of transfer of actionable claim. The transfer of actionable claim is covered under Section 130 of the Transfer of Property Act. As pointed out above, if the document is covered by the Transfer of Property Act, automatically, the role of the Registration Act comes into play and hence, it was in those circumstances, the Court had held that the document requires registration.

15. Furthermore, in terms of Section 85 of the Indian Evidence Act, a Power of Attorney, which has been notarized, is entitled for a presumption that it had been duly executed and authenticated. The presumption under Section 85 of the Indian Evidence Act is a direction to the Court that it "shall presume" the execution of the document. The meaning of "shall



C.R.P.(PD).No.2945 of 2024

WEB COPY

"presume" is found under Section 4 of the Indian Evidence Act. The presumption is that the Power of Attorney had in fact been executed, unless and until it is otherwise disproved. Therefore, the burden of proof is on the petitioners/plaintiffs to show that the notarized document had not been executed by them.

16. In the light of the above discussion, I do not find any merits in the revision. The Civil Revision Petition is dismissed. The order of the learned Subordinate Judge at Udagamandalam in I.A.No.1 of 2024 in O.S.No.62 of 2018 stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

06.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Subordinate Judge,
Udagamandalam.



WEB COPY



C.R.P.(PD).No.2945 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.2945 of 2024
and C.M.P.No.15761 of 2024

06.08.2024