



**IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5797 OF 2009

AMAR NATH

... APPELLANT (S)

VERSUS

GIAN CHAND AND ANR.

... RESPONDENT (S)

**J U D G M E N T**

**K.M. JOSEPH, J.**

**1.** By the impugned judgment the High Court in a second appeal has reversed the concurrent findings rendered in a suit filed by the first respondent and the appellant who is the second defendant in the suit has filed the present appeal. The second respondent who is the second defendant in the suit though served has chosen not to appear. The parties shall be referred to

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by their status in the Trial Court.

## **THE SUIT**

**2.** The plaint schedule property hereinafter referred to as the 'property' consists of 2 Kanals, 10 Marlas and odd land belonged to the plaintiff and was in his possession. He was serving as a junior engineer. He entered into an oral agreement for the sale of the property for a consideration of Rs. 55,000/-. It is the plaintiff's case that when the plaintiff came on leave, the first defendant could not arrange the money and asked for further time. The plaintiff bonafide executed a special power of attorney in favour of the II<sup>nd</sup> defendant for selling the property for the amount of Rs. 55,000/-. As the negotiation fell through in view of the first defendant not being able to arrange the money, the second defendant to whom the power of attorney was executed, surrendered the original to the plaintiff, and the plaintiff told the first defendant that the same stood cancelled. The second defendant is alleged to be a deed writer and a clever person. He applied for the copy of the power of attorney, and fraudulently in collusion with the first defendant,

executed the sale deed on 28.04.1987 for Rs. 30,000/. The second defendant, according to the plaintiff, could not execute the sale deed in the absence of the original power of attorney, and the sub registrar was supposed to verify the aspect from the second defendant under Sections 32, 33 and 34 of the Registration Act. The sale deed was without authority. The second defendant 'was not competent to transfer the possession'. The special power of attorney is deemed to have been cancelled in the eye of law since it was handed over to the plaintiff. When the plaintiff came from his service and enquired with the officials of the revenue staff or the consolidation authority, and got the copies, then he came to know about the sale and that the mutation has been sanctioned. It is on this case that the plaintiff filed a suit for declaration by way of permanent injunction that he is the owner in possession of that property and the mutation showing the sale in favour of the first defendant, by the second defendant, was null and void, and that the second defendant was not having any authority to sell the land owned by the plaintiff, and hence the defendant be

restrained from interfering with the ownership and possession of the plaintiff. It was further prayed that in case it was proved that the second defendant was an agent of plaintiff then in that case, the suit for rendition of accounts be decreed.

**3.** The first defendant (appellant) in his written statement inter alia pleaded that he while admitting that the plaintiff is a junior engineer, his actual place of posting was not known to him. It is also admitted that the first defendant entered into an agreement orally to get the property purchased for Rs.30,000/- and not Rs.55,000/-. It is denied that the first defendant could not arrange for the money. The plaintiff received Rs.10,000/- as part price. The remaining Rs.20,000/- was paid at the time of registration. The negotiation of the sale did not fall through. Second defendant never surrendered the original power of attorney. The plaintiff got the power of attorney after the sale deed was executed by the second defendant. The sum of Rs.20,000/- was given in the presence of the sub registrar. The first defendant was a bonafide purchaser. The sale deed was effected

in a legal manner and after verification by the sub registrar. The second defendant was competent to execute the sale deed.

4. The second defendant also filed a written statement. He contended that there was an agreement between the plaintiff and the first defendant independently without the intervention of the second defendant for the sum of Rs.30,000/- out of which the plaintiff was himself given Rs.10,000/- as earnest money from the first defendant. The remaining Rs.20,000/- was to be received on the registration of the sale deed as at the time of sale, it could not be effected immediately. The plaintiff had to join his duty and therefore wanted the second defendant to have a registered special Power of Attorney from him and then, execute the sale deed and get it registered after receiving the remaining amount of consideration of Rs.20,000/. The consideration of the sale deed being Rs.55,000/- is stoutly denied. It is his further case that the remaining consideration was handed over to the plaintiff and the power of attorney was handed over to the plaintiff. However, the case that the power of

attorney was handed over before execution of sale deed is denied. He denied acquaintance with the government officer much less the sub registrar. There is no prohibition of law for executing a sale deed on the basis of the copy of the registered power of attorney, when the original could not be traced and the plaintiff insisted for the money showing that he has a great need. Legally and factually, it is pleaded 'that no registered deed to cancelled orally.' It requires another registered deed to cancel it.

**5.** The Trial Court framed the following issues, inter alia:-

I. Whether sale in question is without consideration and void as alleged;

II. Whether the plaintiff is entitled to the relief of declaration and permanent injunction;

III. Whether the plaintiff is entitled to the rendition of account from defendant No.2 in the alternative;

IV. Whether the plaintiff is estopped from filing the present suit by his act and conduct;

V. Whether the suit is not properly valued for Court fee and jurisdiction;

**6.** The evidence consisted of oral evidence on behalf of the plaintiff tendered through eight witnesses. The documentary evidence on behalf of the plaintiff consisted of P1 to P11. The first defendant was examined as DW1. The second defendant was examined as DW4. DW2 and DW3 were two other witnesses examined on behalf of the defendant. DX which will assume considerable significance was also adduced apart from D1 and D2. The Trial Court, inter alia, while answering issues no. 1 and 2 was alerted about the provisions of Section 33 and 34 of the Registration Act apart from Section 18A. Section 18A was found to deal with the document presented for registration. It went on to find inter alia that the reading of Section 58, 59 and 60 of the Registration Act leads to the conclusion that the registration of the document is a solemn act. The endorsement of the registration raised a presumption that the executants or their duly authorised agents appeared before the Registrar. It is for the other side to prove that the document was not presented for registration, once it is proved that the document had been presented. The execution was proved before the sub

registrar. The sub registrar has given evidence as PW4 and proved the sale for a consideration of Rs.30,000/. The sale was also proved by the marginal witnesses. Section 18 A of the Registration Act makes it clear that the sale deed must be accompanied with a true copy of the power of attorney. That second defendant was having a certified copy of the special power of attorney. The Trial Court did not accept the plaintiff's case that the second defendant was not his power of attorney at the time of the sale. It relied upon DX-letter dated 02.06.1987 written by the plaintiff. The Trial Court did not attach any weight to the alleged cancellation of the power of attorney especially when the second defendant was having a certified copy of the special power of attorney, which was a registered power of attorney. The cancellation also required registration. Exhibit PW 5A dated 02.07.1987 by which the second defendant agreed to pay Rs.30,000/- to the plaintiff is relied upon and it was inexplicable as why it was executed, if on 02.02.1987, the special power of attorney given to the second defendant was cancelled. The power of attorney was



found subsisting. The mere writing of a word 'cancelled' on the original power of attorney (P2) did not mean that the power of attorney had been cancelled, till notice was given to the second defendant. The I<sup>st</sup> defendant was not bound by any agreement between plaintiff and the second defendant. As per Section 18A, sale deed should accompany true copy of the power of attorney and the original is not required. P1-agreement binds the plaintiff and the second defendant having been proved by the scribe and witnesses. P1 and P2 must be read together. Plaintiff agreed with the second defendant to sell the land for consideration not less than Rs.55,000/-. No ground was given to set aside the sale. The sale was found effected for Rs.30,000/- and was not a void transaction. In answering issue no. 3, it was found however that the plaintiff was entitled to the rendition of the account from the second defendant. The second defendant was in fact found liable to pay Rs.55000/- based on P1 agreement. It was found that the P1 agreement controlled the power of attorney. The agent could not act against the interest of the principal. The court fee of Rs.19.50 was found

correctly fixed. The Trial Court proceeded to decline the relief of declaration by way of permanent injunction as the plaintiff was not the owner in possession but the Suit for rendition of accounts from the second defendant was decreed.

## **FINDINGS OF THE FIRST APPELLATE COURT**

7. The plaintiff authorised the second defendant by power of attorney dated 28.01.1997 to sell the property for Rs.55,000/-. The Court found that the case of the plaintiff, that the power of attorney was cancelled was unsustainable, having regard to the evidence of DW4, wherein he has deposed that he has received DX-letter also. The plaintiff has admitted sending DX. The Court proceeded to find that there was a valid sale deed and endorsement (PW4A). It was found that the sale deed was executed.

## **FINDINGS OF THE HIGH COURT**

8. The following questions of law were framed:

"1. Whether in view of the admitted position that defendant No.2 who was the petition writer, and in whose favour power of attorney had been

executed by the appellant for executing the sale deed for a consideration of Rs. 55,000/- to the knowledge of respondent No.1, it had to be assumed that the sale deed Ex.PW-3/A was fraudulently executed for Rs. 30,000/- when the Power of attorney had been cancelled and revoked and returned by the appellant and the document Ex.PW-5/A was duly proved?

2. Whether the court below has misconstrued the basic document of title Ex.PW-5/A, PW-3/A, P-1, P-2 and wrong inference have been drawn from facts proved on record?

3. Whether on the material on record it was established that there was non-compliance of mandatory provisions of section 18A, 59 and 61 of Registration Act and the findings that registered power of attorney could only be executed by registered document is sustainable in law?

4. Whether the sale deed Ex.PW-3/A conferred any valid title on defendant No.1 and the plaintiff was entitled to the relief of injunction and declaration?

5. Whether in the facts and circumstances of the case, the presumption raised stood rebutted and the plaintiff was entitled to the relief of injunction and declaration instead of the alternative relief of rendition of accounts as held by the court below?"

**9.** Thereafter, the Court proceeded to discuss the evidence and records the following findings:

Defendant No.2 was not competent to execute the sale deed. Power of attorney dated 28.1.1987 was cancelled on 02.02.1987. Therefore, no

reliance could be placed on Exhibit-DX dated 02.06.1987. The evidence of PW4-Sub-Registrar, is referred to wherein he has admitted that it was not clear from the endorsement on the sale deed as to by whom Defendant No.2 was identified to be the power of attorney. It is further found that it is evident from the language of Section 18 of the Registration Act that it was necessary for the Registering Authority to see the true copy of the special power of attorney. In view of the cancellation of the original power of attorney which was cancelled on 02.02.1987, the same could not be relied upon by the Registering Authority for the purpose of execution of the sale deed. The evidence of PW6 is relied upon to find that at time of the cancellation of the power of attorney, Defendant No.1 was present. This implied that Defendant No.1 was aware of the cancellation. In the written statement, it is noted that the stand of second defendant was that the power of attorney had been misplaced. The High Court proceeded to set aside the findings of the courts below and

decreed the suit by declaring the plaintiff as the owner in possession of the land and the mutation showing the sale in favour of the First Defendant was declared null and void.

### **THE SUBMISSIONS OF THE 1<sup>st</sup> DEFENDANT/APPELLANT**

**10.** The High Court has clearly erred in exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC', for short). The substantial questions of law were purely factual. The terms of the power of attorney would show that the case of the plaintiff that the consideration was settled at Rs.55,000/-, was incorrect. It is further contended that it is an admitted fact that Defendant No.1 was put in possession on the execution of the sale deed and Defendant No.1 has been found by trial court to be in possession. The power of attorney which was registered, could have been cancelled only by a registered document. In this regard, we drew support from the judgment of the Allahabad High Court in Daya Shanker & Ors. v. Rajendra

Kumar & Ors.<sup>1</sup> . He also sought support from judgment of the Madras High Court (Madurai Bench) dated 11.12.2019 in Second Appeal No. (MD) 652 of 2015. The first defendant would contend that the registration of a document brings it in public domain and the registered document must be cancelled by the same means. It cannot be permitted to be cancelled in secrecy. He relied on Ratilal Nathubhai & Anr. v. Rasiklal Maganlal & Ors.<sup>2</sup> Sections 32(a) of the Registration Act, 1908 (hereinafter referred to as 'the Act', for short) contemplates a situation where a power of attorney holder is authorised to execute a sale deed. In this case, under the power of attorney executed by the plaintiff, the second defendant was competent to execute the sale deed and he could, therefore, present it for registration. In this regard, he drew support from the judgment of this Court in Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and Another<sup>3</sup> (2009) 14 SCC 782. The appellant also points to the relief sought in the plaint and the court fees to be paid being Rs.19.50,

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<sup>1</sup> (2016) 118 ALR 62

<sup>2</sup> AIR 1950 Bom. 326

<sup>3</sup> (2009) 14 SCC 782

which was the court fees paid for injunction simplicitor only. The plaintiff never sought cancellation of the sale deed nor recovery of possession. The appellant relied on judgment of this Court in Anathula Sudhakar v. T. Buchi Reddy (dead) by LRs & Ors.<sup>4</sup> and Madhukar Vishwanath v. Madhao & Ors.<sup>5</sup>, in this regard.

## **THE SUBMISSIONS OF THE PLAINTIFF**

**11.** The High Court was justified in interfering under Section 100 of the CPC. The High Court rightly found it necessary that the First Appellate Court should have discussed the evidence after formulating the points for determination under Order XLI Rule 31 of CPC. It is further contended that there was fraud and collusion and to the knowledge of both the defendants, the power of attorney stood withdrawn. Non-consideration of relevant evidence justified the High Court in interfering under Section 100 of the CPC. Construction of a document of title or of a document which was

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<sup>4</sup> (2008) 4 SCC 594

<sup>5</sup> (1999) 9 SCC 446

foundation of a right, raised a question of law. In cases of extreme perversity, the High Court can interfere under Section 100. Referring to Sections 32, 33 and 34 of the Registration Act, it is contended that improper presentation of a document is not a mere defect. The provisions are intended to prevent forgery and procurement of conveyance by fraud or undue influence. Reliance was placed on judgment of Privy Council in Jambu Parshad v. Muhammad Nawab Aftab Ali Khan & Anr.<sup>6</sup> and Ma Shwe Mya v. Maung Ho Hnaung<sup>7</sup>. It is further contended that Section 33(4) clearly contemplates the original power of attorney being produced at the time of presentation of the sale deed. The original power of attorney was not produced in this case by the second defendant. The original power of attorney was with the plaintiff and he has produced the same which was marked as Exhibit-P2. It was surrendered by the second defendant. The evidence of PW6 is relied upon. The case of the first Defendant that he was a bonafide purchaser, was a false pretence. After the

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<sup>6</sup> AIR 1914 PC 16

<sup>7</sup> AIR 1922 PC 359



cancellation of the power of attorney, the entire procedure of making an application by the second defendant for a copy, its preparation and receipt, shows fraud and collusion between the Defendants and the Sub-Registrar (PW4) and officials of the Registering Authority. The plaintiff took us through the deposition to demonstrate the falsity of the Defendant's case. There was an oral agreement between the plaintiff and the first defendant to sell and purchase, respectively, the property at Rs.55,000/-. The plaintiff was not paid Rs.10,000/- as claimed by the first defendant. Finding that the first defendant will not be able to raise Rs.55,000/-, the second defendant surrendered the power of attorney on 02.02.1987. The plaintiff has not received any amount from the first defendant or the second defendant. There is no equity in the case of first defendant. To do complete justice, the impugned judgment must be upheld.

## **ANALYSIS**

### **A BRIEF SURVEY OF THE REGISTRATION ACT.**

**12.** We must make a survey of the relevant provisions of the Registration Act. Section 17 deals with the documents which are compulsorily to be registered. The consequences of a compulsorily registrable document not being registered are spelt out in Section 49 of the Act. Section 18 deals with documents, which are optionally registrable. In other words, they are documents, which do not attract the wrath of Section 49 of the Act. In the state of Himachal Pradesh from where this case arises, Section 18A has been inserted (vide *Vide Himachal Pradesh Act 2 of 1969, s. 3*). It reads as follows:

*"18-A. Documents for registration to be accompanied by a true copy.- Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document presented to him for registration unless such document is accompanied by a true copy thereof."*

**13.** The argument of the first defendant, based on Section 18A, is as follows:

Section 18A contemplates the production of the certified copy of the power of attorney and therefore the production of the certified copy of the power of attorney along with the original of the sale deed, was fully justified. The High Court, in the impugned judgment, has referred to Section 18 (apparently Section 18A) and held that it is evident from the said provision that it was necessary for the Registering Authority to see the true copy of the special power of attorney.

### **IMPACT OF SECTION 18A**

**14.** What Section 18A contemplates is the production of a true copy of a document, which is sought to be got registered. The document, which is sought to be registered in this case was the sale deed executed by the second defendant in favour of the first defendant. We are not called upon to decide the case that the true copy of the sale deed was not produced.

**15.** In fact, our view finds support from the Statement of Objects and Reasons to be found in the Indian Registration

(Punjab Amendment Bill), 1961. Section 18A was first introduced in Punjab and it, is thereafter, that it was also made applicable in respect of the State of Himachal Pradesh. The Statement of Objects and Reasons to the Punjab Bill reads as follows:

"According to section 52(1)(c) of the Indian Registration Act, 1908, all documents registerable under the Act, are copied in the relevant Bahis before they are returned to the executant. It takes a considerable time to copy out these documents in the relevant Bahis and the delay causes considerable loss to the litigant people.

Similarly, there is no check on the writing of deeds and to give relief to the public on these two accounts. Applications under this Act, and also on the fees charged by deed-writers. Often, people with little experience and knowledge of the laws on Stamp Registration are writing out these documents at very high rates. This Bill seeks to give relief to the public on these two accounts."

**16.** It is, therefore, clear that the true copy of the document presented for registration is to be produced under Section 18A. It is only to avoid the delay resulting from having to copy the document, that Section 18A was inserted.

## **THE OTHER PROVISIONS**

**17.** The argument of the plaintiff would appear to be that it is imperative, having regard to Sections 32 and

33 of the Act, that the original power of attorney should be produced. In view of this, we consider it necessary to advert to Sections 32 and 33 of the Act, which read as follows:

"32. Persons 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) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assignee of such a person, or

(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 recognisable 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 or 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 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 purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (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" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897.]

Section 33 (2) In the case of every such person the Registrar or 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 attest

the same without requiring his personal attendance at the office or court aforesaid.

Section 33 (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.

Section 33 (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 face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf."

**18.** We also consider it necessary to refer to Section 34 of the Act. It reads as follows:

"34. Enquiry before registration by registering officer.—(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine,

if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

**19.** The argument of the plaintiff that for a proper and legal presentation of a document, the first defendant was obliged to produce the original power of attorney, does not appear to be sound. In fact, the matter itself is not *res integra*. This Court in Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and another (supra), held, inter alia, as follows:



"19. In view of the aforesaid situation, the issue that falls for our consideration is whether a person who executes a document under the terms of the power of attorney, is, insofar 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.

21. Section 32 deals with persons who are eligible to present documents for registration before the proper registration office. Section 32 specifies three categories of persons who can present documents for registration. The use of the word "or" between the clauses of Section 32 demonstrates that the legislature intended the said clauses to be read disjunctively and not conjunctively. It is settled law that the use of the word "or" is used to signify the disjunctive nature of a provision. In this regard reference may be made to the decision of this Court in *State of Orissa v. State of A.P.* [(2006) 9 SCC 591]

22. Clause (a) of Section 32 specifies that a document can be presented for registration by:

(i) by the person executing the document;

(ii) any person claiming under the document presented for registration; and

(iii) in the case the said document is a copy of a decree or order, any person claiming under the decree or order.

Clauses (b) and (c) deal with cases where the document is presented not by any person mentioned in (i), (ii) and (iii) above but by their agent, representative or assign. This is so because the use of the words "such person" in clauses (b) and (c) can be understood to mean only persons as referred to in (i), (ii) and (iii) above.

23. It may also be mentioned herein that the scope of clauses (b) and (c) in Section 32 may to an extent overlap one another. However, we do not propose to deal with the same as it is not relevant for determination of the issue before us. It is suffice to say that insofar as clause (c) of Section 32 is concerned the agents, representatives or assigns of the persons referred to in (i), (ii) and (iii) above can present the said document for registration only if they are duly authorised by the power of attorney executed and authenticated in the manner hereinafter mentioned.

24. The words "executed and authenticated in manner hereinafter mentioned" in Section 32(c) would mean the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads "for the purposes of Section 32, the following power of attorney shall alone be recognised". Section 32 refers to documents presented for registration by a holder of "power of attorney" in clause (c) and it therefore

follows that the procedure specified under Section 33 would be attracted where a document is presented by a person holding "powers of attorney" of the persons mentioned in clause (a) of Section 32.

25. The aforesaid position makes it explicitly clear that Section 32 of the Act requires the documents sought to be registered, to be presented, inter alia by the person executing it. In other words, the said expression requires presence of the actual person executing the document. The basic principle underlying this provision of the Act is to get before the Sub-Registrar the actual executant who, in fact, executes the document in question. In fact, the ratio of the decision in *Ram Gopal* [AIR 1960 Punj 226] has laid down a similar proposition on the conjoint reading of Section 32 and Section 33 of the Act and after referring to all the judgments noted hereinbefore. Same view has been expressed earlier by the Bombay High Court in *Ratilal Nathubhai v. Rasiklal Maganlal* [AIR 1950 Bom 326].

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 holds 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.

28. In the facts of the present case, it is quite clear that Indra Kumar Halani, was given the full authority by Nandlal Tantia under the power of attorney to transfer the suit property and to execute the necessary document. It is an accepted position that the said document had been executed by Indra Kumar Halani in the name and on behalf of Nandlal Tantia thereof. Therefore, for the purposes of registration office under Section 32(a) of the Act Indra Kumar Halani is clearly the "person executing" the document. Therefore, it follows that the said sale deed which was executed and authenticated by Indra Kumar Halani could be presented for registration by him. We are of the considered view that Indra Kumar Halani acted in the aforesaid manner mandated under Section 32(a) of the Act.

29. The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of

fraud has been raised. In view thereof the duty cast on the registering officer under Section 32 of the Act was only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a document to be registered had to proceed with the registration of the same."

**20.** In other words, when a person empowers another to execute a document and the power of attorney, acting on the power, executes the document, the power of attorney holder can present the document for registration under Section 32(a). Section 32(a) of the Registration Act deals with the person executing a document and also the person claiming under the same. It also provides for persons claiming under a decree or an order being entitled to present a document. Section 32(b) speaks about the representative or assignee of 'such a person'. The word such a person in Section 32(b) is intended to refer to the persons covered by Section 32(a). Finally, Section 32(c) provides for the agent of 'such a person' which necessarily means the persons who are encompassed by Section 32(a). Besides agent of the person covered by

Section 32(a), Section 32(c) also takes in the agent of the representative or assignee. Now the words representative or assignee are to be found in Section 32(b). Thus, Section 32(c) deals with agents of the persons covered by Section 32(a) and agents of the representative or assignee falling under Section 32(b). It is in respect of such an agent that there must be due authorisation by a power of attorney, which in turn, is to be executed and authenticated in the manner provided for in Section 33. However, the person, who has actually signed the document or executed the document for the purpose of Section 32(a) does not require a power of attorney to present the document. It may be open to the principal, who has entered obligations under the document, to present the document. Section 32(c) must alone be read with Section 33 of the Act. Thus, when Section 32(c) of the Registration Act declares that a document, whether it is compulsorily or optionally registrable, is to be presented, *inter alia*, by the agent of such a person, representative or assignee, duly authorised by power of attorney, it must be executed and authenticated in

the manner and hereinafter mentioned immediately in the next following section. Section 33 by its very heading provides for power of attorney recognisable for the purpose of Section 32. Section 32(a) cannot be read with Section 33 of the Act. In other words, in a situation, if a document is executed by a person, it will be open to such a person to present the document for registration through his agent. The agency can be limited to authorising the agent for presenting the document for it is such a power of attorney, which is referred to in Section 32(c). It is in regard to a power of attorney holder, who is authorised to present the document for registration to whom Section 33 would apply. In the facts of this case, the second defendant was armed with the power of attorney dated 28.01.1987 and if it was not cancelled and he had executed the sale deed on 28.04.1987, he would be well within his rights to present the document for registration under Section 32(a) of the Act.

**21.** It is no doubt true that presentation is not a matter of form. Without a valid presentation of the document, the registration would be illegal. In this

regard, the observations of the Privy Council in judgment reported in Jambu Prasad v. Muhammad Aftab Ali Khan and others<sup>8</sup> may be noticed.

"Para 8. It was decided, and as their Lordships considered correctly, by Sir John Stanley, C.J. and Sir George Knox, J. in 1966 in *Ishri Prasad v. Baijnath* 28A. 707 : 3 A.L.J. 743 : A.W.N. (1906) 195 that the terms of Sections 32 and 33 of Act III of 1877 are imperative, and that a presentation of a document for registration by an agent, in that case the agent of a vendee of Immovable property, who has not been duly authorised in accordance with those sections, does not give to the Registering Officer the indispensable foundation of his authority to register the document. As those learned Judges said:

His (the Sub-Registrar's) jurisdiction only comes into force if and when a document is presented to him in accordance with law.

Para 11. One object of Sections 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act."

However, in the facts, the IInd defendant having presented the sale deed as executant, the presentation and registration cannot be questioned.

**22.** Section 34 provides for the inquiry to be done by the Registering Office before he orders registration.

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<sup>8</sup> AIR 1914 PC 16



It declares that no document shall be registered under the Act unless the persons executing such document or their representatives, assigns or agents authorised as aforesaid, appear before the Registering Authority before the time, allowed for presentation under Sections 23, 24, 25 and 26. This is, however, subject to Sections 41, 43, 45, 69, 75, 77, 83 and 89. Appearances under Section 34(1) may be simultaneous or at different times. Section 34(3)(a) enjoins upon the Registering Officer to enquire whether or not such document was executed by the persons by whom it purports to have been executed. Section 34(3)(b) further makes it his duty to satisfy himself as to the identity of a person's appearing before him and alleging that they have executed the document. It must be understood and read along with Section 32(a). Section 32(a) mandates presentation of the document for registration by some person executing or claiming under the same, inter alia. In respect of a person who presents the document, who claims to have executed the document, not only is he entitled to present the document for registration, in the inquiry under Section

34(3) (a) and 3(b), the duty of the Registering Officer extends only to enquire and find that such person is the person who has executed the document he has presented and further be satisfied about the identity of the person. When it comes to Section 34(3) (c), the Registering Officer is duty-bound in respect of any person appearing as a representative, assign or agent to satisfy himself of a right of such a person to so appear. Section 34(3) (c) is relatable to persons covered by Section 32(b) and 32(c) of the Act. We have already found that the word 'agent' is to be understood as a person who is authorised to present the document for registration. Such an agent would fall under Section 32(c). Thus, in regard to persons falling in Section 34(3) (c), it would, indeed, be incumbent on the agent, inter alia, to produce the power of attorney as such.

**23.** Section 33(4) of the Act must be read with Section 4 of the Power of Attorney Act, 1882. Section 33(4) reads as follows:

"33(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 face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf."

**24.** Sections 4(a) and (b) of the Power of Attorney Act, 1882 reads as follows:

"4. Deposit of original instruments creating powers-of-attorney. - (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court 9 [or District Court] within the local limits of whose jurisdiction the instrument may be. (b) A separate file of instruments so deposited shall be kept; and any person May search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request."

**25.** For reasons, which we have indicated, Section 32(c) read with Section 33 and Section 34(2)(c) are inter-related and they would have no application in regard to the document presented for registration by a power of attorney holder who is also the executant of the document. In other words, there is really no need for the production of the original power of attorney, when the document is presented for registration by the

person standing in the shoes of the second defendant in this case as he would be covered by the provisions of Section 32(a) as he has executed the document though on the strength of the power of attorney. To make it even further clear, the inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not.

**26.** Section 35 of the Registration Act provides for the procedure on admission or denial of execution. The person, who has executed the document is to be asked whether he accepts the execution of the document. Section 35(2) reads as follows:

"35(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office."

**27.** This provision gives authority to the Registering Authority to satisfy himself that the persons appearing before him are the persons they represent to be or for

any other purpose contemplated under the Act. Towards this end, Registering Officer can examine anyone present in his Office. Section 35(3) reads as follows:

"(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII: <sup>50</sup> [Provided further that the <sup>51</sup> [State Government] may, by notification in the <sup>52</sup> [Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]"

**28.** Thus, the aforesaid provision deals with situations in which the Registering Authority refuses the registration. If the registering Authority is satisfied about the identity of the person and that he admits the execution of the document, it may not be a

part of the Registrar's duty to enquire further. The registration by itself will not bring the curtains down on questions relating to title to the property. The very purport of the Law of Registration is to usher in and maintain a transparent system of maintaining documents relating to property rights. It puts the world on notice about certain transactions which are compulsorily registrable Section 17 inter alia. The law also makes available facility of registering documents at the option of the person (Section 18).

**29.** Section 57 of the Act provides for keeping Books No. 1 and 2 and the Index relating to Book No.1 open for inspection to any person applying to inspect the same. Book No.1, it must be noticed, as provided in Section 51, is a register of non-testamentary documents relating to immovable property. Book No.2 is a record of reasons for refusal to register.

**30.** Section 58 of the Act deals with the procedure on admitting a document to registration.

"58. Particulars to be endorsed on documents admitted to registration. -(1) On every document admitted to registration, other than a copy of a decree or order, or a copy

sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely: -

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal. State Amendments Tamil Nadu: In section 58, -

(i) in sub-section (1), after item (a), the following item shall be inserted, namely:- "(aa) in the case of a document for sale of property, the signature and addition of every person admitting the claim under such document, and, if such claim has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;"

(ii) in sub-section (2), after the expression "execution of a document", the expression "and in the case of a document for sale of property, any person admitting the execution of such document, or any person admitting the claim under that document" shall be inserted. [Vide Tamil Nadu Act 28 of 2000]."

**31.** Section 71 provides for reasons for refusal to register to be recorded. Section 72 provides for an appeal to the Registrar against an Order of the Sub-Registrar refusing to register. Section 77 contemplates a Suit against refusal by the Registrar within 30 days of his Order.

**32.** On an analysis of the provisions, we have no hesitation in rejecting the argument of the plaintiff that the non-production of the original power of attorney by the second defendant, was fatal to a valid registration being effected. The understanding of the Courts regarding Section 18A is also erroneous. Section 18A was enacted only to ensure that the copying process is hastened, as noticed from the Objects and Reasons. The Trial Court was right when it held that Section 18A is concerned only with the document which is presented



for registration. The Trial Court clearly erred relying upon Section 18(A) to hold that certified copy however being produced of the power of attorney was in conformity with Section 18A and the High Court was equally in error to hold that Section 18A contemplated production of true copy of the power of attorney.

**33.** Admittedly, the plaintiff was the owner in possession of the property. It cannot be disputed that plaintiff entered into an agreement with the first defendant to sell the property. What is disputed is the price. On the one hand, the plaintiff contends that the price was fixed at Rs.55,000/-. The defendants dispute the said version. According to them, the property was conveyed by the second defendant acting as the power of attorney holder on behalf of the plaintiff in favour of the first defendant for a total consideration of Rs.30,000/-. The execution of power of attorney dated 28.01.1987, by the plaintiff in favour of the second defendant is not in dispute. It is worthwhile to notice the contents of the power of attorney:

"Special Power Of Attorney  
Stamp Paper Value Rs.5/- No. 1

I, Gian Chand age 35 years S/o Bhagwan Dass S/o Jawahar is R/o Village Dhangota, Tappa Dhatwal, Tehsil- Barsar who is owner in possession of land in Tika Barsar Tappa Panjgran Tehsil Barsar comprising Khasra No. 361 measuring 2k-10m.

I an owner in possession of land. I want to sell this land through sale deed because I cannot, due to service, effect this task. Therefore, through his statement on behalf of me, appoint Sh. Yash Pal Singh S/o Sh Gian Singh R/o Bath Patialan, Tappa Dhatwal, Tehsil Barsar, District Hamirpur, as my Special Power of Attorney and I authorize him that he may sell the above said land to whoever he wants to, and at whatever price, prepare sale deed and produce before Sub Registrar, give statement, receive requisite amount. Thereafter above mentioned land may got mutated in the name of Vendee, got attested. I will accept whatever is done by the attorney. Therefore, being conscious and knowing I write the Special Power of Attorney for proof.

Albad  
Sh. Gian Chand  
Sd/- "

**34.** The said power of attorney is dated 28.01.1987. The second defendant has executed the sale deed in favour of the first defendant on the strength of the power of attorney dated 28.01.1987 on 28.04.1987. The contention of the plaintiff, however, is that the

original power of attorney was surrendered by the second defendant to the plaintiff on 02.02.1987. It is the further case of the plaintiff that on 02.02.1987, he cancelled the power of attorney, which was within the knowledge of the first and the second Defendant. The further case of the plaintiff is based on P1 dated 31.01.1987, which is described as an agreement. It is profitable to refer to the same:

#### "AGREEMENT"

I, Yash Pal Singh son of Gian Singh, am a resident of village Balh PatialanTappa Dhatwal, Tehsil - Barsar, District - Hamirpur and I have been appointed vide registered Special Power of Attorney dated 28/01/1987 in respect of sale of land bearing Khasara No. 361 situated in Tikka Barsar by Gian Chand son of Bhagwan Dass resident of village - Dhangota Tappa Dhatwal, Tehsil - Barsar. I on behalf of Gian Chand made a deal to sell the aforesaid land measuring 2 Kanal 10 Marla to Amar Nath son of Bhakshi Ram of Mehre for 55,000/- (Rupees Fifty Five Thousand). Amar Nath did not have the total consideration amount to pay and he wanted a week's time to arrange the money. For this reason, Gian Chand appointed me as a Special Power of Attorney because Gian Chand had urgently to go to Kinnaur. Therefore, I, now, would be able to sell this land only for 55,000/- (Rupees Fifty Five Thousand) otherwise I would be unable to sell. Therefore I write this

agreement so that it can be used when required.

Writer	Yashpal Singh	Witness
Sd/-	Sd/-	Sd/-

Nikka Ram	Dev Raj
S/o Shri Setu Ram	S/o Shri Chhangnia Ram

V+P.O. - Ghangot, Tehsil - Barsar V+P.O. -  
Ghangot, Tehsil - Barsar District - Hamirpur  
District - Hamirpur 30/01/1987"

**35.** According to the plaintiff, on the basis of the agreement to sell the property for Rs.55,000/-, the second defendant, who has given the power of attorney on 28.01.1987, was empowered to sell the property for a price of Rs.55,000/- only. It is thereafter that on 02.02.1987, on account of the default of the first defendant to raise the amount of Rs.55,000/-, the second defendant allegedly surrendered the power of attorney to the plaintiff. The power of attorney was cancelled.

### **A LOOK AT THE EVIDENCE**

**36.** PW1, who is the plaintiff, has, inter alia, deposed as follows:

P1 agreement was written and given to PW1 by the second defendant. It was read over to him in his presence and the second defendant accepted its correctness and signed it. It was told that the property will not be sold for less than rupees fifty-five thousand. He has executed the Special Power of Attorney in favour of the second defendant. Later, the purchaser (not clear) told him that he would get the registry done after the 2<sup>nd</sup> or 7<sup>th</sup> of February. PW1 came to Mehre on 02.02.1987 but the purchaser (not clear), it is stated, could not arrange for money. On the same day, the second defendant returned the power of attorney and the power of attorney was cut and was cancelled on that date by writing the word 'cancelled' by PW1 on asking by the second defendant. The power of attorney was in his possession. Defendant No.2 applied in court for obtaining the power of attorney and obtained a copy on the same day. PW1 did not know of the registry, which was made and it was made/executed by deceit and he did not get any money. He tried to contact

the second defendant and he told him that he was in need of money and he had sold the land. After that, he caused P3-Lawyer's Legal Notice. Defendant No.1 was aware of the cancellation of the power of attorney and that the property was in his possession. In cross-examination, he has admitted to DX being scribed by his friend at his instance and it being duly signed by him. Where he had written Power of Attorney -cancelled, it is signed by him. He cancelled Power of Attorney at Mehre. He admits that there itself, the Office of the Sub-Registrar was situated. He did not cancel the power of attorney through the Sub-Registrar Office. PW1 further admits that he did not send any notice of cancellation. He remained on leave from 26.01.1987 to 02.02.1987. He denied Defendant No.1 had given any money to his wife. There was no talk regarding money. He denies them having received Rs.10,000/-. He had purchased a land for Rs.15,000/- in 1982. He learnt about sale of the land on 02.06.1987. He did not send any notice on 02.06.1987. Defendant No.1 was not present when

they decided that the land will not be sold for less than Rs.55,000/-. Even P1 was not scribed in the presence of Defendant No.1. When the Power Attorney was cancelled the Defendants and one Nikka Ram were present. He then says Nikka Ram is a resident of Ghangot and he did not know him. He denies the suggestion that Nikka Ram is the brother of Ram Das, whose son, he admits has married his sister. The property is banjar.

**37.** PW2 is one Kishori Lal, who has produced the summoned record, of which, P-4 is a copy. He has stated that he knows the Second Defendant and he can recognise his handwriting.

**38.** PW3 is one Ram Lal, working as a Deed Writer at Barsar. He has scribed the sale deed (P-3/A). The second defendant is his nephew. At the time of scribing the document, he had with him copy of the Special Power of Attorney.

**39.** PW4 is posted as the Sub-Registrar at Barsar since 1982. He knew the second defendant, who is a Deed Writer. He had received Exhibit-P4-application. He

recognises the handwriting of the second defendant. He had written for the Office Report. P-5 was certified by him. It is not necessary to enclose Special Power of Attorney with the sale deed but it is for their satisfaction that the power of attorney is given. He was got identified by Bakshi Ram and is also known to him. He deposed that he did not know of any requirement of a production of the original power of attorney under Sections 34 and 35 of the Registration Act and the Manual. He has denied fabrication of the document in collusion with the second defendant. In his cross-examination, PW4 has stated that on his asking, it was apprised that the second defendant is plaintiff's class fellow. The original of P-4 was written by the second defendant. It was after due diligence/inquiry that he has ordered for the release of copy of the document. He has further stated that second defendant has himself verified/certified and identified as special power of attorney. Rs.20,000/- were given in his presence to him and Rs.10,000/- were confirmed to have been received earlier at home.



**40.** PW-5 is one Vikram Kumar. He has stated that the second defendant has confirmed to have received Rs.30,000/-. The agreement was made at his shop at 03.00 p.m. He and one Kartar Singh had signed.

**41.** PW6 is one Dev Raj. He claims to be witness to P-1, which has been signed by him. It was scribed/written by Nikka Ram and the second defendant was the person who got it written. It was read over to the second defendant, who had thereafter signed. The land was authorised to be sold for Rs.55,000/- and there was no authority to sell it for lesser value. On 02.02.1987, it was expressed in his presence that the land could not be sold at the price and you take back the power of attorney. Then, on two papers, the line was drawn. At that time, first defendant was also there. In his cross-examination, he has deposed that earlier to his examination, he had deposed two times. He denied having deposed as witness in many cases. He does not have any relation of marriage-death with the plaintiff nor was he from his village. He says on that day (it must be on 02.02.1987), he had come to Mehre for purchasing oil. P-1 was written at the place where all the Deed

Writers sit at the Tehsil. He cannot give detail as to who had met him on 30.01.1987 and 02.02.1987. The talk on 02.02.1987 was on the courtyard of the Tehsil where the Deed Writers sat. On 02.02.1987, he had gone there, for photograph and for making certificate. Mehre is 6-7 kilometres from Ghangot and Buhdi is 5 kilometres away. He claims that while oil is available at Buhdi, there was no photographer available. The suggestion that he has deposed as witness in every case, is denied.

**42.** PW-7, one Kartar Singh, the other witness, has deposed that the second defendant has confirmed payment of Rs.30,000/-.

**43.** PW-8 is Nikka Ram. He admits that P-1 contained his signatures and it was written by him at the instance of second defendant. It was signed by the second defendant and also by one Dev Raj, who is examined as PW6. In cross-examination he has deposed that P-1 was written at Mehre and there are Deed Writers at Mehre. He had come to Mehre in connection with his work. Dev Raj has also come there with him. He also admitted that he has deposed as witness in two other cases.

**44.** DW1 is the first defendant/appellant. He had purchased the property vide PW3/A. The deed for sale was settled for Rs.30,000/- with the plaintiff. At the time of agreement, Rs.10,000/- was paid to the plaintiff in the presence of Roshanlal and the IInd defendant. At the time of registration, Rs.20,000/- was paid to the second defendant before the Sub-Registrar. There was neither any agreement for the sale of land for Rs.55,000/- nor had he agreed to such an amount. He was in possession of the property. He states in cross-examination that original registered power of attorney was seen at the time of registry. The power of attorney would have been presented before the Sub-Registrar. The sale agreement was done at the shop of Roshan Lal. There was no written agreement. He has denied the claim that he had not paid Rs.10,000/-.

**45.** DW2 is Roshan Lal. He is the witness to the sale deed. He deposed that the sale was for Rs.30,000/- and that he and Bakshi Ram had signed. Rs.10,000/- was earlier paid. But it was not paid in his presence and Rs.20,000/- was given at the time of registration and Rs.10,000/- had already been paid as advance.

**46.** DW3 has been examined to establish that the possession of the property was with the first defendant. He has deposed on the said lines. He has denied the possession of the plaintiff over the property. He also, however, says that he does not know, who is in possession of the disputed land (it is found from the translation that the last five words are undecipherable).

**47.** DW4 is the second defendant. He deposed that he knew the plaintiff as student. He was appointed as the power of attorney holder, at time plaintiff was at Kinnaur. Plaintiff had posted a letter to him. Plaintiff received Rs.10,000/- from the first defendant at the shop of Roshan Lal. For the purpose of the sale deed, he had scribed the sale deed for a total consideration of Rs.30,000/-. He admits to having received Rs.20,000/- from the first defendant before the Sub-Registrar. He denies, however, having paid the balance amount to the plaintiff. He also delivered possession of the land to the first defendant in furtherance of the sale. He has sold the land with the consent of the plaintiff. In cross-examination, he,

*inter alia*, stated that he received a registered letter from the plaintiff. He does not know whether the original of DX is with him. The original power of attorney was not available with him, when the sale was registered. It was misplaced. He claims that P2 was not the same power of attorney, which was given to him but cancelled and cuttings thereon, is (not clear) in my hand. He denies having returned P2 (power of attorney) back to the plaintiff and that he was left with no authority to sell the land. He denies having signed P1 agreement. He had entered into the oral agreement with the first defendant for the sale of land and had received Rs.10,000/- but there was no written agreement. The application for getting certified copy of the power of attorney was given on the date when the sale was to be registered because the power of attorney had been misplaced. He is a Deed Writer since 1980. At the time when Rs.10,000/- was received, the first defendant and Roshan Lal were present. It is wrong to say that on 16.08.1987, he had written a letter. His license was cancelled by the Deputy Commissioner. He states that it is wrong that he was accused of creating

a fake document. He has paid Rs.20,000/- but he did not remember as to when he paid Rs.20,000/-. He has stated to have been paid the amount to the plaintiff's wife at her residence. The disputed land was fenced with wires and angle iron later by the first defendant. He has denied that he has not paid any money to the plaintiff and the suggestion that he was paid Rs.55,000/- by the first defendant. He has denied having been given Rs.10,000/- by the first defendant. He denies as wrong that he had got the sale registered before the receipt of DX. He has further denied plaintiff being in possession.

**48.** In our view, the High Court has overstepped its limits by reappreciating the evidence, a task which must be left to the First Appellate Court. It is true that the First Appellate Court did not fully conform to the requirements of Order XL1 Rule 31 of the CPC. The property is banjar land. Quite clearly, the plaintiff wanted to sell the land. He has admittedly executed the Power of Attorney in favour of the second defendant. A perusal of the power of attorney, which is dated 28.01.1987, would reveal the following:

Plaintiff has described himself as the owner of possession of the land. He wanted to sell the land through sale deed. Thereafter, it was stated that he could not, due to service, effect this task. Therefore, he appointed the second defendant as the special power of attorney and authorised him that he may sell the above land to whosoever he wanted to and at whatever price, prepare the sale deed, produce before the Sub-Registrar, receive requisite amount, thereafter, the above-mentioned may be got mutated in the name of the vendee. The plaintiff has declared that he will accept, whatever is done by the attorney.

**49.** According to the first defendant, he entered into the agreement with the plaintiff. He has paid Rs.10,000/- as advance. According to the plaintiff also, there was an agreement with the first defendant to sell the land. The consideration, however, was Rs.55,000/-.

**50.** If, we now look into P-1, which is the alleged agreement, which was executed by the Power of Attorney, we may reconstruct the case of the plaintiff. Plaintiff

had to leave the place in keeping with the exigencies of the service. There was an agreement to sell in favour of the first defendant. The property was agreed to be sold for Rs.55,000/-. First Defendant was unable to raise the amount. Therefore, the agreement dated 30.01.1987, was entered into and it refers to the power of attorney dated 28.01.1987. The power of attorney is, undoubtedly, registered. If the plaintiff's case is believed, P-1 agreement is executed by the second defendant, which recites that he has been appointed as the power of attorney. It is further recited that the second defendant, on behalf of the plaintiff, has made a deal to sell the property for Rs.55,000/-. It is stated still further that the first defendant did not have the total amount of consideration. He wanted a weeks' time to arrange the money. For this reason, it is finally stated that the plaintiff had appointed him as the power of attorney because the plaintiff had to urgently go to *Kinnaur*. Finally, it is stated in P-1 that therefore, he would now be able to sell the land only for Rs.55,000/-, otherwise, he would be unable to sell.



**51.** As far as Exhibit-P-1 is concerned, even PW1-the plaintiff has deposed that first defendant was not present when they decided that land will not be sold for less than Rs.55,000/-. He further has deposed that P1 agreement was not scribed in the presence of the first defendant. In fact, even PW6 has not spoken about the presence of the first defendant at the time of making of Exhibit-P-1. What PW6 has spoken is about the presence of the first defendant also on 02.02.1987, when the power of attorney was purportedly cancelled.

**52.** Since, it is not disputed that the plaintiff did execute the power of attorney, empowering the second defendant to sell the property and it is further not in dispute that the second defendant has executed the sale deed in favour of the first defendant, the only question which arises is whether the power of attorney was cancelled before the execution of the sale deed on 28.04.1987. Undoubtedly, the further question would be whether the cancellation was effected in a valid and legal manner and finally, whether it was made known to not only to the second defendant but also to the first defendant. Section 201 of the Contract Act, dealing

with termination of agency, declares that an agency can be terminated by the principal revoking the authority of the agent. An exception to the power of principal to revoke the agency is found in Section 202 of the Contract Act, which provides that where an agent has himself an interest in the property which forms the subject of the agency, in the absence of an express contract, the agency cannot be terminated to the prejudice of the agent's interest. In such cases, the agency would be clearly irrevocable. Section 207 of the Contract Act declares that revocation may be express or may be implied in the conduct of that principal or agent, respectively. Section 208, which deals with the time when termination of the agent's agency takes effect, reads as follows:

"208. When termination of agent's authority takes effect as to agent, and as to third persons.—The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them. —The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."

**53.** We may notice the following view from Pollock and Mulla, The Indian Contract and Specific Relief Acts, 14<sup>th</sup>

Edition:

"Termination not to Affect Third Parties without Notice

Termination becomes effective only when it comes to the knowledge of the affected party. Even if the agent is aware of the revocation, it does not affect third parties who in good faith enter into contract with the agent and in ignorance of the revocation; they are protected; such provision is in interest of commerce:<sup>9</sup> Where the principal has terminated the agency, or the agency has been terminated by happening of events, the principal continues to be bound by the agent's act under the doctrine of apparent authority, until the third parties have notice of the termination.

Time from which Termination Operates

`Revocation by the act of the principal takes effect as to the agent from the time when the revocation is made known to him; and as to third persons when it is made known to them, and not before.'"

**54.** It is no doubt true that the case of the plaintiff is that the second defendant was bereft of the authority to transfer the property as on 28.04.1987 in view of the fact that the second defendant had surrendered the power of attorney dated 28.01.1987 on 02.02.1987 and the plaintiff

had produced the document. The second defendant has denied the case of surrender before the execution of sale deed. According to him, the power of attorney had been misplaced. It is, accordingly, he applied for the certified copy of the same and went ahead with the execution and registration of the sale deed. According to the second defendant, when sale was effected, the power of attorney was given back. The first defendant, in fact, has set up the case that the original power of attorney was with the second defendant even at the time of the registration of the sale deed. We have already held that the production of original power of attorney before the Registering Authority was unnecessary for effecting registration of the sale deed. We take note of the discrepancy emerging from the testimony and the case set up by the parties.

**55.** However, what we would think, may help to resolve the controversy is Exhibit-DX. This is a letter which was admittedly, got scribed and dispatched by the plaintiff to the second defendant. It is dated 02.06.1987, and reads as follows:

"Dear Yashpal Ji

Ex-Dx

Namaskar

Hoping you are well and the news is that I came here 3-4 days back but could not come to you I was here regarding the land. I have got registry done and I am in dire need of money. I had spoken to you regarding land at Mehre and also gave you power of Attorney. You please inform at the earliest if you can talk to anyone or have talked to anyone then kindly send the money because I am in dire need of money.

I am sending this by registered post because it is possible that You may not receive the letter in the Court.

Thank You

You can respond on the address below:

(Dian Chand Dhiman)  
Junior Engineer, IPH  
Nagul Ski, District - Kinnaur"

**56.** PW1 has admitted, having sent the aforesaid letter.

The second defendant has sent a letter on 16.06.1987 and it reads as follows:

"Barsar  
Distt. Hamirpur  
16-6-1987

"Dear Babu Gian Jee,

Namaskar,

I am quite well. I wish your well-being. Further, it is stated in brief that your registered AD letter has been received. And you may have come to know that I as power of attorney have made the sale deed of your land. You might have been astonished to know regarding this, but there is no need to worry in this regard. I have done this job in faith of friendship and for betterment. In this regard I had talked at the shop of Kanshi Ram-Sita Ram and talked to your brother-in-law, Shopkeeper at Sohari. I could not come to you with the reason because my brother was ill at Nangal and later on my wife fell ill. And I could not send full payment to you till today due to the reason that I had spent some amount from this money. Therefore, I thought that until the full amount is not paid then it would not be fair. Besides you meet me, I could not meet then get the information from the shop of Kanshi Ram at Bus Stand Hamirpur.

Rest all is fine.

Yours

-sd-

Yash Pal Singh,

Document Writer,  
Barsar, Distt.  
Hamirpur,  
H.P."

**57.** It is apparent that whatever may be the state of the oral evidence and the difficulty in arriving at the truth on an appreciation of the same, the documents which we have adverted to, unerringly points to the following facts.

Contrary to the case of the plaintiff that the power of attorney stood cancelled on 02.02.1987, after it was surrendered to him on that day, it is that the plaintiff writes to the second defendant about having spoken to the second defendant regarding the land in question at Mehre and also gave him the power of attorney. There is no mention about the power of attorney having been surrendered on 02.02.1987 or about the so-called cancellation of the same. The further stand of the plaintiff was by way of asking the second defendant to inform the plaintiff at the earliest, if he could talk to anyone or had talked to anyone. The meaning of the of latter portion is made clear when he says that the money may be sent to him because he is in dire need of money. Therefore, it means that the case of the plaintiff that he had cancelled the power of attorney by writing the word 'cancelled' on 02.02.1987, upon it being surrendered by the second defendant, cannot be accepted.

**58.** The letter sent by the second defendant to the plaintiff on 16.06.1987 indicates that the second defendant tells the plaintiff that the plaintiff may have come to know that as power of attorney he had made the

sale deed of the property. No doubt, he says that the plaintiff might have been 'astonished to know' regarding the sale. The second defendant further writes to the plaintiff that he has done this job in faith of friendship and for betterment. He admits that he could not go to the plaintiff as his brother was ill and, later on, his wife fell ill. He admits to having spent some amount from the money paid. This correspondence between the plaintiff and the second defendant, in our view, would be fatal to the plaintiff's case that the plaintiff had cancelled the power of attorney.

**59.** While on cancellation, we may notice that the plaintiff, in his deposition, has stated that he had cancelled the power of attorney at Mehre and there itself was the Office of the Sub-Registrar located. He has admitted that he did not get the power of attorney cancelled at the Sub-Registrar Office. Even, more importantly, he has admitted to not having sent any notice of cancellation. The only evidence consists of a statement of PW1 that the first defendant was aware of the cancellation and the statement of PW6, who had said that the first defendant was also there on 02.02.1987, when on



two papers a line was drawn to signify the cancellation. The Trial Court and also the appellate court have relied upon the DX sent by the plaintiff himself, which appears to undermine the evidence about the cancellation on 02.02.1987. The High Court should not have, at any rate, disturbed the said finding in a Second Appeal. In such circumstances, the conclusion is inevitable that the case of the plaintiff that power of attorney stood cancelled, in the manner done on 02.02.1987, cannot be accepted. At any rate, we find it difficult to accept the case of the plaintiff that the first defendant, who is the third party, could be attributed any knowledge of the surrender or the alleged cancellation on 02.02.1987, even assuming for a moment that we could lend credence to the plaintiff's version in this regard that the second defendant surrendered the power of attorney. We need not pronounce on the question whether the power of attorney being registered, it could be cancelled only by a registered power of attorney. This we say as even in the absence of a registered cancellation of the power of attorney, there must be cancellation and it must further be brought to the

notice of the third party at any rate as already noticed.  
Such a cancellation is not made out.

**60.** In this regard it is highly significant to notice the case actually set up in the plaint. In the plaint what is averred by the plaintiff is that when the negotiations fell through the second defendant surrendered the original power of attorney to the plaintiff which is still in possession of the plaintiff and the plaintiff told the defendant no. 1 that the same stand cancelled and he shall not execute any sale deed on behalf of the plaintiff.

[It is not even clear whether it should be understood as the plaintiff told the second defendant that same stand cancelled and he shall not execute any sale deed on behalf of the plaintiff.]

**61.** It is further averred that "even defendant no. 2 was not competent to transfer the possession, rather the special power of attorney deemed to cancelled in the eyes of law since it was handed over to the plaintiff". Therefore, the case set up by the plaintiff was that on the second defendant handing over the power

of attorney to the plaintiff, the special power of attorney was deemed to have been cancelled in the eye of law. There is no whisper in the plaint about the plaintiff having cancelled it in the manner in which he has deposed to in the evidence on 02.02.1987.

**62.** As far as P-1 is concerned, it is dated 30.01.1987. The Trial Court has entered the finding that the P-1 stood proved and that the second defendant is bound by it. The Appellate Court has not disturbed the finding. In other words, proceeding on the basis that the second defendant had a duty to not sell the property below Rs.55,000/-, in terms of P-1, the breach of duty to not sell below Rs.55,000/-, when the second defendant sold the property for Rs.30,000/-, cannot invalidate the sale or render it null and void. A perusal of the power of attorney will make it clear that any restriction on the price is conspicuous by its absence in the power of attorney.

**63.** The upshot of the above discussion is that the impugned Judgment cannot be sustained. The appeal is

therefore allowed and the impugned Judgment will stand set aside. Parties to bear their respective costs.

.....J.  
[ K.M JOSEPH ]

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;  
JANUARY 28, 2022.