

Supreme Court of India

Manik Majumder vs Dipak Kumar Saha (D) Thr. Lrs. on 13 January, 2023

Author: M.R. Shah

Bench: [Nagarathna]

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2965 OF 2022

Manik Majumder and Others

...Appellants

Versus

Dipak Kumar Saha (Dead) through Lrs. & Others

...Respondents

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.04.2018 passed by the High Court of Tripura at Agarthala in Regular Second Appeal No. 01/2005, by which the High Court has allowed the said appeal preferred by the original plaintiffs and has decreed the suit by quashing and setting aside the concurrent Signature Not Verified Digitally signed by Neetu Sachdeva findings recorded by both the courts below, the original defendants have Date: 2023.01.13 17:08:59 IST Reason:

preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

That one Braja Mohan Dey was the owner and in possession of 'Schedule A' property. He was alleged to have taken a loan of Rs. 10,000/- from his tenant, namely, Dhirendra Chandra Saha, original plaintiff No.2. The original owner, Braja Mohan Dey went to East Pakistan. It was alleged that he had executed a Power of Attorney (PoA) in East Pakistan, ostensibly in favour of original plaintiff No.2 to enable repayment of the alleged loan amount by sale of the subject land to himself (original plaintiff No.2) as his PoA holder. That original plaintiff No.2, on the basis of the alleged loan amount and PoA alleged to have been executed by the original owner, executed in his favour sale deed dated 3.9.1968 as PoA holder of the original owner. Thereafter original plaintiff No.2, by virtue of the said PoA, transferred 'Schedule A' property to his wife Gita Rani Saha (original plaintiff No.1) (now deceased) vide sale deed dated 29.09.1968, allegedly for repayment of a sum of Rs. 20,000/- taken by him from his wife, out of which a sum of Rs. 10,000/- was alleged to have been

handed over to the original owner Braja Mohan Dey.

2.1 That original plaintiff No.2 allegedly constructed a godown at the rear end of the grocery shop in another part of 'Schedule A' property ('Schedule C' property). It was the case on behalf of the plaintiffs that one Sarat Chandra Majumdar (original defendant No.1) tried to dispossess the plaintiffs from the said 'Schedule C' property. However, on the other hand, it was the case on behalf of the defendants that their predecessor-in-interest held out that Sarat Chandra Majumdar was in possession of the suit land for more than thirty years and was running a business from the said property, while denying that the plaintiffs had acquired any right, title or interest as claimed over the suit land. The original defendants also claimed to be in peaceful possession of the property for over forty years and it was their case that they were paying the municipal taxes and land revenue and other statutory dues. The plaintiffs alleged that the defendants had started a pucca construction on 'Schedule C' property and forcibly dispossessed them from the said property. Therefore, the plaintiffs filed a Civil Suit being T.S. No. 201/1985 before the learned trial Court for a declaration of title over the suit land and recovery of khas possession from the defendants (appellants herein).

2.2 The said suit was resisted by the defendants by filing a written statement denying all the allegations as well as their right of possession in respect of the disputed suit property. At this stage, it is required to be noted that though the original plaintiff No.2 claimed the ownership on the basis of the sale deed dated 3.9.1968 executed by plaintiff No.1 in his own favour on the basis of the alleged PoA executed by the original owner, however, the same was not produced before the learned trial Court and in the suit.

2.3 The learned trial Court vide its judgment and decree dated 11.09.1995 dismissed the suit and held that the plaintiffs were not entitled to relief sought as no right, title or interest was established in favour of plaintiff No.2, inter alia, for want of PoA for proper execution of the sale deed in his favour. At this stage, it is required to be noted that issue No.6 was, "have the plaintiffs proved their alleged right, title and interest in the suit land?". The learned trial Court also held that the sale deeds in favour of plaintiff No.2 and plaintiff No.1 respectively did not have the endorsements of the Sub-Registrar that it was executed by the PoA of Braja Mohan Dey (original owner) and further that even in an earlier suit between plaintiff No.2 and Sarat Chandra Majumdar, the said PoA was not produced. The learned trial Judge also came to the conclusion that the provisions of Section 33(1)(c) of the Registration Act, 1908 have not been complied with, when according to the plaintiffs the alleged PoA was executed at Kumilla, East Pakistan, now Bangladesh, which is a foreign country.

2.4 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court dismissing the suit, the original plaintiffs preferred an appeal before the first appellate Court. In the appeal before the first appellate Court, the plaintiffs filed an application under Order 6 Rule 17 CPC for amendment of the plaint in T.S. No. 201/1985. The amendment sought for was to the effect that the missing PoA, i.e., the fulcrum of the case was allegedly handed over by the plaintiffs to original defendant No.1 and that despite demands, he never returned the same. Vide order dated 31.01.1998, the first appellate Court rejected the prayer for amendment of the plaint by observing that allowing the amendment at that stage would mean a remand of the suit for fresh trial. That after framing the points for consideration, the first appellate Court dismissed the appeal and confirmed

the judgment and decree passed by the learned trial Court dismissing the suit. The first appellate Court also found that though plaintiff No.2 had acquired title over the suit land on the basis of the sale deed executed by him in his favour on the basis of the PoA alleged to have been executed by its true owner Braja Mohan Dey, but failed to produce the same before the Court and as such in the absence of PoA, genuinity of the sale deed dated 3.9.1968 cannot be presumed to be correct and on the basis of that sale deed, subsequent sale deed dated 29.09.1968 in favour of plaintiff No.1 by plaintiff No.2 also cannot be treated as genuine. 2.5 Feeling aggrieved and dissatisfied with the judgment and order passed by the first appellate Court dismissing the appeal and confirming the judgment and decree passed by the learned trial Court dismissing the suit, the plaintiffs preferred the second appeal before the High Court under Section 100 CPC.

2.6 In the Second Appeal, the High Court, while admitting the appeal, framed the following substantial question of law:

“Whether a sale deed executed by the attorney of the vendor can be challenged by a third party only on the ground that the attorney executive in the deed was not duly authorised by a power of attorney.” Subsequently, the High Court reframed the following substantial questions of law:

“1) Whether the endorsement made on the sale deed No.1-10394 dated 3.9.1968 [Exbt.11] in respect of the power of attorney is substantive evidence in respect of the power of attorney authorising the plaintiff No.2 to sell the said land as demised in the sale deed dated 3.9.1968?

2. Whether the defendants had fundamental onus to discharge in respect that the power of attorney was not in existence or forged and as such, the sale deed dated 3.9.68 cannot be treated as the instrument of a valid transfer?” 2.7 By the impugned judgment and order, the High Court has allowed the second appeal No. 01/2005 by setting aside the concurrent findings recorded by the courts below by drawing a statutory presumption in respect of existence of PoA by virtue of endorsement. While holding so, the High Court has considered Section 33(1)(c) of the Registration Act.

Consequently, the High Court has decreed the suit and has directed the appellants – original defendants to handover the vacant possession of the suit land to the original plaintiffs.

2.8 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court allowing the second appeal and quashing and setting aside the judgments and orders of the courts below dismissing the suit and consequently decreeing the suit in favour of the original plaintiffs, the original defendants have preferred the present appeal.

3. Shri Rana Mukherjee, learned Senior Advocate has appeared on behalf of the appellants – original defendants and Shri Hrishikesh Baruah, learned Advocate has appeared on behalf of the original plaintiffs.

3.1 Learned counsel appearing on behalf of the appellants – original defendants has vehemently submitted that the High Court has committed a serious error in law by setting aside the concurrent findings of the courts below in the second appeal. This is particularly when both the courts below concurrently found that plaintiff No.2 is alleged to have acquired title over the suit land on the basis of the sale deed dated 3.9.1968 executed by him in his own favour on the basis of the PoA executed by its true owner Braja Mohan Dey, but failed to produce the same before the Court and as such in the absence of PoA, genuinity of the sale deed dated 3.9.1968 cannot be presumed to be correct. Further, on the basis of the sale deed dated 3.9.1968, subsequent sale deed dated 29.09.1968 in favour of plaintiff No.1 by plaintiff No.2 also cannot be treated as genuine. Therefore, the very execution of the sale deed dated 3.9.1968 is doubtful and it cannot be said that the same has been executed validly.

3.2 It is further submitted that the High Court, while drawing a statutory presumption, has failed to consider that when execution of the sale deed is doubtful and the cloud over the execution has not been cleared, no statutory presumption could be drawn in respect of existence or regularity of the PoA by virtue of an endorsement, when the PoA which was allegedly executed in a foreign country could not be produced and execution of the PoA has been done contrary to Section 33(1)(c) of the Registration Act.

3.3 It is submitted that the High Court has erroneously relied on the judgment of this Court in the case of Prem Singh and others v. Birbal and others, (2006) 5 SCC 353. Relying upon the aforesaid decision, the High Court has seriously erred in holding that there is a presumption that “a registered document is validly executed”. 3.4 It is further submitted that despite the original plaintiffs having sale deeds in their favour, plaintiff No.1 sought a declaration of the title. It is submitted that assuming that the plaintiffs were dispossessed from ‘Schedule C’ property of which relief was claimed, then an application/proceeding under Section 6 of the Specific Relief Act could have also been filed, which was not done because the plaintiffs in the suit knew that there was a cloud in their title to the suit land. 3.5 It is urged that even the original owner of the land, Braja Mohan Dey, who was alleged to have executed the missing PoA, was never made a party to the suit. He was neither a party to the suit nor was examined as one of the witnesses by the trial Court in support of the case of the plaintiffs. It is submitted that even the sale deeds executed by virtue of the said PoA were not proved by examining the registering authorities or by production of documents registering such sale. 3.6 Now so far as the effect of Section 33(1)(c) of the Registration Act, it is submitted that insofar as the PoA was concerned, no evidence was led to the effect that the same was in compliance of the provisions of Section 33(1)(c) of the Registration Act. It is urged that as such the trial Court has observed that the plaintiffs had not produced the PoA before the Court and there was no explanation/avermnt made in the plaint for such non-production. It is submitted that even the subsequent conduct/attempt on the part of the plaintiffs seeking amendment of the plaint before the first appellate Court deserves consideration. It is submitted that having found that non-production of the PoA by the plaintiffs would come in their way, and in fact had gone against them, the plaintiffs tried to make out altogether a new case by averring that the copy of the PoA was handed over to original defendant No.1 and despite several requests, he never returned the same. It is submitted that the same was never the case of the plaintiffs when the suit was filed and there was no such amendment prayed in the plaint. 3.7 Learned counsel appearing on behalf of the appellants has

heavily relied upon the decision of this Court in the case of *H. Siddiqui v. A. Ramalingam* (2011) 4 SCC 240 (paras 13 & 15) in support of his submission that once the issue of alleged PoA was raised, the High Court ought not to have decided the second issue framed by it in that case without deciding on the first issue, i.e., that of impact of non- production of the PoA and its existence thereof. It is submitted that in the present case, the High Court ought to have decided the issue of non- production of PoA by the plaintiffs in the first instance and then would have drawn the statutory presumption.

3.8 It is further submitted that in the present case, the learned trial Court also specifically observed that no endorsement was made by the Sub-Registrar on the documents in compliance with Section 26 and Section 58 of the Registration Act. It is contended that it was neither stated in the deed that the plaintiff has the PoA by which he was empowered to execute the deed in his favour nor was an averment made in the plaint to that effect. It is submitted that the evidence produced by the plaintiffs, i.e., two sale deeds dated 3.9.1968 and 29.9.1968 based on the purported PoA, has not been proved by production of official records or through the Registrar being examined as a witness. It is urged that the PoA is the fulcrum of the case on which the plaintiffs were claiming their rights, the plaintiffs never produced in any form. It is further urged that it was incumbent on the part of the plaintiffs to produce PoA as the plaintiffs in the suit were having their rights, title or interest through the PoA which is the basic document.

3.9 Learned counsel appearing on behalf of the appellants has further submitted that Sections 101 to 103 of the Indian Evidence Act provides that a party who avers the title must prove the title and that such a party is not relieved of the onus. It is submitted that in the present case even the plaintiffs had not discharged their initial burden of proving the title. Reliance is placed upon the decision of this Court in the cases of *Anil Rishi v. Gurbaksh Singh* (2006) 5 SCC 558; and *Sebastio Luis Fernandes v. K.V.P. Shastri* (2013) 15 SCC 161. 3.10 It is further submitted that Section 65 of the Indian Evidence Act provides for circumstances under which secondary evidence may be given without filing primary evidence. It is submitted that in the present case the plaintiffs have failed to prove the primary evidence, i.e., PoA on the basis of which the secondary evidence, i.e., the sale deeds were executed. Reliance is placed on the decision of this Court in the case of *J. Yashoda v. K. Shobha Rani* (2007) 5 SCC 730. It is submitted that therefore in the absence of the principal evidence (PoA), the significance of the two sale deeds, produced by the plaintiffs is diluted. 3.11 It is further contended that in the impugned judgment and order, the High Court while holding against the appellants and upsetting the concurrent findings of the courts below, inter alia, has held that there was a statutory presumption in favour of the plaintiffs insofar as the PoA is concerned. It is submitted that the said finding is erroneous inasmuch as the statutory presumption would not be available to the plaintiffs and the documents in question since the document (PoA) itself has not been produced before the courts below to ascertain whether the document was in order or in compliance of Section 33(1)(c) of the Registration Act. 3.12 Learned counsel appearing on behalf of the appellants has also relied upon the decisions of this Court in the case of *Rajni Tandon v. Dulal Ranjan Ghosh Dastidar* (2009) 14 SCC 782; and recent decision of this Court in the case of *Amar Nath v. Gian Chand* 2022 SCC OnLine SC 102, in support of his submission on Section 33 (1)(c) of the Registration Act.

3.13 Making the above submissions and relying upon the aforesaid decisions, it is vehemently submitted that the High Court has erred in allowing the second appeal and quashing and setting aside the concurrent findings of the courts below and thereby decreeing the suit while exercising the power under Section 100 CPC. Therefore, it is prayed to allow the present appeal and set aside the impugned judgment and order passed by the High Court and restore the judgment and decree passed by the learned trial Court.

4. The present appeal is opposed by Shri Hrishikesh Baruah, learned counsel appearing on behalf of the respondents – original plaintiffs. 4.1 It is vehemently submitted that the land which is in possession of defendant No.1 is founded on the title of plaintiff No.1 based on the sale deed dated 3.9.1968 which has been executed on the basis of the PoA in favour of plaintiff No.2. It is submitted that therefore the defendants are not entitled in law as well as in equity to raise a dispute about the existence of the same.

4.2 It is submitted that as such the original defendants tried to take forceful possession of 'Schedule C' property by breaking the godown and taking away the goods. Plaintiff No.2 informed the concerned police station and thereafter made a prayer before the Court of the SDM, Sardar for drawing up proceedings under Section 144 Cr.P.C. On a police enquiry report, proceedings under Section 144 Cr.P.C. were started. During the proceedings, a prohibitory order was passed. The defendants entered the possession of 'Schedule C' property. It is submitted that, in fact, the learned Executive Magistrate directed the defendants to vacate the 'Schedule C' property/land and handover the same to the plaintiffs. However, in the revision petition filed by the defendants, the learned revisional Court set aside the same on technical grounds. The plaintiffs approached the High Court by way of revision petition. The High Court disposed of the case by directing that the plaintiffs can initiate a fresh case under Section 145 Cr.P.C. regarding the 'Schedule C' property. It is submitted that thereafter the plaintiffs filed a petition under Section 145 Cr.P.C. However, on 27.09.1985, as the defendants started construction of a pucca structure on 'Schedule C' property, the plaintiffs were constrained to file the suit. 4.3 It is submitted that as such the High Court has rightly drawn the statutory presumption in favour of the plaintiffs. It is submitted that as observed and held by the High Court, the defendants have not led any evidence to rebut the presumption. It is submitted that as there was an endorsement in the sale deed and that it is a vital piece of evidence, the High Court has not committed any error in drawing the statutory presumption.

4.4 It is further submitted that Part VI of the Registration Act deals with presenting documents for registration. Section 32 contemplates that only those persons mentioned in clause (c) are entitled to present documents for registration. In case the PoA holder himself executes the sale deed, then for the purpose of registration he is considered to be a person falling under Section 32(a) of the Registration Act. He is not even required to produce the PoA (although in the present case the PoA was produced and the requisite endorsement was made). It is submitted that sub-clause (c) contemplates presentation of a document for registration by a PoA holder of a PoA holder. It is submitted that Section 33 further provides as to which PoA holders will be recognised for the purpose of Section 32. Sub-clause (c) provides for a case where the principal is not residing in India. It is submitted that in that case, the PoA executed has to be authenticated by the concerned persons mentioned therein. Further, the plaintiffs have proved execution of the PoA by the original owner by

examining PW1. It is contended therefore there is no dispute that the steps mentioned in Section 33(1)(c) of the Registration Act were complied with.

4.5 It is further submitted that Section 34 of the Registration Act contemplates an enquiry which relates to various aspects mentioned in sub-clause (3) including (i) enquiring into the fact as to whether such document was executed by the persons by whom it purports to have been executed; (ii) satisfying himself as to the identity of the persons appearing before him; and (iii) in case of any person appearing as a representative assign or agent satisfying himself as to the right of such person so to appear. That on completion of enquiry as contemplated under the Registration Act, the registering authority may direct registration and issuance of a certificate in terms of Section 60(1) and 60(2) of the Act. Therefore by virtue of Section 60(2) of the Registration Act, there is a statutory presumption which arises to the effect that the document has been registered in the manner provided by the Act, which means that it has been registered after due compliance of the enquiry contemplated under Section 33(1) (c) and 36 of the Registration Act. 4.6 It is submitted that in the present case plaintiff No.2 had executed the first sale deed dated 3.9.1968 which is a registered document. That on the foundation of the said sale deed, the second sale deed dated 29.09.1968 had been executed in favour of plaintiff No.1 and therefore the owner of the property is plaintiff No.1. It is contended that on the foundation of the aforesaid registered document, the title has to flow. Otherwise, it would lead to a situation wherein a registered document will have no effect. That in the present case there is no challenge to the sale deeds. Therefore, the legal effect of the execution of the sale deeds has been proved.

4.7 It is submitted that the defendants are asking for production of a PoA which was used by the predecessor-in-interest of plaintiff No.1 to execute the sale deed in his favour. This burden to provide the PoA on the foundation of which the first sale deed was executed is an onerous burden and not contemplated in law. That as such the defendants are nothing but rank tress-passers. They have never set up their title in the property. They have never asserted that they have obtained possessory right from a person with title. Therefore, they have no right to challenge the title of plaintiff No.1.

4.8 Relying upon the recent decision of this Court in the case of Amar Nath (supra), it is submitted that as observed and held by this Court that when a PoA holder executes the sale deed, he executes in terms of Section 32(a) of the Registration Act and therefore he does not need to produce the PoA. Only when the PoA holder executes a further PoA, then only the second PoA holder will have to produce the PoA between him and the first PoA and not otherwise.

4.9 Making the above submissions and relying upon the above decision, it is prayed to dismiss the present appeal.

5. I have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that in the present case, the plaintiffs instituted the suit for declaration of title, to which they were laying claim by virtue of the two sale deeds, one dated 3.9.1968 (executed by plaintiff No.2 in his favour on the basis of the alleged PoA alleged to have

been executed by the original land owner – Braja Mohan Dey) and the second sale deed dated 29.09.1968 (executed by plaintiff No.2 in favour of plaintiff No.1 as a PoA holder of the original owner). Both, the learned trial Court as well as the first appellate Court held that the plaintiffs have failed to prove their title as the PoA on the basis of which plaintiff No.2 claimed the right/title is not forthcoming and/or not produced before the Court. Therefore, both, the learned trial Court as well as the first appellate Court held that the requirement of Section 33(1)(c) of the Registration Act has not been satisfied. However, by drawing the statutory presumption under Section 60 of the Registration Act, the High Court has believed the sale deeds dated 3.9.1968 and 29.09.1968 and has held that the plaintiffs have proved their title. But, by the impugned judgment and order and drawing the statutory presumption, the High Court while exercising the powers under Section 100 CPC, has set aside the concurrent findings recorded by the courts below.

6. When the plaintiffs claimed title on the basis of the aforesaid two sale deeds dated 2.9.1968 and 29.09.1968, it was for the plaintiffs to prove even the execution of the sale deeds. The defendants were not required to challenge the sale deeds in the suit filed by the plaintiffs, who prayed for a decree for a declaration of title in their favour. When plaintiff No.2 claimed title on the basis of the PoA executed by the original owner and thereafter executed the sale deed in favour of plaintiff No.1 as PoA of the original owner, the conditions provided under Section 33(1)(c) of the Registration Act are required to be strictly complied with. Sections 32 and 33 of the Registration Act, which are relevant for our purpose, read as under:

“32. Persons to present documents for registration.—Except in the cases mentioned in 33[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 assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

33. Power-of-attorney recognizable for purposes of Section 32. —(1) For the purposes of Section 32, the following powers-of- attorney shall alone be recognized, namely—

(a) if the principal at the time of executing the power-of-attorney resides in any part of 35[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 37[India], a power-of attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government: Provided that the following persons shall not be required to attend at any registration-office or Court for the 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 the Court. [Explanation.—In this sub-section, “India” means India, as defined in clause (28) of Section 3 of the General Clauses Act, 1897 (10 of 1897)].

(2) In the case of every such person the Registrar 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.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.”

7. According to the plaintiffs and it is not in dispute that the original owner was residing in East Pakistan. According to the plaintiffs, the original land owner executed the PoA in favour of plaintiff No.2 at Kumilla, Bangladesh. The original PoA is not produced on record. As per Section 32 of the Registration Act, every document to be registered under the Registration Act shall be presented at the proper registration office by some person executing or claiming under the same, or, by the agent of such a person, representative or assign, duly authorised by PoA executed and authenticated in the manner mentioned in Section 33(1)(c) of the Registration Act. Section 33 of the Registration Act provides that for the purposes of Section 32, only those power of attorneys shall be recognised as are mentioned in Section 33(1). As per Section 33(1)(c) of the Act, if the principal at the time of execution of the PoA does not reside in India, a PoA executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government shall be valid. In the present case, as such, the requirement of Section 33(1)(c) of the Act has not been satisfied at all. Section 32 of the Act is to be read along with Section 33(1)(c) of the Registration Act. Only in a case where the execution of the PoA is as per Section 32 read with Section 33(1)(c) of the Act, there shall be statutory presumption under Section 60 and/or under the provisions of the Registration Act. Therefore, the High Court has committed a grave error in

drawing the statutory presumption in favour of the plaintiffs and more particularly with respect to alleged PoA alleged to have been executed by the original owner in favour of plaintiff No.2. As such, there were concurrent findings recorded by both the courts below on non-compliance and/or non-fulfilling the conditions mentioned in Section 33(1)(c) of the Registration Act. By drawing the statutory presumption and without properly appreciating and/or considering the fact that there is a non-compliance of Section 33(1)(c) of the Registration Act there cannot be any statutory presumption, the High Court has set aside the concurrent findings recorded by both the courts below, in exercise of powers under Section 100 CPC.

8. Even the conduct on the part of the plaintiffs, more particularly on the part of plaintiff No.2, executing the second sale deed in favour of plaintiff No.1 – his own wife as a PoA of original land owner deserves serious consideration. It is required to be noted and even according to the plaintiffs, on the basis of the PoA alleged to have been executed by the original land owner – Braja Mohan Dey, plaintiff No.2 executed the registered sale deed in his own favour dated 3.9.1968. If that be so, in that case, there was no reason for him to execute the subsequent sale deed in favour of plaintiff No.1 – his own wife as a PoA of the original land owner. Once he became the owner on the basis of a registered sale deed dated 3.9.1968, which was executed by him in his own name as a PoA of the original owner, he could have executed the sale deed in favour of plaintiff No.1 as the owner and not as a PoA of the original owner.

9. Even another conduct on the part of the plaintiffs submitting the application to amend the plaint under Order 6 Rule 17 CPC submitted before the first appellate Court also creates doubts about the genuinity of the PoA. It was never the case on behalf of the plaintiffs before the trial Court and in the suit that the PoA was handed over by the plaintiffs to original defendant No.1 and that despite his demands he never returned the same. Having found and realised that the non-production of the PoA had gone against them, subsequently, before the first appellate Court, the plaintiffs sought to make out a case that the PoA was handed over by plaintiff No.2 to original defendant No.1 and that despite his demands, never returned the same. The amendment sought under Order 6 Rule 17 CPC was rightly refused by the first appellate Court. The plaintiffs tried to make out altogether a new case which was not even the case of the plaintiffs earlier. This conduct on the part of the plaintiffs also deserves serious consideration and it creates serious doubts on the genuinity of the PoA. In that view of the matter, the High Court has committed a serious error in drawing a statutory presumption and the authenticity of the sale deeds. There may be a statutory presumption as per Section 60 of the Registration Act where all other requirements of execution of the sale deed, required to be complied with under the Registration Act are complied with and the genuineness of the PoA on the basis of which the sale deed was executed is not doubted.

10. In view of the above and for the reasons stated above and as the PoA is not produced on record; the executant of the PoA in favour of plaintiff No.2 has not stepped into the witness box; there is a non-compliance of Section 33(1)(c) of the Registration Act; and the plaintiff no.2 is claiming title on the basis of the PoA alleged to have been executed by the original owner which is not forthcoming and that plaintiff no.1 is claiming the title on the basis of the sale deed dated 29.09.1968 executed by plaintiff No.2 as a PoA holder of the original owner which is not forthcoming, I am of the opinion that the learned trial Court was justified and right in dismissing the suit and refusing to pass a

decree for a declaration of title in favour of the plaintiffs. The same was rightly confirmed by the first appellate Court. The High Court has committed a serious error in decreeing the suit. The impugned judgment and order of the High Court is unsustainable both, on law as well as on facts.

11. In view of the above and for the reasons stated above, the present Appeal Succeeds and is Allowed. The impugned judgment and order passed by the High Court decreeing the suit is hereby quashed and set aside and the judgment and decree passed by the trial Court, confirmed by the first appellate Court, is hereby restored. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.

[M.R. SHAH] NEW DELHI;

JANUARY 13, 2023.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2965/2022

MANIK MAJUMDER & ORS.

APPELLANT(S)

VERSUS

DIPAK KUMAR SAHA (D)
THR. LRS. & ORS.

RESPONDENT(S)

JUDGMENT

NAGARATHNA J.

I have had the advantage of reading the judgment proposed by His Lordship M.R. Shah, J. However,

I am unable to agree with the reasoning as well as the result arrived at by His Lordship. Hence, my separate judgment.

The defendants in Title Suit No. 201 of 1985 have assailed the judgment and decree dated 05th April, 2018, passed by the High Court of Tripura in Regular Second Appeal No. 01 of 2005. By the impugned judgment, the judgment and decree dated 26 th August, 2004 passed in Title Appeal No. 02 of 1996 by the First Appellate Court, i.e., the Court of the District Judge, West Tripura, Agartala, affirming the judgment and decree dated 11 th September, 1995 in Trial Suit No. 201 of 1985 has been set- aside. Consequently, the suit has been decreed by the High Court. Hence, the appeal by the defendants in the suit.

2. For the sake of convenience, the parties herein shall be referred to in terms of their rank and status before the Trial Court.

3. The case of the plaintiffs in a nutshell is stated as under:-

(i) The suit property was owned and possessed by Braja Mohan Dey and plaintiff no. 2, namely, Dharendra Chandra Saha was a tenant running a shop in a hut located within the suit property. Braja Mohan Dey took a loan of Rs. 10,000/- from plaintiff no. 2 and since he was unable to repay the loan, he sold the land in favour of plaintiff no.1 in lieu of the loan amount.

(ii) However, soon after the sale, Braja Mohan Dey went to East Pakistan (now Bangladesh) and could not complete registration of the sale deed in favour of plaintiff no. 2. Therefore, he executed a Power of Attorney dated 01st August, 1968, in favour of plaintiff no. 2 before the 1st Class Magistrate, Komilla, Komilla District, East Pakistan thereby appointing plaintiff no. 2 as his attorney i.e. on behalf of the seller, Braja Mohan Dey, to execute a sale deed and transfer the property to the buyer as his Attorney.

(iii) On the strength of the Power of Attorney dated 01 st August, 1968, plaintiff no. 2 executed and registered a sale deed dated 03rd September 1968 in his own favour as the attorney on behalf of the seller, Braja Mohan Dey. Plaintiff no. 2 thereby became the owner of the suit property.

(iv) In his capacity as the absolute owner of the suit property, plaintiff no. 2 then executed a sale deed dated 29 th October, 1968, in favour of his wife-plaintiff no. 1, namely, Gita Rani Saha. The said sale deed was registered on 09 th November, 1968. That the suit land stood in the name of plaintiff no. 1 who duly paid municipality tax, land revenue etc.

(v) That on one portion of the suit property described as schedule 'A' property in the plaint, plaintiff no. 2 was running a grocery business under the name M/s. Dipak Bhandar. That the land falling to the eastern side of schedule 'A' property, described as schedule 'B' property in the plaint, was sold by plaintiff no. 2 to Makhan Chand Deb, who subsequently sold the said land to Gauranga Chandra Dey. Defendant no 1 was Gauranga Chandra Dey's tenant in respect of schedule 'B' property.

(vi) That plaintiff no. 2 constructed a godown in the portion behind his shop and the same has been described as schedule 'C' property in the plaint. The same was also in the possession of plaintiff no. 2. That defendant no. 1 tried to take forceful possession of the suit property by breaking down the said godown. In this regard Miscellaneous Case No. 02 of 1981 was registered in the Court of the Sub-Divisional Magistrate, Sadar and a prohibitory order was issued under Section 144 of the Code of Criminal Procedure, 1898. During the pendency of the prohibitory order, the defendants entered into the suit property, took forceful possession of the same and broke down the godown.

(vii) Thereafter, the Executive Magistrate took cognizance of Miscellaneous Case No. 02 of 1981 and by an order dated 13 th July, 1984 directed the defendants to vacate the suit premises, failing which, possession thereof would be forcefully recovered with the aid of police authorities. However, the order dated 13 th July, 1984 was set aside by the Additional District and Sessions Judge by an order dated 30 th January, 1985 on the ground that there was a delay of two months in conversion of the proceedings initially registered under Section 144 of the Code of Criminal Procedure to proceedings under Section 145 of the Code. The order of the Additional District and Sessions Judge dated 30th January, 1985 was sustained by the Gauhati High Court, while granting liberty to plaintiff no. 2 to initiate fresh proceedings in this regard. That accordingly fresh proceedings were initiated.

(viii) That notwithstanding the fact that notice of the fresh proceedings was served on the defendants, they started putting up a pucca construction on the suit property. Therefore, the plaintiffs were constrained to file a suit for declaration of title and recovery of khas possession of the suit land.

4. In response to the plaint, the defendants filed a written statement the contents of which are encapsulated as under:-

(i) The fact that Braja Mohan Dey was the original owner and possessor of the suit property, was denied. It was averred that the contents of the plaint regarding the loan obtained by Braja Mohan Dey, in lieu of which the suit property was sold to plaintiff no. 2, were totally false. That no power of attorney was executed by Braja Mohan Dey in favour of plaintiff no. 2 in respect of the suit property.

(ii) That plaintiff no. 2 was a tenant under defendant no. 1 in a room located in the northern portion of schedule 'A' property.

(iii) That there arose no question of the defendants forcibly taking possession of schedule 'C' property as they had been in legal possession of the suit property for more than thirty years, i.e., since the year 1981. That the defendants had been running a business in the suit property under the name "Chandra Hotel." That neither of the plaintiffs was ever in possession of the suit land. That the documents based on which the plaintiffs claimed title over the suit land, i.e., power of attorney and sale deeds were false and fabricated.

With the aforesaid averments, it was prayed before the Trial Court that the suit for declaration of title and recovery of khas possession of the suit land, filed by the plaintiffs, be dismissed.

5. The Court of the Assistant District Judge, West Tripura, Agartala by its judgment and decree dated 11 th September, 1995 dismissed T.S. No. 201 of 1985.

The salient findings of the Trial Court are as under:

(i) That the sale deed dated 03rd September, 1968 did not contain an endorsement by the Sub-Registrar to the effect that the sale deed was executed by plaintiff no. 2 in his capacity as the attorney of Braja Mohan Dey. The endorsement made by the Sub-Registrar on the sale deed dated 03rd September was a simple endorsement merely stating that the sale deed had been executed by plaintiff no. 2.

(ii) That it was not stated in the sale deed dated 03 rd September, 1968 itself that plaintiff no. 2 was making the sale on the strength of the power of attorney executed in his favour by Braja Mohan Dey.

(iii) That the plaintiffs did not produce before the Trial Court, the power of attorney which formed the basis for the sale deed dated 03rd September, 1968. That although in another suit, being T.S. 79/1973, plaintiff no. 2 had deposed that the document conferring power of attorney on plaintiff no. 1, was handed over by him to defendant no. 1, no such submission was made in the present case.

(iv) That the sale deed dated 03rd, September, 1968 could not be held to be properly executed for want of power of attorney authorising such execution. Therefore, plaintiff no. 2 could not be said to have any right, title or interest over the suit property. Consequently, it could not be held that the transfer made by plaintiff no. 2 in favour of plaintiff no. 1 was valid.

(v) That no evidence was led by the defendants to establish their title over the suit property by adverse possession which is a significant finding.

6. Being aggrieved, the plaintiffs preferred T.A. No. No. 02 of 1996 before the first appellate court. By judgment dated 26 th August, 1995, the first appeal was dismissed and the judgment of the Trial Court was confirmed.

The relevant findings of the first appellate court are encapsulated as under:

(i) That the plaintiffs failed to prove that the power of attorney was handed over to defendant no. 1. That since the power of attorney stated to be executed by Braja Mohan Dey in favour of plaintiff no. 2 was neither produced before the court, nor was it proved that the same was handed over to defendant no. 1, a question had arisen as to existence and genuinity of the power of attorney.

(ii) That since the said power of attorney formed the basis for the sale deed dated 03rd September, 1968, the sale deed could not be considered to be legally executed.

7. Being aggrieved, the plaintiffs preferred regular second appeal No. 01 of 2005 before the High Court of Tripura at Agartala. By the impugned judgment dated 05th April, 2018, the second appeal was allowed and the judgments of the Trial Court and first appellate court were set aside.

The High Court considered and decided the following substantial questions of law:

“1) Whether the endorsement made on the sale deed No. 1- 10394 dated 03.09.1968 in respect of the power of attorney is a substantive evidence in respect of the power of attorney authorising the plaintiff no. 2 to sell the said land as demised in the sale deed dated 03.09.1968?

2) Whether the defendants had fundamental onus to discharge in respect that the power of attorney was not in existence or forged and as such, the sale deed dated 03.09.1968 cannot be treated as the instrument of valid transfer?”

8. The following findings were recorded by the High Court in the impugned judgment:

(i) That facts as to the authority of plaintiff no. 2 to execute the sale deed dated 03rd September, 1968 were recited therein and having been satisfied about the power of plaintiff no. 2 to execute the sale deed, the same was allowed by the Sub- Registrar for being registered.

(ii) When a registering authority has made an endorsement accepting that by virtue of a power of attorney, the attorney was allowed to execute the sale deed, a statutory presumption ought to be drawn as to the fact of validity of the power of attorney and consequently of the sale deed.

(iii) That there is a presumption of correctness under Section 58 of the Registration Act, 1908, to transactions endorsed by a Sub-Registrar. That such statutory presumption can be rebutted only by strong evidence to the contrary.

(iv) That the Trial Court and first appellate court had wrongly shifted the onus on the plaintiffs, while the burden ought to have been on the defendants to prove their case which was contrary to the statutory presumption of validity of the sale deed dated 03rd September, 1968. That the defendants failed to rebut the presumption of validity of the sale deed even though the onus was squarely on them.

Aggrieved by the judgment of the High Court allowing the second appeal preferred by the plaintiffs, the appellants- defendants have approached this Court.

9. We have heard Sri Rana Mukherjee, learned senior advocate appearing on behalf of the appellants and Sri. Hrishikesh Baruah, learned advocate appearing on behalf of the respondents, and perused the material on record.

10. Learned Senior Counsel for the appellants-defendants at the outset contended that the High Court was not right in allowing the second appeal preferred by the plaintiffs by drawing a presumption as to validity of the sale deed dated 03 rd September, 1968. That the High Court committed a serious error in law while setting aside the concurrent findings of the Trial Court and first appellate court to hold that the sale deed dated 03rd September, 1968 was valid even though the power of attorney forming the basis of such sale deed was neither produced nor proved. That

there may be a statutory presumption under Section 60 of the Registration Act, 1908 only where all other requirements of execution of sale deed are complied with and when there is no doubt as to the genuinity of the power of attorney. That a presumption ought not to have been drawn in the present case as the plaintiffs have failed to produce the power of attorney or even a copy thereof to prove the existence of the same.

11. It was further contended that even if it was to be assumed that a power of attorney was executed by Braja Mohan Dey in favour of plaintiff no. 2, the same would still not be valid in the eye of law owing to reasons of non- satisfaction of the statutory requirements of Section 33 (1) (c) of the Registration Act, 1908. That it was an undisputed fact that as on the date on which the power of attorney is stated to be executed, Braja Mohan Dey was residing in East Pakistan. That a power of attorney executed in a foreign country, in order to be valid would have to be executed in accordance with Section 33 (1) (c) of the Registration Act, 1908. However, in the instant case, there is no evidence to demonstrate that the power of attorney was executed in accordance with the said statutory provision. That since the execution of the power of attorney was not in accordance with Section 33(1)(c), no statutory presumption can be drawn under Section 60 of the Registration Act, 1908, as to the validity of the sale deed dated 03rd September, 1968.

12. It was next submitted that the conduct of plaintiff no. 2 required consideration inasmuch as he executed the second sale deed in favour of his wife, as the power of attorney of the original owner, even though he could have executed the same in his capacity as owner of the suit property by virtue of the sale made in his favour on 03rd September, 1968.

13. Sri Rana Mukherjee, Learned Senior Counsel appearing on behalf of the defendants- appellants contended that a party who avers title in a property must prove the same and such party is not relieved of the onus probandi. That assuming for the sake of argument that the suit was not defended by the defendants, the plaintiffs would still have to prove their title in order to be entitled to a decree.

With the aforesaid averments, it was prayed that the impugned judgment of the High Court be set-aside and the judgment of the Trial Court which was affirmed by the first appellate court, be restored.

14. Per contra, learned counsel for the respondents-plaintiffs supported the impugned judgment of the High Court and contended that the High Court rightly drew a statutory presumption as to the validity of the sale deed dated 03 rd September, 1968. That it is trite law that registration of a document is a solemn act and the recitals of a registered document are presumed to be valid unless such a presumption is rebutted by strong evidence to the contrary. That since the Sub-Registrar had accepted the sale deed dated 03 rd September, 1968 for registration, it is to be presumed that the Sub-Registrar had done so only on satisfying himself as to the fact that the person who was executing the document was the proper person and competent to do so.

15. It was submitted that the endorsement made on the sale deed dated 03rd September, 1968 could be considered as prima- facie evidence as to the title to the suit property. That accordingly, there

would arise a presumption as to validity of the sale deed. While such presumption is a rebuttable presumption, the defendants in the present case had failed to discharge the burden of rebutting the same.

16. Section 60(2) of the Registration Act, 1908 was pressed into service, to contend that registration of a document was proof enough of the fact that the said document had been registered in the manner provided under the Registration Act, 1908, and that the facts mentioned in the endorsement have occurred as mentioned therein. In that regard, it was contended that since the sale deed dated 03rd September, 1968 was a registered document, a statutory presumption may be drawn as to the fact that the registration was completed after due compliance of the provisions of the Act.

17. That the Trial Court and the first appellate court cast an onerous burden on the plaintiffs to produce the power of attorney which formed the basis of the sale deed dated 03 rd September, 1968 to prove the sale deed which is a deed of conveyance of title. That such a burden was not contemplated under law and on that ground, the present Civil Appeal may be dismissed. It was urged that production of power of attorney was not required in order to prove a registered sale deed.

In the above backdrop, it was contended that the High Court was right in allowing the second appeal and hence, there is no merit in the present appeal.

18. Having heard the learned counsel for the respective parties, the following points would arise for consideration:

(i) Whether the statutory requirements of Section 33 (1) (c) of the Registration Act, 1908 had been complied with in the instant case while executing the power of attorney dated 01 st August, 1968?

(ii) Whether non-production of the document of power of attorney before the Trial Court and the first appellate court would be fatal to the case of the plaintiffs?

(iii) Whether the plaintiffs have proved the sale deeds dated 03rd September, 1968 and 29th October, 1968?

(iv) What order?

The relevant Sections of Registration Act, 1908, adverted to by learned counsel for the parties read as under:

“32. Persons to present documents for registration.— Except in the cases mentioned in 5 [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 assign 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 recognized, namely:—

(a) xxx xxx xxx;

(b) xxx xxx xxx;

(c) if the principal at the time aforesaid does not reside in 1[India], a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, 2[Indian] Consul or Vice-Consul, or representative 3[***] of the Central Government:

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.

1 Subs. by Act 3 of 1951, Sec.3 and Sch., for “the States” (w.e.f. 1-4-1951). 2 Subs. by the A.O. 1950, for “British”.

3 The words “of His Majesty or” omitted by the A.O. 1950. (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.

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.

“60. Certificate of registration.— (1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.” Sections 67 and 85 of the Indian Evidence Act, 1872, reads as under:

“67. Proof of signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.

85. Presumption as to powers-of-attorney. — The Court shall presume that every document purporting to be a power-of-

attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, [Indian] Consul or Vice-Consul, or representative of the [Central Government], was so executed and authenticated.” Section 17 of the Registration Act speaks about documents of which registration is compulsory, while Section 18 deals with documents of which registration is optional. Clause (f) of Section 18 states that all other documents not required by Section 17 to be registered, may be registered at the option of the parties. In other words, the documents which are compulsorily registrable are listed under Section 17 and such list is exhaustive. The documents, registration of which is optional, are specified in clauses (a) to (e) of Section 18 but this list is not exhaustive. Under clause (f) of Section 18 “all other documents” which do not require registration under Section 17 are also optionally registrable such as the power of attorney, document relating to adoption etc.. A power of attorney is not a compulsorily registrable document when it is duly notarized. It carries the presumption of being valid in view of Section 85 of Evidence Act. Since, a power of attorney does not come within the ambit of Section 17 or clause (a) to (e) of Section 18, registration of a power of attorney is optional. An attorney holder may execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor or principal, provided he has been specifically given power to sell the property of the principal. The nature and scope of power of attorney has been explained by this Court speaking through R.V. Raveendran, J. in *Suraj Lamp and Industries vs. State of Haryana* (2012) 1 SCC 656. The relevant paragraphs of the judgment reads as under:

“20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882).

It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In *State of Rajasthan v. Basant Nahata* [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52) ‘13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.' An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor." The relevant provisions of the Registration Act, 1908, could be discussed.

(i) Section 32 speaks about persons to present document for registration. A power of attorney has a special authority to present a document on behalf of the principal at the registration office vide *Chotey Lal vs. The Collector of Moradabad* A.I.R. 1922 PC 279.

(ii) Under Section 33 (1) (c), if a power of attorney has been executed before and authenticated by Magistrate, 1 st Class of Komilla (Bangladesh) authorising the attorney to execute a sale deed for a house in India, it is sufficient to prove its execution vide *Atal Chakravarty vs. Sudhi Gopal Pandey* (1969) 73 CWN 947. On the other hand, if a power of attorney is not executed and authenticated in compliance with Section 33(1)(c), the same is invalid. Thus, if a principal does not reside in India and power of attorney executed before and authenticated by a Notary Public or any court Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, the same is valid.

(iii) Section 34 speaks about the enquiry to be made before registration of a document by registering officer. Section 35 casts a duty on the registering authority to enquire about the identity of the executant and the factum of execution and registration of a document is to be treated as presumption of execution by the person indicated as the executant of the document. Such a presumption is, however, rebuttable. Sections 34 and 35 state what a registering officer has to see before registering a document. Once satisfied as to such particulars as are stated under Sections 34 and 35, he cannot refuse to register a document except mentioned under grounds in Section 35(3).

(iv) Section 58 speaks about particulars to be endorsed on documents admitted for registration, 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.

Thus, the registering officer shall endorse the signature of every person admitting the execution of document. Such document is prima facie evidence against the executant. The presumption of correctness attached to endorsement made by the Sub-Registrar is in view of the provisions of Sections 58, 59 and 60 of the Registration Act. This presumption can be rebutted only by strong evidence to the contrary.

On compliance of Sections 34, 35, 58 and 59 as they apply to a given document, the registering officer shall endorse a certificate containing word “Registered” on the document itself and indicate the number and page of the book in which the document has been copied. This gives the document, the character of a registered document. Thus, compliance of the provisions of Sections 34, 35, 52, 58 and 59 constitutes registration. The certificate of registering officer is admissible to prove the admission of execution.

However, a registered deed has to be proved in accordance with Section 67 of the Evidence Act, 1872. Section 67 states that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting. Section 67 states that proof of signature and the genuineness of document proved by the proof of handwriting is proof of execution. Execution of a document means signing a document by consenting on it by a party. Section 67 does not prescribe any particular mode of proof. Mere registration of a document is not self-sufficient proof of its execution. It is only a prima facie proof of its execution particularly when no other evidence is available. Registration of a document is evidence of its execution by its executor. Certificate by registering officer under Section 60 of the Registration Act, 1908 is relevant for proving its execution. Proof by evidence afforded by the contents of the documents is of considerable value.

In the instant case, what is sought to be proved is title by the sale deed and not the power of attorney as it is the sale deed which conveys title and the sale deed has been executed in accordance with the provisions of Registration Act, 1908, and proved in accordance with Section 67 of Evidence Act. It cannot be held that the sale made on behalf of the seller (original owner of the suit land) to the buyer through the power of attorney is vitiated as the power of attorney was not produced before the Court. This is because even in the absence of the production of the power of attorney, the contents of the sale deed and the execution of the power of attorney as well as the sale deed have been established by proving the sale deed in accordance with the law.

19. A primary plank in the arguments advanced on behalf of the appellants-defendants is that the requirements of Section 33(1) (c) of the Registration Act had not been complied with while executing the power of attorney dated 01 st August, 1968 and therefore, no validity could be attached to the said document. Consequently, the sale deed dated 03rd September, 1968 which was executed on the strength of the said power of attorney could also not be presumed to be valid. In

order to determine whether the statutory requirements of Section 33 (1)

(c) of the Registration Act, 1908 had been complied with while executing the power of attorney, the recitals of the sale deed dated 03rd September, 1968 may be referred to. On perusal of Annexure CA-1 (Exhibit – 11 before trial court) which is a copy of deed of sale dated 03rd September, 1968 executed by the Power of Attorney holder (plaintiff No.2) in favour of himself, the following facts emerge:

(i) That Sri Braja Moha Dey is the owner of the land in question after getting rayati jote allotment order from the government land authorities.

(ii) That due to the need for construction of huts and for urgent family expenditure, the seller Braja Moha Dey had approached the buyer, that is, Sri Dharendra Chandra Saha, (plaintiff No.2) to lend some money, as the buyer was the tenant of the said land (suit schedule property) and the buyer agreed to lend the money to the seller.

(iii) In the year 1964, the seller received a loan amount of Rs.10,000/- (ten thousand) from the buyer and constructed huts on the aforesaid land.

(iv) The seller had gone to Hatiya of East Pakistan but was unable to return and could not repay the loan amount to the buyer therefore, he intended to sell his land and, hence, through a messenger, informed the buyer about the same as he was in possession of the suit schedule land, as a tenant. The said tenant/buyer agreed to buy the land in lieu of the debt that the seller had to pay.

(v) The seller acknowledged this condition that in discharging the liability of loan of Rs.10,000/- towards the buyer and to provide a registered Sale Deed in favour of the buyer, on 1 st August, 1968 executed a Power of Attorney before the 1 st Class Magistrate, Komilla, Komilla District, East Pakistan appointing Sri Dharendra Chandra Saha – plaintiff No.2 as his attorney i.e. on behalf of the seller to execute a sale deed and transfer the property to the buyer as his Attorney.

(vi) That the buyer can obtain mutation against the seller in the Government records by creating a record of right in his name including his legal heirs and the successors without any objection.

20. In Annexure CA – 2 (Exhibit – 12), which is a copy of the sale deed dated 29th October, 1968 the following recitals are recorded:

(i) That the schedule land is in absolute ownership and possession of the owner namely, Sri Dharendra Chandra Saha (plaintiff No.2) by virtue of a registered sale deed dated 03 rd September, 1968.

(ii) That since the original owner, Sri Braja Moha Dey, could not repay a sum of Rs. 10,000/- (ten thousand) to the seller (Sri Dharendra Chandra Saha) he executed a Power of Attorney dated 01st August, 1968 appearing before the 1st Class Magistrate, Komilla Sadar, District Komilla, East Pakistan appointing Sri Dharendra Chandra Saha (plaintiff No.2) as his legal attorney giving power

to sell or transfer himself the property in question the land in question.

(iii) That on the strength of the aforesaid power of attorney dated 03rd September, 1968, plaintiff No.2 sold the said property to himself vide registered deed dated 03 rd September, 1968 as a result he became the absolute owner and in possession of the land along with the house standing thereon as a buyer.

(iv) As an absolute owner, he executed registered sale deed in favour of his wife Geeta Rani Saha on account of an earlier loan taken by him for Rs.20,000/- and in lieu of repayment thereof.

21. On a conjoint reading of the aforesaid two documents, namely sale deeds, it is established that the initial sale deed dated 03rd September, 1968 by plaintiff No.2 Sri Dharendra Chandra Saha is as a power of attorney holder of Braja Mohan Dey, to himself as a buyer. The power of attorney is dated 01 st August, 1968, the details of which are referred to in the said sale deed inasmuch as the power of attorney was executed by the original owner Sri Dharendra Chandra Saha before the 1 st Class Magistrate, Komilla, East Pakistan, which is evident on a reading of both the documents. Thereafter, plaintiff No.2 executed a sale deed dated 29th October, 1968 in favour of the plaintiff No.1 as the absolute owner of the suit schedule property. Therefore, there is compliance of Section 33(c) of the Registration Act, 1908 inasmuch as the power of attorney has been executed before the 1st Class Magistrate, Komilla, East Pakistan. Hence there is no substance in the contention of the learned Senior Counsel appearing for the appellants-defendants that the requirements of Section 33(1) (c) of the Registration Act, 1908, had not been complied with while executing the power of attorney dated 01st August, 1968 and therefore, no validity could be attached to the said document.

22. It is also required to be noted at this juncture that as per Section 18 of the Registration Act, registration of deed of attorney is optional. Further, Section 32 deals with the categories of persons who can present documents for registration. The following three categories of persons are mentioned therein:

(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 assign 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 mentioned therein.

Therefore, it is evident that plaintiff no. 2, had the authority as per Section 32 (C) to present a document for registration in his capacity as the attorney of Braja Mohan Dey, the original owner of the suit property.

23. Further, non- production of the power of attorney in the suit is also not fatal to the case of the plaintiffs. In this regard, reliance may be placed on a recent judgment of this Court in Amar Nath vs. Gian Chand and Anr., 2022 SCC OnLine SC

102. The facts of the said case are that the Plaintiff therein had executed a power of attorney in favour of the second defendant therein and on the strength of such power of attorney, the second defendant executed a sale deed in favour of the first defendant. However, the plaintiff challenged the sale made in favour of the first defendant, inter-alia, on the ground that the second defendant could not have executed a sale deed in the absence of the original power of attorney and the sub-registrar was required to verify this aspect from the second defendant. It was contended that the sale deed executed without producing the power of attorney was without authority as the plaintiff No.2 was not competent to transfer the possession in the absence of the original power of attorney. The suit was dismissed by the Trial Court and the First Appellate Court. The High Court in Second Appeal reversed the decision of the Trial Court and First Appellate Court and decreed the suit in favour of the plaintiff. In doing so, the High Court noted that it was unclear from the endorsement on the sale deed as to by whom the plaintiff No.2 was identified to be the power of attorney. This Court in a Civil Appeal challenging the decision of the High Court, set aside the same and held that a power of attorney holder, while executing a sale deed, need not produce the original document conferring power of attorney. That a sale would not be liable to be disturbed solely on the ground that the power of attorney forming the basis of such sale was not produced before the Sub-Registrar at the time of registration.

On examining the scheme of Sections 32-34 of the Registration Act, the following observations were made:

“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.

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. XXX XXX

22. XXX XXX

23. XXX XXX

24. XXX XXX

25. XXX XXX

26. For reasons, which we have indicated, Section 32(c) read with Section 33 and Section 34(2)(c) are interrelated 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.” (Underlining by me) In short, the law laid down in Amar Nath (supra) supports the position that production of the original power of attorney is not an indispensable requirement to establish the validity of execution of a sale deed. It would therefore follow that production of a power of attorney is not a necessary

requirement to prove a sale deed before a court of law executed through a power of attorney.

24. Section 67 of the Evidence Act deals with proof of documents such as a sale deed as in the instant case. The proof of signature or the handwriting of the executant on a document is sufficient to prove a document which is the sale deed dated 29th October, 1968, in the instant case. There is no dispute that the said sale deed is not signed by plaintiff No.2 or that it is not his signature or that he is not the executor of the document. The admission of the signature of the said document by plaintiff No.2 is proof of the signature on the document which is sufficient for proof of the document of sale deed of sale in favour of plaintiff No.1. Further, the same is a registered sale deed which is a document conveying title. Hence, the plaintiff No.1 has acquired title from plaintiff No.2 and from the original owner of the land in question. Therefore, under the circumstances, plaintiff No.1 has proved her right, title and interest in the land in question. There is no contra evidence produced by the defendants so as to defeat the validity of the sale deeds. The said documents speak for themselves. Therefore, there is no substance in the contentions of the appellants arising under the provisions of the Registration Act, 1908. Thus, plaintiff No.1 has acquired title to the land in question. Further, when a sale deed is executed on the strength of deed of power of attorney, the non-production of the deed of power of attorney in the suit is not fatal to the case of the plaintiff.

25. The appellants-defendants herein contended that that there may be a statutory presumption as per Section 60 of the Registration Act, 1908, only where all other requirements of execution of sale deed are complied with and there is no doubt as to the genuineness of the power of attorney. In the present case, the sale deed dated 03rd September, 1968 was executed on the strength of the power of attorney which was executed in conformity with Section 33 (1) (c) of the Registration Act, 1908 because the power of attorney has been duly executed before the 1st Class Magistrate, Komilla, East Pakistan as noted from the two sale deeds. There is no contra evidence produced by defendants in that regard. Since the requirements of execution of a sale deed are duly complied with, and there is no reason to doubt the recitals of the sale deed which has been proved in accordance with law, it would follow that the statutory presumption under Section 60 of the Registration Act could be invoked in the instant case.

26. It is trite that registration of a document is a solemn act of parties and the recitals of a registered document are presumed to be valid unless such a presumption is rebutted by strong evidence to the contrary, vide *Ishwar Dass Jain vs. Sohan Lal*, (2000) 1 SCC 434. This is because, as already stated, the document speaks for itself.

In *Chotey Lal vs. The Collector of Moradabad* (supra) the Privy Council considered the question as to the presumption of validity of a power of attorney which formed the basis of a registered mortgage deed which was later challenged. The Privy Council noted that since the sub-registrar had accepted the document for registration, it is prima-facie evidence that the conditions have been satisfied and after registration of the document, the burden of proving any alleged infirmity rests on the person who challenges the registration. Similarly, in *Jugraj Singh and Anr. vs. Jaswant Singh and Ors.*, 1970 (2) SCC 386, this Court reiterated the legal position as to the presumption of regularity of official acts, and held that it would be presumed that a sub-registrar registering a document would have proceeded with the registration only on satisfying himself as to the fact that

the person who was executing the document was the proper person.

27. Reliance may also be placed on the decision of this Court in *Rattan Singh and Ors. vs. Nirmal Gill and Ors.*, AIR 2021 SC 899. In the said case, the issue pertained to the validity of a general power of attorney (hereinafter, “GPA”) and consequently of the sale deed executed on the strength of the GPA. The plaintiff therein, being the executor of the GPA contended that the GPA was obtained fraudulently and was therefore invalid. This Court, while holding that no case of fraud was made out, upheld the validity of the GPA and the sale deed executed on the strength of the GPA. The relevant observations of this Court as to the presumption of validity of documents and burden of proof required to rebut such presumption, are extracted as under:

“The presumption in favour of a 30-year old document is a rebuttable presumption. Nothing prevented the Plaintiff to rebut the presumption by leading appropriate evidence in order to disprove the same. Since the Plaintiff failed to do so, the said document would be binding on the Plaintiff. As a matter of fact, the parties had acted upon the terms of the said document without any demur since 1963 and it was, therefore, not open to resile therefrom at this distance of time. Hence, the trial Court was right in holding the 1963 GPA, to be a genuine document.”

28. In short, it has been authoritatively laid down by this Court that a registered document carries with it, by virtue of it being registered, the presumption as to the authority of the person executing it. In the present case, the Trial Court and the First Appellate Court failed to treat the endorsement made by the District Sub-Registrar on the body of the sale deed, as evidence in respect of the authority of Plaintiff No. 2 to execute the sale deed. This is to be considered in light of the fact that at no point of time did the original owner namely, Braja Mohan Dey dispute the execution of power of attorney in favour of Plaintiff No. 2.

29. Prima-facie, the endorsement made on the sale deed dated 03rd September, 1968, could be considered as determinative evidence of the conveyance of title to the suit property by its original owner, especially where the defendants have not set up a case to establish any independent title over the suit property. When such a presumption arises, the onus would be on a person who challenges such presumption, to successfully rebut it, vide *Prem Singh and Ors. vs. Birbal and Ors.*, (2006) 5 SCC 353. In that context, the question that would arise is, whether, the defendants have rebutted the presumption of validity of the sale deed dated 03rd September, 1968. In order to answer this question, the following facts may be considered:

(i) Trial Court and First Appellate Court have concurrently found that the defendants do not have any title over the suit land and against such finding the defendants have not preferred an appeal. They have thus accepted this finding which has attained finality.

(ii) The original owner namely, Braja Mohan Dey has not initiated any proceeding to dispute the execution of power of attorney in favour of Plaintiff No. 2.

(iii) The order of the Sadar Munsiff dated 17th July, 1974, in T.S. 69/1974 records that by way of a sale deed dated 03 rd September, 1968, Plaintiff No. 2 had purchased the suit property and was paying municipal taxes as the owner of the premises which finding is binding on the parties herein as the same has not been upset by any Court of law. Sarat Chandra Majumdar, original defendant No. 1 in the present suit, was the plaintiff therein.

(iv) Notwithstanding the fact that the original defendant had become aware of the sale deed dated 03rd September, 1968 and of the power of attorney that formed the basis of such sale deed, no steps were taken by the Defendant to challenge Plaintiff No. 2's title over the suit property. It was only in the written statement filed in the present suit that it was vaguely claimed that Sarat Chandra Majumdar was the title holder of the suit property and Plaintiff No. 2 was a tenant therein. This, without there being any legal basis or evidence.

In light of the said facts, it can be stated that the defendant has not rebutted the presumption of validity of the sale deed dated 03rd September, 1968.

30. In short, there is no reason to disbelieve the recitals contained in the registered sale deed dated 03 rd September, 1968 merely on the ground that the document conferring power of attorney in favour of plaintiff no. 2 was not produced before the Trial Court.

In the instant case, the High Court was therefore right in holding that when a document has been duly registered, there is a presumption of correctness and it can be rebutted only by strong evidence to the contrary. But the defendants have not led any evidence in order to rebut the presumption as might be drawn on the basis of the said endorsement on the body of the sale deed No.1010394, dated 03.09.1968 accepting original plaintiff no.2 as the attorney of the original owner, Braja Mohan Dey. The same is a vital piece of evidence which has been ignored by the Trial Court as well as the first Appellate Court. The High Court is further right in holding that original plaintiff no.2 was duly nominated and constituted as the attorney of Braja Mohan Dey (original owner of the suit land) and on the strength of the said power of attorney, plaintiff No.2 transferred land in favour of himself. As the absolute owner, plaintiff No.2 sold the said land to plaintiff No.1. Thus, plaintiff no.1 had every right to recover the said suit land, description of which has been provided in the Schedule (C) of the plaint by removing and demolishing all obstructions from the defendants. The High Court was therefore right in decreeing the suit.

Consequently, the present appeal is dismissed. The impugned judgment of the High Court of Tripura in Regular Second Appeal No. 01 of 2005, by which, the judgment and decree dated 26th August, 2004 passed in Title Appeal No. 02 of 1996 by the First Appellate Court in Title Appeal No. 02 of 1996 affirming the dismissal of Title Suit No. 201 of 1985 by the Asst. District Judge No.1, Tripura has been set-aside, is affirmed.

31. Parties are directed to bear their respective costs.

.....J.

[B.V. NAGARATHNA] NEW DELHI 13 JANUARY, 2023.