

Asset Reconstruction Company (India) ... vs S.P. Velayutham on 4 May, 2022

Author: V. Ramasubramanian

Bench: V. Ramasubramanian, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2752-2753 OF 2022
(Arising out of Special Leave Petition(C) NOS.19662-19663 OF 2021)

ASSET RECONSTRUCTION COMPANY
(INDIA) LIMITED

...APPELLANT(S)

VERSUS

S.P. VELAYUTHAM & ORS.

...RESPONDENT(S)

JUDGMENT

V. Ramasubramanian, J.

1. Asset Reconstruction Company (India) Limited, to whom the Indian Bank assigned the loans and the underlying security of a particular borrower, has come up with the above appeals challenging the judgment of the Division Bench of the High Court of Judicature at Madras, reversing the judgment of a learned Single Judge of the Court, by which the learned Single Judge held the registration of a sale deed by the Registering Authority to be null and void.

2. We have heard Mr. Guru Krishna Kumar and Mr. Nakul Devan, learned senior counsel for the appellant, and Mr. Shyam Divan, Mr. Atul Nanda and Mr. Mukul Rohatgi, learned senior counsel appearing for the contesting respondents.

3. The brief facts necessary for the disposal of the appeals can be summarised as follows:□

(i) In the year 1992, the Indian Bank sanctioned financial facilities to M.V.R. Group of Industries. According to the Indian Bank, the borrower offered the immovable property covered by the document now in dispute, as collateral security and a mortgage by deposit of title deeds is said to have been created way back in the year 1995□96;

(ii) Alleging that the borrower defaulted in repayment of the loan, Indian Bank filed an application before the Debts Recovery Tribunal in the year 1996 under Section 19 of the Recovery of Debts Due

to Banks and Financial Institutions Act, 1993;

(iii) However, after the advent of the Securitisation Act, 2002, the Bank issued a demand notice dated 15.12.2004 under Section 13(2) of the Securitisation Act. It was followed by a possession notice dated 30.03.2005 under Section 13(4);

(iv) Thereafter, the respondent nos. 4 and 5 herein executed a deed of Power of Attorney ('PoA' for short) on 23.08.2006 in favour of Mr. S.P. Velayutham, the 1st respondent in one of these appeals and the 6th respondent in the other appeal. This deed of Power of Attorney contained an express prohibition for the agent to encumber the properties. This deed of PoA was registered in the Office of the Sub-Registrar, Alandur;

(v) By another deed of PoA dated 07.06.2007, the power of sale is said to have been conferred upon the agent, but this deed of power was unregistered;

(vi) On the basis of the original registered deed of PoA dated 23.08.2006 which did not confer a power of sale, Mr. S.P. Velayutham sold the property to his son Amar (the 6th respondent in one of these appeals and the 1st respondent in the other appeal) under a deed of sale dated 05.07.2007;

(vii) In the meantime, Indian Bank which already initiated proceedings under the Securitisation Act, assigned the debt and the collateral security in favour of the appellant herein, which is an asset reconstruction company. On the basis of such assignment, the appellant issued a sale notice dated 05.08.2008;

(viii) However, Mr. Amar, executed a deed of settlement dated 13.10.2008 in favour of his father Mr. S.P. Velayutham, from whom he had purchased the property;

(ix) While so, during the period 2009-2015, some encroachments took place which led to the initiation of proceedings under Section 145 Cr.P.C. The original borrowers also filed civil suits and the appellant got themselves impleaded in those suits;

(x) Eventually, the appellant filed a writ petition in W.P.No. 33462 of 2014 seeking a declaration that the act of the Sub-Registrar in registering the sale deed executed by S.P. Velayutham in favour of his son Amar, was null and void. The said writ petition was allowed by a learned Judge on the ground that there was utter failure on the part of the Registering Authority to follow the mandate of law as prescribed in Sections 32 to 35 of the Registration Act, 1908 and that the Registrar failed to verify the deed of PoA dated 23.08.2006, before allowing registration of the sale deed executed on the basis of the said power;

(xi) However, two intra-court appeals filed by the father-son duo, were allowed by the Division Bench primarily on the ground, (1) that the appellant ought to have taken recourse to a civil suit; and (2) that the appellant is guilty of violating the order passed by this Court in the proceedings arising out of the order of the Sub-Divisional Magistrate under Section 145 of the Cr.P.C., directing the parties to approach the civil court. Aggrieved by this order of the Division Bench, the appellant

has come up with the above appeals.

4. Assailing the impugned order of the Division Bench of the High Court, it is contended by the learned senior counsel for the appellants,

(i) that the High Court failed completely to appreciate that the Registration Act, 1908, enjoins upon the Registering Authority to verify “the person executing” the document sought to be registered;

(ii) that in cases where the statutory authorities fail to perform the duties enjoined upon them, under specific provisions of the statute, the jurisdiction of the High Court under Article 226 of the Constitution does not stand ousted; (iii) that what was challenged before the High Court in a petition under Article 226 was not the acts of individuals, but the acts of omission and commission on the part of the Registering Authority and hence the writ petition cannot be said to be not maintainable; and (iv) that by an over-simplified process of reasoning, the Division Bench of the High Court threw the appellant out of the Court and also added insult to injury by commenting upon the conduct of the appellant and imposing costs.

5. Supporting the impugned order, it is contended by Mr. Shyam Divan, learned senior counsel appearing for Mr. S.P. Velayutham (respondent no.6 in one of these appeals and respondent no.1 in the other appeal), (i) that when admittedly title suits are pending and the very appellant herein has got themselves impleaded therein, it was not open to the appellant to resort to a short-cut method of invoking the jurisdiction of the writ court; (ii) that when there are seriously disputed questions of fact, with the contesting respondents (father and son) tracing their title to an unbroken, unimpeachable chain of registered documents dating back to 1929, the appellant could not have invoked the writ jurisdiction of the High Court, after having got an assignment deed from the Indian Bank just a few years ago in 2007; (iii) that the very right of the Indian Bank to claim the creation of a mortgage in their favour, has come under cloud after the officials of the Indian Bank and the borrowers got convicted by the Special Court for the CBI cases in Calendar Case No. 36 of 1998 for various offences punishable under Section 120B read with Sections 420, 467, 471 etc., and Section 13(2) read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988; (iv) that the attempt of the appellant to invoke the writ jurisdiction of the High Court was in the teeth of the judgment of this Court in SLP(Crl.)No.838 of 2015 dated 27.02.2015, which arose out of proceedings under Section 145 of the Code of Criminal Procedure, 1973; (v) that despite this Court affirming the judgment of the High Court relegating the appellant to a civil court, the appellant took a chance by invoking the writ jurisdiction of the High Court suppressing material facts; and (vi) that the appellant, whose very locus to stake a claim on the properties is disputed, was rightly non suited by the High Court.

6. Mr. Atul Nanda, learned senior counsel appearing for one of the parties, while adopting the contentions of Mr. Shyam Divan, added that when the Special Court for CBI cases has found the very creation of the mortgage in favour of Indian Bank to be a product of fraud and forgery, an institution claiming to be the assignee of the mortgagee could not have invoked the writ jurisdiction of the High Court, especially after having got impleaded in the civil suits.

7. Mr. Mukul Rohatgi, learned senior counsel appearing for one of the contesting respondents invited our attention to the statutory provisions and the decision of this Court in *Rajni Tandon vs. Dulal Ranjan Ghosh Dastidar & Anr*¹, and contended that the requirement of authentication of PoA by the Registrar under Section 33(1), was mandatory only in cases where the person executing the document is different from the person presenting it for registration and that wherever the agent himself has signed the deed which is presented for registration, he becomes the executant of the document, leaving no role for the Registrar to probe.

8. We have carefully considered the above submissions. 1 (2009) 14 SCC 782

9. The limited question that arises for our consideration is as to whether the invocation of the writ jurisdiction of the High Court by the appellant was right, especially when civil suits at the instance of third parties are pending and when the appellant had already been directed by this Court, in proceedings arising under section 145 of the Code of Criminal Procedure, to move the civil court?

10. To enable (or disable?) us to find an answer to the above question, the learned counsel on both sides took us through some provisions of the Registration Act, 1908 and a few decisions of this Court. We shall now take a look at them.

11. There is and there can be no dispute about the fact that while the Registering Officer under the Registration Act, 1908, may not be competent to examine whether the executant of a document has any right, title or interest over the property which is the subject matter of the document presented for registration, he is obliged to strictly comply with the mandate of law contained in the various provisions of the Act. Therefore let us take a look at the scheme of the Act.

12. The Registration Act, 1908 is divided into XV parts. Part III comprising of Sections 17 to 22 contains provisions relating to registerable documents; Part IV of the Act contains prescriptions regarding the time of presentation of documents for registration; Part V contains provisions prescribing and regulating the place of registration of documents; Part VI contains provisions relating to presentation of documents for registration and the procedure on admission and denial of execution; Part VII contains provisions for enforcing appearance of executants and witnesses; Part XI contains provisions relating to the duties and powers of Registering Officers and Part XII contains provisions relating to refusal to register and the remedies available against such refusal.

13. Before we look at the relevant provisions of the Registration Act, 1908, it is necessary to note that “Registration of deeds and documents” falls in Entry 6 of List III (Concurrent List) of the SEVENTH SCHEDULE of the Constitution. Therefore, the Registration Act, 1908, which is a Central Act, can be seen as something which provides only a template upon which the States are entitled to make amendments. This is why amendments by States galore in the Registration Act, 1908. Therefore, any interpretation of the provisions of the Act, should be in consonance with the scheme of the Act as applicable to the State involved in the litigation. For instance, registration of certain documents may be optional in some States but mandatory in some other States. Therefore, the interpretation made by this Court, of a provision as amended in its application to a particular State, cannot be applied blindly while interpreting the same provision as applicable to another State. Keeping this aspect in

mind, let us now peep into the statutory provisions.

14. Section 32 of the Act mandates that every document to be registered under the Act, irrespective of whether such a registration is compulsory or optional, shall be presented by any of the persons mentioned therein. Section 32 reads 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 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.”

15. The words “such person” appearing in clauses (b) and (c) of Section 32, correlate to the words “person executing or claiming under the same”, appearing in clause (a) of Section 32. In other words, clause (a) covers both the executant as well as the claimant of the document. Therefore, clauses (b) and (c) cover several persons who may represent the executant or the claimant. Since the controversy in several decisions of this Court has revolved around clause (c) of Section 32, it would be useful, for the purpose of easy appreciation, to break clause (c) into its several components as follows:

(i) by the agent of the person executing the document;

(ii) by the agent of the person claiming under the document;

(iii) by the agent of the representative of the person executing the document;

(iv) by the agent of the representative of the person claiming under the document;

(v) by the agent of the assign of the person executing the document;

(vi) by the agent of the assign claiming under the document. It must be noted that the word “agent” appearing in clause (c) of section 32 goes not only with the words “such a person”, but also with the words “representative” and “assign”. This is for the reason that ‘representative’ and ‘assign’ are independently covered by clause

(b) and hence if these words do not go with the word ‘agent’ then their appearance in clause (c) would be redundant.

16. By virtue of the 2nd part of clause (c) of Section 32, it is necessary that if a document for registration is presented by any of the aforementioned six categories of persons, he should have been “duly authorized by a PoA executed and authenticated in the manner mentioned in the other provisions of the Act”. In other words, in cases where a document is presented for registration by the agent, (i) of the executant; or (ii) of the claimant; or (iii) of the representative or assign of the executant or claimant, the same cannot be accepted for registration unless the agent is duly authorized by a PoA executed and authenticated in the manner provided in the Act.

17. Section 33 contains prescriptions regarding the types of PoA, which alone shall be recognized, for the purposes of Section 32. Section 33 reads as follows:□

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 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 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 Court.

(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.”

18. A careful look at Sections 32 and 33 will show that while speaking about PoA, these provisions do not use the word “registration”. While Section 32(c) uses the words “executed and authenticated”, Section 33(1) uses the words “recognised” and “authenticated”. Therefore it is clear that the word “authenticated” is not to be understood to be the same as “registered”. The reason why we say so is that Section 33(1) speaks only about authentication and not registration and clauses (a), (b) and (c) of Section 33(1) provides the list of persons competent to authenticate a PoA. Persons who are empowered by clauses (a), (b) and (c) of sub-section (1) of Section 33 to authenticate a PoA are as follows: □

(i) The Registrar or the Sub-Registrar within whose district or sub-district the principal resides, if such principal resides, at the time of execution of the PoA, in any part of India to which this Act applies;

(ii) Any Magistrate, if the principal resides in any part of India where this Act is not in force;

(iii) A Notary Public, any Court, Judge, Magistrate, Indian Consul, Vice Consul or Representative of the Central Government, if the principal does not reside in India.

19. It may be seen from the list of persons indicated above, that not all of them are Registrars and Sub-Registrars appointed in terms of Section 6 of the Registration Act, 1908. Under the Act, the power of registration is conferred only upon the Registrars and Sub-Registrars appointed under the Act. But clauses (b) & (c) of Section 33(1) speaks about persons other than Registrars and Sub-Registrars. This is why, Section 32(c) as well as Section 33 use only the expression “authenticated” and not the word “registered”. But unfortunately several Courts have mixed up these two words, resulting in applying the test in terms of Sections 17 and 18 for determining the validity of a PoA.

20. In fact the distinction between “authentication” and “registration” is spelt out very clearly in the Tamilnadu Registration Rules. It may be noted here that section 69(1) of the Registration Act, 1908, empowers the Inspector General of Registration (i) to exercise general superintendence over all the registration offices in the territories under the State Government; and (ii) to make rules consistent with the Act, in respect of matters provided in clauses (a) to (j) therein. These rules, by virtue of

sub-section (2) of section 69, are required to be submitted to the State Government for approval and to be published in the official gazette after such approval. The rules so made in terms of section 69, in the State of Tamil Nadu, provide clarity on the distinction between authentication and registration.

21. Rules 48 and 49 of the Tamilnadu Registration Rules read as follows:

48. A power of attorney may be brought to a registering officer (1) for authentication, or (2) for registration, or (3) for both authentication and registration. In the first case, he shall merely make the entry prescribed for authentication; in the second case, he shall register the power in the same manner as any other document; and in the third case, he shall first authenticate the power and then admit it to registration in the usual manner.

49. Although a power of attorney may be registered like any other instrument, it is not valid for registration purposes unless authenticated. When a power of attorney is brought to a registering officer by a person who does not understand the distinction between authentication and registration, the registering officer should explain the difference to him and give him such information as may be necessary.

22. After pointing out the distinction between authentication and registration of a PoA, Rule 52 indicates the duty to be performed by the Registering Officer, at 2 points of time, namely (i) at the time of authentication; and (ii) when the power is revoked. Rule 52 reads as follows:

52. (i) An abstract in the form printed in Appendix III shall be retained of each power of attorney authenticated by a registering officer whether such power is general or special, registered or not registered. The abstract shall be signed by the registering officer; and shall be filed in a separate file with a serial number along with other powers retained under rule 46.

The notes of interlineations, blanks, erasures and alterations made by the registering officer on the original power shall be copied verbatim in the abstract.

(i) (a) Each registration office shall maintain a register of all revocations of powers of attorney registered in, or communicated to it.

(b) When notice of a revocation is given to a registering officer, he shall send an intimation of the same to such other offices as may be specified by the person revoking the power.

23. In fact, there is a separate chapter in Chapter X of the Registration Rules of Tamilnadu, devoted to deeds of PoA. Rules 48, 49 and 52 which we have extracted above, are part of the said chapter. Rule 46 spells out the procedure to be followed by the Registering Officer when a document is presented for registration under a general PoA and the procedure to be followed when the document is presented under a Special PoA. It reads as follows:

46. (i) If a document is presented for registration under special power of attorney, the power shall be retained and filed in the office with the following endorsement
..... No..... of 19

Presented in connection with document No..... of 19..... of Book....., Vol.....

Date: Signature of Registering Officer.

(ii) If a document is presented for registration under general power of attorney, the power shall be returned with the following endorsement:

Presented in connection with document No..... of 19..... of Book.....,
Vol.....

Date: Signature of Registering Officer.

(iii) When a document is presented for registration by a person entitled to present it and execution is admitted by an agent under a power of attorney, the following endorsement shall be made on the power, which shall be retained and filed, or returned, according as it is a special or a general power *No..... of 19.....
Presented in connection with document No..... of 19..... of Book.....,
Vol.....

Date: Signature of Registering Officer.

24. Having seen (i) the distinction between authentication and registration of a PoA; (ii) the obligation imposed by the Act and the Rules, upon the Registering Officer while authenticating and/or registering a PoA; (iii) the necessity for the Registering Officer to maintain a track of revocation of deeds of PoA; and (iv) the different requirements of Rule 46, relating to a document presented under a general PoA and a document presented under a special PoA, let us now turn to the other provisions.

25. Section 34 of the Act contains provisions regarding the enquiry to be undertaken by the Registering Officer before registration. Section 34, in its application in the State of Tamilnadu, as amended by Tamilnadu Amendment Act 28 of 2000, 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 (and in the case of document for sale of property, the persons claiming under that document)², 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;

2 Vide Tamil Nadu Act 28 of 2000, sec.3

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document (or they are claiming under 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.

26. Sub-section (3) of Section 34 imposes three obligations upon the Registering Officer. These obligations are:

(i) To enquire whether or not such document was executed by the person by whom it is claimed to have been executed;

(ii) To satisfy himself as to the identity of the person appearing before him and claiming to have executed the document;

(iii) To satisfy himself about the right of any person appearing as a representative, assign or agent, to so appear;

27. We may note that Sections 32(c), 34(1) and 34(3)(c) use the expressions ‘agent’, ‘representative’ and ‘assign’. Though in common parlance, we understand the power of attorney agent of a person to be the representative of the principal, the words “agent” and “representative” are used in Sections 32(c) and 34(3)(c) to mean 3 Vide Tamil Nadu Act 28 of 2000, sec.3 different persons. The word “representative” is defined in Section 2(10) of the Registration Act “to include the guardian of a minor and the committee or other legal curator of a lunatic or idiot”. The words “agent” and “assign” are not defined in the Act. Therefore, we may justifiably borrow the definition of the expression

“agent” from Section 182 of the Indian Contract Act, 1872, which defines an “agent” “to mean a person employed to do any act for another or to represent another in dealings with third person”.

28. Keeping the above definitions in mind, if we go back to Section 32(c) it could be seen that whenever the agent of, (i) the executant;

(ii) the claimant; (iii) a representative; or (iv) an assign, presents a document for registration, (1) he should have been authorised by PoA and (2) such PoA should have been executed and authenticated in the manner provided in clauses (a), (b) or (c) of sub-Section (1) of Section 33. The requirement of registration depends upon the State amendments.

29. What is covered by Section 32 (c) read with Section 33(1) is something different from what is covered by Section 34(3). While Section 32(c) read with Section 33(1) speaks about the entitlement of the person to present a document for registration, Section 34(3) speaks about the enquiry to be conducted and the satisfaction to be arrived at by the Registering Officer. Section 34(3)(c) imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. This prescription has to be read with rule 46 of the Tamilnadu Rules.

30. Before we complete our discussion on the statutory scheme, it is necessary to take note of few more provisions, applicable in the State of Tamilnadu, which are of relevance. By Tamilnadu Act No.29 of 2012, Section 17(1) of the Registration Act, 1908 was amended so as to insert clauses (f), (g), (h) and (i). Clause (h) so inserted, reads as follows: “Instruments of power of attorney relating to immovable property other than those executed outside India”

31. Simultaneously, Section 28 was also amended by the State of Tamilnadu to incorporate a proviso to the effect that a document mentioned in Section 17(1)(h) may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides.

32. By the very same Tamilnadu Amendment Act 29 of 2012, two more provisions were also inserted in the Registration Act, 1908. One was Section 34-B and another was Section 64A. Section 34B reads as follows: “34-B. Procedure for Registration of document of Power of Attorney relating to immovable property. Subject to the provisions of this Act, no document of Power of Attorney relating to immovable property shall be registered unless passport size photographs and finger prints of the principal, the agent and of the identifying witnesses are affixed to the document and the agent has also signed such document.”.

Section 64A reads as follows: “64A. Procedure where instrument of Power of Attorney presented in office of Sub-Registrar relates to immovable property not situate in sub-district. Every Sub-Registrar on registering an instrument of Power of Attorney including instrument of revocation or cancellation of such Power of Attorney relating to immovable property not situate in his own sub-district, shall make a copy and send the same together with a copy of the map or plan (if any) mentioned in section 21, to every other Sub-Registrar in whose sub-district the whole or any part of such property is situate and such Sub-Registrar shall file the same in his Book No.1:

Provided that where such instrument relates to immovable property in several districts, shall forward the same to the Sub-Registrars concerned, under intimation to the Registrar of every district in which any part of such property is situate."

33. At this stage we should record that the dispute on hand relates to a document executed and registered much before the Tamilnadu Amendment Act 29 of 2012. But still we have taken note of it, not for the purpose of applying it to this case, but for the purpose of flagging certain concerns. Now that we have noticed various provisions of the Act, let us see some factual aspects and then deal with the contentions on both sides.

34. In the case on hand, the sale deed dated 05.07.2007 executed by the father S.P. Velayutham, in favour of his son Amar, contained a specific recital to the effect that the owners of the property had appointed S.P. Velayutham, as their Power of Attorney, by a deed dated 23.08.2006 to sell the property. But far from authorising the power agent to sell the property, clause 7 of the registered deed of PoA dated 23.08.2006, on the basis of which the sale deed was executed, actually contained an express prohibition from creating any encumbrance on the property. Clause 7 of the registered PoA dated 23.08.2006 reads as follows : "(7) To negotiate with any third party/s claimant/s including broker/s take the Banks and other financial institutions claimant/s if any in the schedule mentioned properties and to settle such claims and on, this behalf our attorney is empowered to do all acts, deeds and things. To enter upon the schedule mentioned properties for the survey of, the same. The power agent herein appointed shall have no power to encumber the schedule mentioned properties for the survey of the same. The power agent herein appointed shall have no power to encumber the schedule mentioned properties without the written consent of us."

35. Apart from the fact that clause 7 extracted above expressly prohibited the power to encumber, there was also no stipulation authorising S.P. Velayutham to appear before any Registering Officer for the purpose of sale, as an agent. Though clause 5 authorised the agent to appear before the Registrar and to admit execution, the same was specifically in relation to the execution of gift deeds in favour of municipalities, corporations or other authorities, for the purpose of development of the layout, formation of the roads etc. Similarly, clause 6 of the deed of PoA also contained a limited power to appear before the Sub-Registrar, but the same was also restricted to certain things mentioned in clause 6 itself.

36. Interestingly, the contesting respondents relied upon another unregistered deed of PoA dated 07.06.2007, which contained a power to sell. Despite this document being dated 07.06.2007 and despite the date of execution of the sale deed being 05.07.2007, there was no reference to this PoA in the sale deed. This deed of PoA has surfaced much later and the fraudulent nature of this deed of PoA is patently visible, in view of certain recitals contained therein. The relevant recitals contained in the unregistered PoA dated 07.06.2007 reads as follows: "...AND WHEREAS, under the said General Power of Attorney Deed though we have intended to confer power including to sell the Schedule mentioned properties under clauses of the said General Power of Attorney Deed, by inadvertence and over sight the said clause relating to power to sell the schedule mentioned properties was omitted to be included therein;

AND WHEREAS, now our Agent Mr. S.P. Velayutham has found the said mistake and requested for execution of additional and supplemental General Power of Attorney Deed 'empowering him to sell the schedule mentioned properties' and to receive the sale consideration therefor. In continuation of the earlier General Power of Attorney Deed dated 23.08.2006 referred to above,;

AND WHEREAS, we as the Principals under the General Power of Attorney Deed dated 23.08.2006 are satisfied with, the mistake pointed out by our Agent and 'accordingly we also agreed' to execute this General Power of Attorney Deed and as such we are appointing Mr. S.P. Velayutham, son of Sabapathy, Hindu; aged about 50 years, residing at No. 5, Sabarj, Street, Madlpakkam, Chennai-600091 as our General Power of Attorney to do the following acts; deeds and things relating to the properties detailed in the Schedule hereunder..." The above recitals contain a totally false statement to the effect, (i) that a power of sale was intended to be conferred under the original PoA, but it was omitted due to inadvertence and oversight; and (ii) that after the mistake was pointed out, the Principals decided to execute the additional document. These recitals are manifestly false and are contrary to clause 7 of the registered PoA dated 23.08.2006. In any case, this PoA dated 07.06.2007 was not what was produced or relied upon at the time of registration of the sale deed dated 05.07.2007.

37. Therefore, if the Registering Officer had verified the recitals contained in the registered deed of PoA dated 23.08.2006, to see if the power agent had the power to do what he did, he would have refused the registration of the document. Rule 46 of the Tamilnadu Registration Rules ordains what the Registering Officer is obliged to do, (i) when a document is presented for registration under a special PoA; and (ii) when a document is presented for registration under a general PoA. It was the failure on the part of the Registering Officer to do what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have relegated the parties to the civil court.

38. Two main contentions are raised on behalf of the contesting respondents, namely (i) the restraint that is expected of the High Court, in a writ petition arising under Article 226, in respect of matters which require detailed factual investigation; and (ii) the limited scope of the enquiry that could be conducted by the Registering Authority under Sections 32 to 34 of the Registration Act, 1908.

39. In support of the 1st contention, the learned senior counsel appearing for the respondents relied upon the following decisions, (i) Thansingh Nathmal vs. Superintendent of Taxes⁴, (ii) Sarvepalli Ramaiah vs. District Collector⁵; (iii) Latif Estate Line India Ltd. vs. Hadeeja Ammal⁶.

40. Out of the aforesaid decisions, the decision in Thansingh (supra) arose out of the orders of assessment passed under the Assam Sales Tax Act, 1947. The order passed by the original authority was challenged before the appellate authority and then the revisional authority and thereafter in a writ petition under Article 226. It was in such circumstances that this Court held that the High

Court had no power to decide questions of fact which are exclusively within the competence of the taxing authorities. Similarly, the decision in Sarvepalli Ramaiah (supra), arose out of proceedings for the grant of Ryotwari Patta. The dispute travelled to the High Court after an elaborate enquiry by the District Collector. It was in that context that 4 (1964) 6 SCR 654 5 (2019) 4 SCC 500 6 2011 (2) CTC 1 this Court examined the scope of the power of judicial review under Article 226.

41. The Full Bench decision of the Madras High Court in Latif Estate Line India Ltd. (supra), arose out of a controversy as to whether a deed of cancellation of sale can or cannot be accepted for registration. The Full Bench explained the circumstances under which a deed of cancellation, presented by both the vendor and the purchaser, can be accepted. But the Full Bench categorically held that a deed of unilateral cancellation cannot even be accepted for registration. This proposition actually goes in support of the contention of the appellant that the Registering Officer has a duty to see whether the document presented for registration has been presented in accordance with law or not. In fact the decision of the Full Bench itself arose out of a writ petition challenging the act of the Registering Authority in allowing the registration of the deeds of unilateral cancellation of sale deeds.

42. The reliance placed by the respondents on the decision in Satya Pal Anand vs. State of Madhya Pradesh⁷, is misplaced. The decision 7 (2016) 10 SCC 767 in Satya Pal Anand (supra) arose out of a case where the allotment of a plot made by a cooperative society was cancelled unilaterally by a deed of extinguishment, by the society. The allottee raised a dispute which ended in a compromise but notwithstanding the compromise the allottee raised a dispute under the relevant provisions of the Madhya Pradesh Cooperative Societies Act, 1960. When the dispute was pending, the allottee moved the Registering Officer for the cancellation of the deed of transfer executed in favour of the subsequent purchasers. When the Registering Authority refused to comply with the demand, a writ petition was moved seeking a declaration that the deed of extinguishment and the subsequent sales were null and void. The High Court dismissed the writ petition on the ground that a dispute was already pending before the competent authority under the Cooperative Societies Act. When the order of dismissal passed by the High Court was challenged before this Court, there was a difference of opinion as to whether the issue was directly covered by the decision of this Court in Thota Ganga Laxmi and Another vs. Government of Andhra Pradesh and Others⁸. Therefore, the matter was placed 8 (2010) 15 SCC 206 before a three Judge Bench. While upholding the decision of the High Court, the three member Bench held in Satya Pal Anand (supra) that there was no rule in the State of Madhya Pradesh similar to Rule 26(k)

(i) of the Rules issued by the State of Andhra Pradesh under Section 69 of the Registration Act, 1908 and that therefore the decision in Thota Ganga Laxmi (supra) cannot be invoked.

43. The decision in Satya Pal Anand (supra) cannot go to the rescue of the contesting respondents, for the simple reason that the writ petitioner in that case, first accepted a compromise and then raised a dispute under the Cooperative Societies Act (which is akin to a civil suit) and thereafter approached the High Court under Article 226 for a declaration, which he could have sought only in the already instituted proceedings. The very fact that Thota Ganga Laxmi was sought to be distinguished on the basis of the express provision contained in the Rules of the State of A.P., would

indicate that there is no absolute bar for the High Court to exercise jurisdiction under Article 226.

44. Both sides relied upon the decision of this Court in *Rajni Tandon* (supra). The question that arose in *Rajni Tandon* (supra) was as to whether the PoA required authentication by the Registering Authority, when a sale deed executed by the power agent himself is presented for registration by the power agent. This question was couched in a different language by this Court in paragraph 19 of the Report in *Rajni Tandon* (supra) 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.”

45. After analysing Sections 32 and 33 of the Registration Act, 1908 this Court came to the conclusion that whenever an agent is authorised to execute a document and present the same for registration and he accordingly executes the document in terms of PoA, he becomes the actual executant in so far as the Registering Authority is concerned and that therefore he becomes entitled under Section 33(a) to present it for registration. This Court further held that the authentication in terms of Section 33(1)(a) is required only in cases where Section 32(c) is invoked. Paragraph 33 of the Report in *Rajni Tandon* is reproduced for easy appreciation as follows: □“33. Where a deed is executed by an agent for a principal and the same agent signs, appears and presents the deed or admits execution before the registering officer, that is not a case of presentation under Section 32(c) of the Act. As mentioned earlier the provisions of Section 33 will come into play only in cases where presentation is in terms of Section 32(c) of the Act. In other words, only in cases where the person(s) signing the document cannot present the document before the registering officer and gives a power of attorney to another to present the document that the provisions of Section 33 get attracted. It is only in such a case, that the said power of attorney has to be necessarily executed and authenticated in the manner provided under Section 33(1)(a) of the Act.”

46. But we are not concerned in this case with the question whether the PoA relied upon by the power agent S.P. Velayutham in the sale deed executed by him, required authentication and whether the Registering Authority committed a blunder in accepting the sale deed presented by him for registration, without verifying the authentication of the PoA or not. We are concerned in this case with the most fundamental question whether the Registering Authority could have turned a blind eye to the fact that the deed of PoA on the basis of which the sale deed was executed as well as presented for registration by S.P. Velayutham contained an express prohibition for the power agent to create an encumbrance on the property, especially in the light of the Rules framed under section 69 of the Act. The decision in *Thota Ganga Laxmi*, was in a way approved by a 3□member Bench in *Satya Pal Anand*, on the basis of the rules in the State of Andhra Pradesh, showing thereby that statutory rules also play a crucial role. *Rajni Tandon* is not an authority for holding that the registering Authority has no duty even to verify the presence or absence of a power of sale in the deed of PoA, especially in the light of the rules.

47. In *Amarnath vs. Gian Chand* 9, this Court was concerned with a case arising out of peculiar circumstances. The said case arose out of a civil suit for a declaration of title and for permanent injunction. The plaintiff in that case entered into an oral agreement for the sale of his property and

gave a special PoA in favour of the second defendant. But the agreement fell through and hence the plaintiff took back the original deed of PoA from the second defendant. However, the second defendant applied for a copy of the PoA and thereafter sold the property in collusion with the first defendant. Upon coming to know of the same, the original owner filed the suit as aforesaid, contending that the second defendant had no valid power and that the Registering Authority ought to have verified this aspect from the second defendant under Sections 32, 33 and 34 of the Registration Act, 1908. After trial, the trial court dismissed the suit on the ground that the cancellation 9 (2022) SCC Online SC 102 of the PoA also required registration and that the mere writing of the word “cancelled” on the original PoA cannot be taken to mean that the power was validly cancelled. The First Appellate Court confirmed the judgment and decree of the trial court. While reversing the judgments of the trial court and the Appellate Court, the High Court opined that under Section 18A of the Registration Act as applicable to the State of Himachal Pradesh, by way of an amendment under Himachal Pradesh Act 2 of 1969, the PoA ought to have accompanied the sale deed presented for registration and that if the Sub-Registrar had ensured this, he would have found that in view of the cancellation of the power, the agent ceased to have any power of sale. This decision of the High Court was reversed by this Court in *Amar Nath* (supra), after an exhaustive analysis of the provisions of the Registration Act, 1908. While doing so, this Court held in paragraph 26 as follows: “26. 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.”

48. Though the passage extracted above, lends credence to the contention of the learned senior counsel for the contesting respondents, there is some difficulty in accepting the same as a proposition of law of universal application. There are two reasons why we say so. They are: (i) as we have stated elsewhere, the interpretation of the provisions of the Registration Act, would depend upon the State amendments and the Rules framed in each State under Section 69; and (ii) in *Amar Nath*, the challenge to the sale was before the civil court, not merely on the ground that the Registering Authority failed to perform his duties, but also on the ground that the defendant conveyed what he could not have. Unfortunately, the parties in *Amar Nath*, appear to have gone on a wild goose chase. Instead of focussing their attack on the agent (who was the defendant in the suit), for executing the document without any power, the parties focussed their attack on the registering officer for permitting the registration of the document. This resulted in their failure. If a civil court finds that the sale by a power agent was unauthorised, then the question whether the Registering Officer performed his duties properly or not, would lose its significance. An attack on the authority of the executant of a document, is not to be mixed with the attack on the authority of the Registering Officer to register the document. The distinction between the execution of a document and the registration of the document is to be borne in mind while dealing with these questions.

49. Actually, the registration of a document comprises of three essential steps among others. They are, (i) execution of the document, by the executant signing or affixing his left hand thumb impression; (ii) presenting the document for registration and admitting to the Registering Authority the execution of such document; and (iii) the act of registration of the document.

50. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.

51. The third step namely the act of registration, is something that the Registering Authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the Registering Officer is the actor in the third step. Apart from the third step which is wholly in the domain of the Registering Authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration.

52. Thus, the first two steps in the process of registration are substantial in nature, with the parties to the document playing the role of the lead actors and the Registering Authority playing a guest role in the second step. The third step is procedural in nature where the Registering Authority is the lead actor.

53. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. It must be noted that when a High Court, in exercise of its jurisdiction under Article 226 finds that there was utter failure on the part of the Registering Authority to stick to the mandate of law, the Court merely cancels the act of registration, but does not declare the very execution of the document

to be null and void. A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not the Registering Authority performed his statutory duties in the manner prescribed by law. It is well settled that if something is required by law to be done in a particular manner, it shall be done only in that manner and not otherwise. Examining whether the Registering Authority did something in the manner required by law or otherwise, is certainly within the jurisdiction of the High Court under Article 226. However, it is needless to say that the High Courts may refuse to exercise jurisdiction in cases where the violations of procedure on the part of the Registering Authority are not gross or the violations do not shock the conscience of the Court. Lack of jurisdiction is completely different from a refusal to exercise jurisdiction.

54. In the case on hand, the appellant has not sought a declaration from the High Court that the execution of the document in question was null and void or that there was no title for the executant to transfer the property. The appellant assailed before the High Court, only the act of omission on the part of the Registering Authority to check up whether the person who claimed to be the power agent, had the power of conveyance and the power of presenting the document for registration, especially in the light to the statutory rules. Therefore, the learned Single Judge rightly applied the law and allowed the writ petition filed by the appellant, but the Division Bench got carried away by the sound and fury created by the contesting respondents on the basis of (i) pendency of the civil suits; (ii) findings recorded by the Special Court for CBI cases; and (iii) the order passed by this Court in the SLP arising out of proceedings under Section 145 Cr.P.C.

55. Arguments were advanced on the question whether the Registering Authority is carrying out an administrative act or a quasi-judicial act in the performance of his statutory duties. But we think it is not relevant for determining the availability of writ jurisdiction. If the Registering Authority is found to be exercising a quasi-judicial power, the exercise of such a power will still be amenable to judicial review under Article 226, subject to the exhaustion of the remedies statutorily available. On the contrary if the Registering Authority is found to be performing only an administrative act, even then the High Court is empowered to see whether he performed the duties statutorily ordained upon him in the manner prescribed by law.

56. Much ado was sought to be made by contending that the appellant approached the High Court without disclosing the previous orders of the High Court and this Court, relegating them to civil court for the adjudication of their claim. Reliance was also placed in this regard on the decision of this Court in *Raj Kumar Soni vs. State of U.P.*¹⁰.

57. But we do not agree. The previous orders directing the appellant to go to the civil court arose out of the proceedings under Section 145 of the Cr.P.C. But it does not mean that the recourse to civil court was seen as the only panacea for all ills.

10 (2007) 10 SCC 635

58. Therefore, in the light of (i) the Tamilnadu Registration Rules discussed above; (ii) the statutory scheme of Sections 32 to 35 of the Act as well as other provisions as amended by the State of

Tamilnadu; and (iii) the distinction between a challenge to the first 2 steps in the process of execution of a document and the third step concerning registration, we are of the considered view that the Division bench of the High Court was not right in setting aside the order of the learned single Judge. If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice.

59. Therefore, in fine, the appeals are allowed, the impugned order of the Division Bench is set aside and the order of the learned single Judge is restored. There will be no order as to costs.

.....J. (Hemant Gupta)J. (V. Ramasubramanian) New
Delhi May 04, 2022