

A POWER OF ATTORNEY IS TO BE CONSTRUED STRICTLY**INTRODUCTION:**

*The Apex Court in Mrs. Umadevi Nambiar v/s Thamarasser Roman Catholic Diocese Rep. by its Procurator Devssia's Son Rev. Father Joseph Kappil*¹ observed that a power of attorney was to be construed strictly and that a power to sell could not be inferred from a power of attorney.

FACTS:

The suit property belonged to one Mr. Ullattukandiyil Sankunni, which thereafter devolved upon his two daughters, Mrs. Umadevi Nambiar, the Appellant and Smt. Rane Sidhan ("**said Agent**").

On 21st July, 1971, the Appellant executed a general Power of Attorney in favour of the said Agent under a registered document bearing No. 35 of 1971 ("**said Power**").

The said Power was cancelled on 31st January, 1985.

However, prior to the said Power being cancelled, the said Agent assigned/released certain properties by executing four documents in favour of third parties.

The Appellant was constrained to file two suits bearing O.S. No. 16 of 1986 ("**First Suit**") and O.S. No. 27 of 1988 ("**Second Suit**"), against the assignees/releasees.

A preliminary decree came to be passed in the Second Suit on 7th January, 1989, pursuant to which it was brought to the knowledge of the Appellant that the assignees/releasees of the suit property had in turn assigned/released the suit property in favour of the Respondent herein (Thamarasser Roman Catholic Diocese,

represented by its Procurator Devssia's Son Rev. Father Joseph Kappil).

In view of the above, the Appellant filed yet another suit bearing O.S. No. 130 of 1989 ("**Third Suit**"), for seeking partition and separate possession of her half share in the suit property. In the Third Suit, the Trial Court *inter alia* observed that that the said Power did not confer any power to sell the suit property and therefore, the said Agent was not entitled to alienate the suit property. The original alienations made in years 1981 and 1982 by the said Agent were null and void on account of lack of express power to sell and accordingly, the subsequent sale made by those alienees in favour of the Respondent was also held to be invalid. In view of these observations made, the Trial Court decreed the Third Suit in favour of the Appellant.

The Respondent herein, preferred an appeal before the High Court. The High Court *inter alia* observed that although the said Power did not contain an express power to sell the suit property and that the transferee could not be said to have exercised reasonable care as required under Section 41 of the Transfer of Property Act, 1882, the Appellant was not entitled to a decree for partition as the Appellant had failed to seek cancellation of the alienations of the suit property. The High Court allowed the

¹ Civil Appeal No. 2592 of 2022

appeal in favour of the Respondent. (“**Impugned Order**”)

Aggrieved by the order of the High Court, the Appellant preferred an appeal before the Apex Court.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was:

Whether a power to sell could be inferred from a general Power of Attorney which did not expressly contain a power to execute a sale deed?

JUDGMENT:

The Apex Court observed that the said Power executed by the Appellant in favour of the said Agent contained provisions expressly empowering the said Agent to (i) grant leases, (ii) make borrowals if and when necessary with or without security, and to execute and register all documents in connection therewith, and (iii) to sign in her own name, documents for and on behalf of the Appellant and present them for registration.

The Apex Court observed that there was no clause in the said Power authorizing or empowering the said Agent to sell the suit property. The power to sell could not be inferred from a document of Power of Attorney.

The Apex Court noted that the Trial Court as well as the High Court were *ad idem* on the finding that the said Power did not confer any power of sale.

The Apex Court observed that the High Court had failed to appreciate that the possession of an agent under a deed of Power of Attorney was also the possession of the principal and that any unauthorized sale made by an agent would not tantamount to the principal parting with possession.

The Apex Court relied on its earlier judgement in ***Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust***², wherein it was held that a document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii) to admit execution before the Registering Authority.

The Apex Court observed that it was a fundamental principle of the law of transfer of property that “*no one can confer a better title than what he himself has*” (*Nemo dat quod non habet*). In view thereof, in the present matter, as the said Agent did not have any power to sell the suit property to third parties who in turn sold it to the Respondent, such third parties could not have derived any valid title to the suit property. Accordingly, such third parties could not have conveyed any title to the Respondent.

The Apex Court allowed the appeal by reversing and setting aside the Impugned Order and restored the decree of the Trial Court.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² (2012) 8 SCC 706