

POWER OF ATTORNEY IS OF NO CONSEQUENCE IF NEITHER SALE DEED IS EXECUTED NOR ANY ACTION IS TAKEN BY ITS HOLDER

INTRODUCTION:

*The Apex Court in a recent decision in **Ghanshyam v. Yogendra Rathi**¹ observed that a power of attorney is of no consequence if neither the sale deed is executed nor any action is taken by the holder of the Power of Attorney.*

FACTS:

On 10.04.2002, the defendant-appellant, who owned a premises, which is a part of H-768, J.J. Colony, Shakarpur, Delhi ("**Premises**"), entered into an Agreement to Sell with the plaintiff-respondent for the sale of the Premises. The plaintiff-respondent paid the entirety of the sale consideration, and on the very same day, the defendant-appellant made a will leaving the Premises to the plaintiff-respondent. Furthermore, the defendant-appellant gave the plaintiff-respondent a Power of Attorney. Despite the fact that the plaintiff-respondent obtained possession of the abovementioned premises, no sale deed was executed.

The plaintiff-respondent soon thereafter licensed a part of the Premises to the defendant-appellant as a licensee for three months. However, once this term expired, the defendant-appellant refused to vacate the licensed portion of the Premises. As a result, the plaintiff-respondent filed a suit against the defendant-appellant for eviction from the Premises and collection of mesne profits. The plaintiff-respondent asserted ownership based on the abovementioned Agreement to Sell, Power of Attorney, a memo of possession, a receipt of payment of sale consideration, and the abovementioned will dated 10.04.2002. The

defendant-appellant claimed that the plaintiff-respondent's documents were manipulated on blank papers. However, no evidence was presented to back up this assertion. It was not the defendant-appellant's case that the abovementioned documents were not executed or that the consideration had not been paid.

The Trial Court determined that there was no evidence to show that any of the abovementioned documents were obtained through misrepresentation, manipulation, or deception of the defendant-appellant. The plaintiff-respondent had established his ownership of the Premises. As the defendant-appellant's license had been determined, the trial court held that the plaintiff-respondent was entitled to an eviction decree and payment of mesne profits, albeit not at the rate sought by the respondent, but at the rate of Rs. 1000/- per month for the use and possession of the Premises which was in issue.

Aggrieved by the order of the Trial Court the defendant-appellant preferred an appeal before the first appellate court. Here, once again an order was passed against the defendant-appellant and hence being aggrieved once more, the defendant-appellant preferred a second appeal before the High Court. The High Court dismissed the second appeal, whereafter

¹ 2023 SCC OnLine SC 725

the defendant-appellant approached the Apex Court.

JUDGMENT:

The Apex Court determined that in light of the provisions of Section 54 of the Transfer of Property Act, 1882, the Agreement to Sell was not an instrument of title or a deed of transfer of property by sale and, therefore, would be unable to grant the plaintiff-respondent absolute title over the Premises. Additionally, the Agreement to Sell, the payment of the entire sale consideration, as stated in the agreement and corroborated by receipt of payment, and the fact that the plaintiff-respondent was in possession of the Premises in accordance with law, as established by the possession memo, established that the plaintiff-respondent had possessory rights over the Premises in part performance of the agreement to sell. It was also held that transferor, i.e., the defendant-appellant, had no right to interfere with the plaintiff-respondent's possessory right. The defendant-appellant's subsequent entry over a portion of the Premises was simply as the plaintiff-respondent's licensee. The defendant-appellant no longer occupied the Premises in the position of the owner.

The Court observed that the Power of Attorney executed by the defendant-appellant was of no relevance because no sale deed had been executed and no action was carried out by the power of attorney holder to bestow title upon the plaintiff-respondent on the strength of said power of attorney. The failure to execute any document by the general power of attorney

holder rendered the aforementioned general power of attorney ineffective.

It was also observed by the Court that the will executed by the defendant-appellant in favour of the plaintiff-respondent was pointless because the will, if any, would take effect upon the executant's death and not before.

The Court further stressed that recognizing agreements to sell, powers of attorney, and wills as giving rights in immovable property violated statute law, which required the execution of a document of title or transfer and its registration to confer right and title in a tangible immovable property valued over Rs. 100/-.

The Court stated that the view of the Delhi High Court in *Veer Bala Gulati v. Municipal Corporation of Delhi*² and *Asha M. Jain v. Canara Bank*³ were contrary to the legal position arising from Section 54 of the Transfer of Property Act, 1882. It was observed in these cases that an agreement to sell with payment of full consideration and possession along with an irrevocable power of attorney and other ancillary documents were a transaction to sell despite the absence of a sale deed.

The Court placed reliance upon two other decisions of the Delhi High Court in *Imtiaz Ali v. Nasim Ahmed*⁴ and *G. Ram v. Delhi Development Authority*⁵ wherein it was observed that an agreement to sell or a power of attorney are not documents of transfer and hence immovable property cannot be transferred unless a document as specified in Section 54 of the Transfer of Property Act, 1882 has been duly executed and registered under Section 17 of the Indian Registration Act, 1908. Reliance was also placed on an earlier judgement of the Apex Court in *Suraj Lamp & Industries Pvt. Ltd. v. State*

² 2003 SCC OnLine Del 345

³ 2001 SCC OnLine Del 1157

⁴ 1986 SCC OnLine Del 269

⁵ 2002 SCC OnLine Del 405

of Haryana⁶ where the Apex Court similarly disapproved of the transfer of immovable property through an agreement to sell, will and general power of attorney rather than a registered deed of conveyance.

The Court held that an agreement to sell is not legally considered a sale transaction or an instrument transferring ownership right in immovable property. However, the prospective purchaser gains possessory ownership after

due performance of his part of the contract and being lawfully in possession in accordance with Section 53A of the Transfer of Property Act, 1882. The transferor or anybody claiming under him cannot infringe on the prospective purchaser's possessory rights.

The Supreme Court concluded that there was no error or illegality by the Trial Court in as much as the plaintiff-respondent was lawfully entitled to a decree of eviction with mesne profits.

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.

⁶ (2009) 7 SCC 363