

**SUPREME COURT OF INDIA**

Rajni Tandon

Vs.

Dulal Ranjan Ghosh Dastidar

C.A.No.4671 of 2004

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

29.07.2009

**JUDGMENT**

**Dr. Mukundakam Sharma, J.**

1. The present Civil Appeal raises questions relating to interpretation of Section 32 and 33 of the *Registration Act, 1908* (hereinafter referred to as the Act).

2. The dispute pertains to a Flat situated on the ground floor of a building commonly known as Nilachal at Tollygunge, Calcutta (hereinafter referred to as the said premises). The appellant by virtue of a Registered Deed of Conveyance dated 28.02.1990 purchased the said premises from one Sri Nandlal Tantia (also referred to as Shri N. L. Tantia), Karta of M/s R. L. Tantia Sons (HUF). The said Deed of Conveyance was executed by the constituted attorney of Shri N. L. Tantia, Shri Indra Kumar Halani, on the basis of a Power of Attorney). It is pertinent of mention herein that the said premises was purchased by Shri Nandlal Tantia in his capacity as a Karta of M/s R. L. Tantia and sons (HUF) in August 1978. Mrs. Ava Rani Ghosh Dastidar (Predecessor in interest of Respondent No. 1 herein) was allowed to stay free of charge in the said premises from October, 1978 as a personal gesture of Shri Nandlal Tantia as a licensee only. Sri N. L. Tantia, Karta of M/s R. L. Tantia Sons intimated the Society about their ownership in the said premises and asked them to send all future correspondence and maintenance bills in their name. They also informed the society that Mrs. Abha Rani Ghosh Dastidar was temporarily staying in the said premises as a licensee.

3. It is the case of the Appellant that all records / documents, conveyance deed, corporation records, maintenance bills of the Nilachal Housing Society in which the said premises was located, resolution of the Nilachal Housing Society under the West Bengal Apartment Owners Act giving the detailed list of flat owners, show N. L. Tantia / R. L. Tantia and Sons as the owner of the said premises.

4. Mrs. Ava Rani Ghosh Dastidar served a notice in the year 1982 on the Society as to why maintenance bills etc. were not made out in her name. Mrs. Ava Rani Ghosh Dastidar thereafter filed Civil Suit No. 322 of 1982 against the Society asking them to include her

name as the owner and send all correspondence, maintenance bills etc to her. The President and Secretary of the Housing Society filed a reply in this Suit stating that Mrs. Ava Rani Ghosh, Dastidar could not be recognized as a owner in absence of any document to prove her ownership. She was asked to submit better documents proving her ownership.

5. M/s. R. L. Tantia Sons (HUF) served a notice dated 20.04.1983 to Mrs. Ava Rani Ghosh Dastidar revoking the licence granted and asking for vacant possession of the flat. When Smt. Ava Rani Ghosh Dastidar refused to vacate the flat, Mr. Nandalal Tantia filed Suit No. 174 of 1983 for eviction against her.

6. The Appellant herein after coming to know that a Suit for Eviction filed by his Predecessor in interest was pending moved an Application for impleadment as a party. This application for impleadment filed by the Appellant was rejected. The Title Suit No. 174 of 1983 filed by the erstwhile owner Mr. Nandlal Tantia was dismissed on 29.01.1991 for default due to the fact that Sri. N. L. Tantia having sold the property to the Appellant was not interested in pursuing the matter.

7. The Appellant after being refused to be made a party in Suit for Eviction filed a fresh Suit in May 1990 for Eviction, Possession and Damages for unauthorized occupation of the property against the Respondents. This Suit was numbered as Title Suit No. 24 of 1991.

8. Respondent No. 2 alone contested the Suit. The said defendant contended that Nandlal Tantia was not the owner of the Suit property and he had no right title and interest therein and as such the Appellant did not acquire any right, title and interest in the Suit premises by virtue of her purchase of the same by a registered Deed of Conveyance dated 28.02.1990. The said Respondent further made out a case for acquisition of title by adverse possession upon contention that the said defendant has been occupying the Suit premises along with his mother since 11.09.1978 as of right and adversely against the rightful owner and after the death of his mother in the year 1983 he is in possession of the same adversely against the interest of any other person. The Respondent No. 2 also urged that one Mr. Indra Kumar Halani executed the said Sale Deed on behalf of Nandlal Tantia as his constituted Attorney in favour of the appellant and presented the same for registration. It was therefore argued that registration of the Sale Deed was hit by provisions of Section 33 (1) (a) of the Act as the power of attorney in favour of Indra Kumar Halani was not executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-District said Nandalal Tantia resided.

9. The Trial Court recorded a finding that the Power of Attorney under which the Sale/Conveyance Deed was executed was not registered and the same ought to have been registered as Mr. Indra Kumar Halani executed the said Sale Deed on behalf of Nandalal Tantia as his constituted Attorney and presented the same for registration. Hence, it was held to be in violation of provisions of Section 32 and 33 of the Act. Consequently, it was also held that the Title in the said premises had not passed in favour of the Appellant. The Trial Court accordingly dismissed the Suit as the Appellant/Plaintiff did not acquire any right title and interest by virtue of her purchase by the said deed of conveyance dated 28.02.1990.

10. In the appeal filed by the Appellant against the said decree of dismissal of the suit, the first appellate court held that that the Respondent failed to establish his case for acquisition of title in the suit premises by adverse possession. On the question of presentation of the said deed of conveyance for registration by Indra Kumar Halani, the Court of Appeal held that the same was properly registered as Indra Kumar Halani being the executant of the same had presented the same for registration and as such the provision of Section 33 (1) (a) of the Act were not applicable in the facts and circumstances of this case and consequently decreed the Suit in favour of the Appellant.

11. It may be mentioned herein that in the second appeal before the High Court the Respondent did not assail the finding of the first appellate court that they did not acquire right, title and interest in the suit premises by way of adverse possession. Such findings therefore became final. During the course of hearing, two substantial questions of law were raised in the following manner:

“(a) Whether the finding of the Court as regards the validity of the Sale Deed being Exhibit 1 executed and presented by an Agent - Indra Kumar Halani on behalf of the principal on the strength of a power of attorney (Exhibit-10) is sustainable in Law, when admittedly Exhibit 10 was not registered nor an authenticated document in the manner prescribed in Section 33 of the Registration Act.

(b) Whether the findings of the Appellate Court as to the validity of the registration of the document (Exh. 1) done in good faith and on active participation of the Registration by drawing inference from Section 87 of the Registration Act is liable to be sustained in law when the question at issue is not the defects in the procedure of the Registrar, but the lack of jurisdiction and more so, when the findings recorded by the trial Court in this regard were not reversed.”

12. The High Court, after hearing arguments of the counsel appearing for the parties, answered the question No. 1 as also question No. 2 in favour of the Respondents - Defendants. So far as question No. 1 is concerned, it was held that since the power of attorney (Exhibit 10) is, admittedly, not a registered document and was simply notarized by a Notary, therefore Indra Kumar Halani, was not authorized to execute and present the sale deed (Exhibit 1) before the Sub-Registrar for registration. It was, therefore, held by the High Court that no right and title had passed to the Plaintiff on the basis of the aforesaid sale deed. Accordingly, the issue No. 1 was decided in favour of the Respondents - Defendants. So far question No. 2 is concerned, upon a conjoint reading of Section 32, Section 33 (1) (a) and Section 34 of the Act, the High Court took the view that it was difficult to conclude that Indra Kumar Halani became the executant by himself on the basis of the power of attorney which was neither executed nor authenticated in the manner provided under Section 33 (1) (a) of the Act so as to enable him to present the sale deed for registration in compliance with the provisions of Section 32 (a) of the Act. The second appeal was accordingly allowed and the suit filed by the Appellant - Plaintiff was dismissed vide its judgment and order dated 20.08.2003.

13. Being aggrieved by the aforesaid decision, the Appellant - Plaintiff preferred the present appeal.

14. Leave was granted by this Court and the Respondent Nos. 2(a) and 2(b) entered appearance. The preparation of the paper books was dispensed with and it was directed that the case be heard on the basis of the SLP paper books. On an application being filed by the appellant-plaintiff herein, it was ordered that the appeal would be listed during the summer vacation, 2009 before this Court. Consequently, the appeal was listed for hearing before us on 19th May 2009.

15. Learned Counsel for the Appellant - Plaintiff argued the case at length before us. However, none appeared for the Respondents - Defendant when the matter was heard.

16. It was submitted by the learned counsel appearing for the Appellant - Plaintiff that in this case what is applicable is Section 32 (a) of the Act and the provisions of Section 33 (1) (c) of the Act would have no application. It was further submitted by him that it is not necessary that a power of attorney to execute document, is capable of being recognized only when it is mandatorily registered and authenticated under Section 33 (1) (c) of the Act. It was next submitted that pursuant to the power of attorney executed by Nandlal Tantia in favour of Indra Kumar Halani authorizing him (Indra Kumar Halani) to execute the sale deed, he duly executed and presented the said sale deed for registration before the Sub - Registrar and the said registration was done by the Sub-Registrar. In support of his submission he relied upon decisions rendered by various High Courts, viz., *Motilal v. Ganga Bai*<sup>1</sup>, *Gopeswar Pyne v. Hem Chandra Bose Ors.*<sup>2</sup>, *Mt. Aisha Bibi v. Chhajju Mal Ors.*<sup>3</sup>, *Sultan Ahmad Khan v. Sirajul Haque and Ors.*<sup>4</sup> and *Ors.*<sup>5</sup> *Sami Malti Vahuji Maharaj v. Purushottam Lal Poddar*<sup>6</sup>. These decisions support the stand taken by the Appellant - Plaintiff before us.

17. However, our attention was also drawn to decisions in which the courts had taken a contrary view. Reference in this regard may be made to the decisions, viz., *D. Sardar Singh v. Seth Pissumal Harbhagwandas Bankers*<sup>7</sup> and *Abdus Samad vs. Majitan Bibi Anr.*<sup>8</sup>.

18. 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, in so far as the registration office is concerned, the actual executant of the document and is entitled under Section 32 (a) to present it for registration and get it registered.

19. Part VI of the Act deals with 'Presentation of Documents for Registration'. Sections 32 and 33 of the Act which are in Part VI deal with 'persons to present documents for registration' and 'power-of- attorney recognisable for purposes of Section 32' respectively. Section 32 and 33 of the Act are referred to hereunder: Section 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 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. Section 33. Power-of-attorney recognisable for purposes of Section 32:-

(1) For the purposes of Section 32, the following powers-of- attorney shall alone be recognised, namely:-

(a) if the principal at the time of executing the power-of- attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub- Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of- attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by 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.”

20. Section 32 deals with persons who are eligible to present documents for Registration before the proper registration office. Section 32 specifies three categories of persons who can present documents for Registration. The use of the word or between the Clauses of Section 32 demonstrates that the legislature intended the said Clauses to be read disjunctively and not conjunctively. It is settled law that the use of the word 'or' is used to signify the disjunctive nature of a provision. In this regard reference may be made to the decision of this Court in *State of Orissa v. The State of Andhra Pradesh reported in*<sup>9</sup>.

21. Clause (a) of Section 32 specifies that a document can be presented for registration by (i) by the person executing the document (ii) any person claiming under the document presented for registration and (iii) in the case the said document is a copy of a decree or order, any person claiming under the decree or order.

22. Clause (b) and (c) deal with cases where the document is presented not by any person mentioned in (i), (ii) and (iii) above but by their agent, representative or assign. This is so because the use of the words such person in Clause (b) and (c) can be understood to mean only persons as referred to in (i), (ii) and (iii) above. It may also be mentioned herein that the scope of Clause (b) and (c) in Section 32 may to an extent overlap one another. However, we do not propose to deal with the same as it is not relevant for determination of the issue before us. It is suffice to say that in so far as Clause (c) of Section 32 is concerned the agents, representative or assigns of the persons referred to in (i), (ii) and (iii) above can present the said document for registration only if they are duly authorized by power-of- attorney executed and authenticated in manner hereinafter mentioned. The words executed and authenticated in manner hereinafter mentioned in Section 32 (c) would mean the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads for the purposes of Section 32, the following power-of-attorney shall alone be recognised. Section 32 refers to documents presented for registration by a holder of power-of-attorney in Clause (c) and it therefore follows that the procedure specified under Section 33 would be attracted where a document is presented by a person holding a powers-of-attorney of the persons mentioned in Clause (a) of Section 32.

23. The aforesaid position makes it explicitly clear that Section 32 of the Act requires the documents sought to be registered, to be presented, inter alia by the person executing it. In other words, the said expression requires presence of the actual person executing the document. The basic principle underlying this provision of the Act is to get before the Sub-Registrar the actual executant who, in fact, executes the document in question. In fact, the ratio of the decision in *Ram Gopal (supra)* as reported in AIR 1960 Punjab 226 has laid down a similar proposition on the conjoint reading of Section 32 and Section 33 of the Act and after referring to all the judgments noted hereinbefore. Same view has been expressed earlier by the Bombay High Court in *Ratilal Nathubhai and Anr. v. Rasiklal Maganlal and Ors.*<sup>10</sup>.

24. It is important to bear in mind that one of the categories of persons who are eligible to present documents before the registration office in terms of Section 32 of the Act is the person executing the document. The expression person executing used in Section 32 of the

Act, can only refer to the person who actually signs or marks the document in token of execution, whether for himself or on behalf of some other person. Thus, person executing as used in Section 32 (a) of the Act signifies the person actually executing the document and includes a principal who executes by means of an agent. Where a person hold a power of attorney which authorises him to execute a document as agent for some one else, and he executes a document under the terms of the power of attorney, he is, so far as the registration office is concerned, the actual executant of the document and is entitled under Section 32 (a) to present it for registration and get it registered.

25. In view of the aforesaid legal position, we are of the considered view that the law laid down by the Andhra Pradesh High Court in *D. Sardar Singh v. Seth Pissumal Harbhagwandas Bankers [Supra]* and the decision of Calcutta High Court in *Abdus Samad v. Majitan Bibi Anr. [Supra]* with regard to the interpretation of Section 32 and 33 of the Act is not the correct legal position.

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

27. The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of fraud has been raised. In view thereof the duty cast on the Registering Officer under Section 32 of the Act was only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a document to be registered had to proceed with the registration of the same.

28. The High Court held that since the power of attorney was not registered document, Indra Kumar Halani, was not authorized to execute and present the sale deed before the Sub-Registrar for registration. It was, therefore, held by the High Court that no right and title had passed to the Plaintiff on the basis of the aforesaid sale deed. The High Court also held that upon a conjoint reading of Section 32, Section 33 (1) (a) and Section 34 of the Act, it was difficult to conclude that Indra Kumar Halani became the executant by himself on the basis of the power of attorney which was neither executed nor authenticated in the manner provided under Section 33 (1) (a) of the Act so as to enable him to present the sale deed for registration in compliance with the provisions of Section 32 (a) of the Act. We do not agree with the said findings of the High Court.

29. 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.

30. In the instant case, Indra Kumar Halani executed the document on behalf of Shri N. L. Tantia under the terms of this power of attorney. He then presented it for registration at the Registration Office and it was registered. The plea taken by the Respondents that in order to enable him to present the document it was necessary that he should hold a power of attorney authenticated before the Sub-Registrar under the provisions of Section 33 is thus not supported by the language of Section 32. The provisions of Section 33 therefore only apply where the person presenting a document is the general attorney of the person executing it, and not where it is presented for registration by the actual executant, even though he may have executed it as agent for some one else. In this case, the presentation is by the actual executant himself and is hence is entitled under Section 32 (a) to present it for registration and to get it registered.

31. Accordingly, we allow the present appeal and set aside the judgment and order passed by the High Court and restore the judgment and decree passed by the first appellate court whereby and whereunder a decree for eviction of the respondents-defendant was passed. No order as to the costs.

<sup>1</sup>*AIR 1915 Nagpur 18*

<sup>2</sup>*AIR 1920 Calcutta 316*

<sup>3</sup>*AIR 1924 Allahabad 148*

<sup>4</sup>*AIR 1938 ALL 170*

<sup>5</sup>*AIR 1960 Punjab 226*

<sup>6</sup>*AIR 1984 Calcutta 297*

<sup>7</sup>*AIR 1958 Andhra Pradesh 107*

<sup>8</sup>*AIR 1961 Calcutta 540*

<sup>9</sup>*(2006) 9 SCC 591*

<sup>10</sup>*AIR 1950 Bombay 326*