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PROOF OF SALE DEED EXECUTED THROUGH POWER OF ATTORNEY HOLDER – MANIK MAJUMDER CASE

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1. **Introduction**
 - 1.1 The judgment in *Manik Majumder v. Dipak Kumar Saha [(2023) 8 SCC 410]* was passed in adjudication of a dispute between one Dharendra Chandra Saha (respondents through legal representatives) and Manik Majumder (appellants). Both the parties claimed right, title and ownership over a suit property.
 - 1.2 The judgment is discussed herein.
2. **Brief Facts**
 - 2.1 The dispute between the parties relates to a suit property where the respondents filed a suit for declaration of title and recovery of *khas* possession over the said property and the appellants objected such relief on ground of being in peaceful possession of the said property since many years.
 - 2.2 The claim of the respondents was based on a Power of Attorney (PoA) and a sale deed executed in lieu of such PoA.
 - 2.3 It was pleaded that a PoA was executed by one Braja Mohan Dey (the original owner) in favour of the respondents (tenants at that point in time) who transferred ownership of the said property by virtue of such PoA and later with the same PoA transferred it in the name of the wife of the respondent (Gita Rani Saha) for repaying a debt taken from the wife.
 - 2.4 The respondents however failed to produce the PoA before the Court.
 - 2.5 The trial court dismissed the suit for lack of proof of the property having been transferred in favour of the respondents and further that the sale deed on the basis of which the claim was being made did not contain any endorsement by the Sub-Registrar that the sale deed was being executed by the respondents as the attorney of the original owner. In fact, it was a simple endorsement stating the fact of execution.
 - 2.6 It was thus found that the sale deed was not properly executed and the requirement of Section 33(1)(c) of the Registration Act, 1908 had not been satisfied.
 - 2.7 The matter went up in appeal to the High Court where the views of lower courts were set aside and the High Court held that there was a statutory presumption on existence of the PoA by virtue of the endorsement. The High Court was of the view that when the attorney/respondents were allowed to execute the sale deed by the registering authority, a statutory presumption ought to be drawn as to the validity of the PoA.
 - 2.8 The appeal was allowed in favour of the respondents. Hence the present appeal was filed by the appellants challenging the judgment of the High Court.
3. **Issues**
 - 3.1 The two primary issues considered by the Court were
 - Whether Section 33(1)(c) of the Registration Act, 1908 was complied with in executing the PoA
 - Whether non-production of PoA could lead to a clear conclusion on the right of either of the parties to the suit property.
4. **Statutory Pillar**
 - 4.1 Section 32 of the Registration Act provides the list of persons who are authorised to present documents at the proper registration office.
 - 4.2 Section 33 lists the forms of PoA which shall be recognizable for the purpose of Section 32, i.e., authorising persons to present the documents.
 - 4.3 In this case, the person who executed the PoA was not a resident of India at the time of execution and hence the relevant provision herein was Section 33(1)(c) which states

that if the principal at the time of execution of the PoA does not reside in India, a PoA executed before and authenticated by a notary public, or any court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government shall be valid.

4.4 Section 85 of the Evidence Act, 1872 also provides for presumption as to execution and authentication of PoA when it has been executed before and authenticated by a notary public, or any court, Judge, Magistrate, Consul or Vice-Consul or representative of the Central Government.

5. Observations

5.1 The Division Bench in this case did not come to a concurring view and hence both judges passed two opposing decisions.

5.2 Observations of J. M.R. Shah :

- a. Relying on the literal interpretation of the statutory provisions, it was observed that only where the PoA has been executed in the manner provided under Section 33(1)(c) read with Section 32 of the Registration Act can statutory presumption be drawn in favour of execution of the document.
- b. The High Court's decision in favour of the respondents was passed in ignorance of the conditions specified under Section 33(1)(c) and non-compliance thereof by the respondents.
- c. The High Court also erred in recognizing the conduct of the respondent in executing a deed of sale first in his own name and later transferring it to his wife.
- d. Another conduct that was worth noting was that the respondents had filed an application for amendment before the first appellate court for addition of a prayer to the effect that the appellants had taken the PoA and then refused to return the same.
- e. The Court observed that this prayer was made only because the respondents realised at the appellate stage that the non-production of the PoA had potentially driven the case against them before the trial court. In fact, this point was never raised before the trial court, leading to further doubts as to the existence of the document.
- f. The Court thus found that the non-production of the PoA and the non-compliance of Section 33(1)(c) should not have been ignored by the High Court in decreeing the suit in favour of the respondents and that the trial court was justified in dismissing the suit for title of possession.

5.3 Observations of J. B.V. Nagarathna :

- a. In addition to Sections 32 and 33, section 58 of the Registration Act was also relied upon which deals with particulars to be endorsed on documents admitted to registration.

b. The Court observed that a document admitted for execution by a registering officer is prima facie evidence against the executant.

c. Under Sections 17 and 18 of the Registration Act read with Section 85 of the Evidence Act, a PoA is not a compulsorily registrable document when it is duly notarised.

d. The Court also relied on *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana [(2012) 1 SCC 656]* where it was held that a PoA was a creation of an agency and not an instrument of transfer.

e. A PoA executed before and authenticated by Magistrate, 1st class was sufficient to prove its execution. (*Atal Chakravarty v. Sudhi Gopal Pandey (1969) 73 CWN 947*)

f. The Court held that in the instant case, the sale deed was ought to be proved for claim of title and not the PoA.

g. The sale deed was executed in accordance with the provisions of the Registration Act and proved in accordance with Section 67 of the Evidence Act. Thus, the sale deed or the transfer of title could not be doubted merely on non-production of PoA.

h. The Court referred to the recitals of the sale deed to determine the statutory presumption under Section 33(1)(c) of the Registration Act. The sale deed refers to the details of the PoA which mentions that it was executed before the Magistrate, 1st class. Hence, it cannot be said that the requirement of Section 33(1)(c) was not complied with.

i. The Court held that it has been established in *Amar Nath v. Gian Chand [(2022) 11 SCC 460]* that it was not mandatory to produce the original PoA for executing the sale deed.

j. Once the Sub-Registrar had accepted the document for registration, it is prima facie evidence that the conditions have been satisfied (*Chhotey Lal v. Collector of Moradabad (AIR 1922 PC 279)*)

k. The Court further held that proof of signature of handwriting of the executant is sufficient to prove a document, the sale deed in this case. Hence the respondents had acquired title over the suit property. Additionally, no contra evidence was produced by the appellants to defeat the validity of sale deeds.

6. Conclusion

6.1 Since the two judges pronounced two different opinions on the issues in question, no concrete decision could be arrived at on the appeal. It was directed that a larger Bench may be constituted for settling the correct position of law on such issues. What remains to be seen is as to whether the larger bench, as and when constituted shall go by the opinion of J. Shah or by that of J. Nagarathna.

A copy of the judgment is annexed hereto at **page 3 to 50**.

(2023) 8 Supreme Court Cases 410 : 2023 SCC OnLine SC 37

In the Supreme Court of India

(BEFORE M.R. SHAH AND B.V. NAGARATHNA, JJ.)

MANIK MAJUMDER AND OTHERS . . Appellants;

Versus

DIPAK KUMAR SAHA (DEAD) THROUGH LEGAL
REPRESENTATIVES AND OTHERS . . Respondents.

Civil Appeal No. 2965 of 2022[†], decided on January 13, 2023

Registration Acts and Rules — Registration Act, 1908 — Ss. 33(1)(c), 32, 34, 35, 52, 58, 59 and 60 — Suit for declaration of title on the basis of registered sale deed executed through power-of-attorney (PoA) holder — Sale deed executed through PoA holder — Determination of validity and proof of — Production of PoA before the court — Whether mandatory — Disagreeing at the Bench, matter referred to larger Bench

— On the strength of the power of attorney dt. 1-8-1968, Plaintiff 2 executed and registered a sale deed dt. 3-9-1968 in his own favour as the attorney on behalf of the seller, who had gone to East Pakistan/Bangladesh — Plaintiff 2 then executed a sale deed dt. 29-10-1968, in favour of his wife, Plaintiff 1 — As disputes arose, plaintiffs filed a civil suit for a declaration of title over the suit land and recovery of possession from the defendants

— Per M.R. Shah, J. (Nagarathna, J. disagreeing) — Original owner was residing in East Pakistan; and according to the plaintiffs, the original landowner executed the PoA in favour of Plaintiff 2 at Kumilla, Bangladesh — Further, the original PoA was not produced on record — Held, the requirement of S. 33(1)(c) had not been satisfied at all — Further S. 32 is to be read along with S. 33(1)(c) and only in a case where the execution of the PoA is as per S. 32 read with S. 33(1)(c), there shall be statutory presumption under S. 60 and/or under the provisions of the Registration Act

— The PoA was not produced on record; the executant of the PoA in favour of Plaintiff 2 had not stepped into the witness box; there was non-compliance of S. 33(1)(c) — Plaintiff 2 was claiming title on the basis of the PoA alleged to have been executed by the original owner which was not forthcoming and that Plaintiff 1 was claiming the title on the basis of the sale deed dt. 29-9-1968 executed by Plaintiff 2 as a PoA holder of the original owner which was not forthcoming — In the present case, trial court was justified and right in dismissing the suit and refusing to pass a decree for a declaration of title in favour of the plaintiffs

(Paras 14 to 25)

— Per B.V. Nagarathna, J. (disagreeing) — Held, under S. 33(1)(c), if a power of attorney has been executed before and authenticated by Magistrate, 1st Class of

Komilla (Bangladesh) authorising the attorney to execute a sale deed for a house in India, it is sufficient to prove its execution — Further, certificate by registering officer under S. 60 is relevant for proving its execution — Production of a power of attorney is not a necessary requirement to prove a sale deed executed through a power of attorney, before a court of law — Further, a registered document carries with it, by virtue of it being registered, the presumption as to the authority of the person executing it

— High Court was right in holding that when a document has been duly registered, there is a presumption of correctness and it can be rebutted only by strong evidence to the contrary — However, the defendants did not lead any evidence in order to rebut the presumption as might be drawn on the basis of the endorsement on the body of Sale Deed No. 1010394, dt. 3-9-1968 accepting original Plaintiff 2 as the attorney of the original owner, B — In the present case, Plaintiff 1 had every right to recover the said suit land

— Evidence Act, 1872 — Ss. 67 and 85 — Property Law — Transfer of Property Act, 1882, S. 54

(Paras 57 to 88)

The plaintiffs filed a civil suit for a declaration of title over the suit land and recovery of possession from the defendants.

The case of the plaintiffs in a nutshell was : The suit property was owned and possessed by B and Plaintiff 2, namely, D was a tenant running a shop in a hut located within the suit property. B took a loan of Rs 10,000 from Plaintiff 2 and since he was unable to repay the loan, he sold the land in favour of Plaintiff 1 in lieu of the loan amount.

However, soon after the sale, B went to East Pakistan (now Bangladesh) and could not complete registration of the sale deed in favour of Plaintiff 2. Therefore, he executed a power of attorney dated 1-8-1968, in favour of Plaintiff 2 before the 1st Class Magistrate, Komilla, Komilla District, East Pakistan thereby appointing Plaintiff 2 as his attorney i.e. on behalf of the seller, B, to execute a sale deed and transfer the property to the buyer as his Attorney.

On the strength of the power of attorney dated 1-8-1968, Plaintiff 2 executed and registered a sale deed dated 3-9-1968 in his own favour as the attorney on behalf of the seller, B. Plaintiff 2 thereby became the owner of the suit property. In his capacity as the absolute owner of the suit property, Plaintiff 2 then executed a sale deed dated 29-10-1968, in favour of his wife, Plaintiff 1, namely, G. The said sale deed was registered on 9-11-1968. That the suit land stood in the name of Plaintiff 1 who duly paid municipality tax, land revenue, etc.

That on one portion of the suit property described as Schedule 'A' property in the plaint, Plaintiff 2 was running a grocery business under the name M/s DB. That the land falling to the eastern side of Schedule 'A' property, described as Schedule 'B' property in the plaint, was sold by Plaintiff 2 to M, who subsequently sold the said land to GC. Defendant 1 was GC's tenant in respect of Schedule 'B' property.

That Plaintiff 2 constructed a godown in the portion behind his shop and the

same has been described as Schedule 'C' property in the plaint. The same was also in the possession of Plaintiff 2. That Defendant 1 tried to take forceful possession of the suit property by breaking down the said godown.

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The plaintiffs ultimately filed a civil suit being TS No. 201 of 1985 before the trial court for a declaration of title over the suit land and recovery of *khas* possession from the defendants (appellants herein).

The trial court vide its judgment and decree dated 11-9-1995 dismissed the suit and held that the plaintiffs were not entitled to relief sought as no right, title or interest was established in favour of Plaintiff 2, inter alia, for want of PoA for proper execution of the sale deed in his favour.

The issues inter alia arising for consideration in the appeal were:

(i) Whether the statutory requirements of Section 33(1)(c) of the Registration Act, 1908 had been complied with in the instant case while executing the power of attorney dated 1-8-1968?

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

(iii) Whether the plaintiffs proved sale deeds dated 3-9-1968 and 29-10-1968?

Disagreeing at the Bench, the Supreme Court

Opined :

Per M.R. Shah, J. (Nagarathna, J. disagreeing)

Both, the trial court as well as the first appellate court held that the plaintiffs have failed to prove their title as the PoA on the basis of which Plaintiff 2 claimed the right/title is not forthcoming and/or not produced before the court. Therefore, both, the trial court as well as the first appellate court held that the requirement of Section 33(1)(c) of the Registration Act has not been satisfied. However, by drawing the statutory presumption under Section 60 of the Registration Act, the High Court has believed the sale deeds dated 3-9-1968 and 29-9-1968 and has held that the plaintiffs have proved their title. But, by the impugned judgment and order and drawing the statutory presumption, the High Court while exercising the powers under Section 100 CPC, has set aside the concurrent findings recorded by the courts below.

(Para 14)

When the plaintiffs claimed title on the basis of the aforesaid two sale deeds dated 2-9-1968 and 29-9-1968, it was for the plaintiffs to prove even the execution of the sale deeds. The defendants were not required to challenge the sale

deeds in the suit filed by the plaintiffs, who prayed for a decree for a declaration of title in their favour. When Plaintiff 2 claimed title on the basis of the PoA executed by the original owner and thereafter executed the sale deed in favour of Plaintiff 1 as PoA of the original owner, the conditions provided under Section 33(1)(c) of the Registration Act are required to be strictly complied with.

(Para 15)

According to the plaintiffs and it is not in dispute that the original owner was residing in East Pakistan. According to the plaintiffs, the original landowner executed the PoA in favour of Plaintiff 2 at Kumilla, Bangladesh. The original PoA is not produced on record.

(Para 17)

As per Section 33(1)(c) of the Registration Act, if the principal at the time of execution of the PoA does not reside in India, a PoA executed before and authenticated by a notary public, or any court, Judge, Magistrate, Indian

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Consul or Vice-Consul, or representative of the Central Government shall be valid.

(Para 18)

The requirement of Section 33(1)(c) of the Registration Act has not been satisfied at all. Section 32 of the Act is to be read along with Section 33(1)(c) of the Registration Act. Only in a case where the execution of the PoA is as per Section 32 read with Section 33(1)(c) of the Act, there shall be statutory presumption under Section 60 and/or under the provisions of the Registration Act.

(Para 19)

Even the conduct on the part of the plaintiffs, more particularly on the part of Plaintiff 2, executing the second sale deed in favour of Plaintiff 1 — his own wife as a PoA of original landowner deserves serious consideration. It is required to be noted and even according to the plaintiffs, on the basis of the PoA alleged to have been executed by the original landowner — B, Plaintiff 2 executed the registered sale deed in his own favour dated 3-9-1968. If that be so, in that case, there was no reason for him to execute the subsequent sale deed in favour of Plaintiff 1 — his own wife as a PoA of the original landowner. Once he became the owner on the basis of a registered sale deed dated 3-9-1968, which was executed by him in his own name as a PoA of the original owner, he could have executed the sale deed in favour of Plaintiff 1 as the owner and not as a PoA of the original owner.

(Para 21)

Even another conduct on the part of the plaintiffs submitting the application to amend the plaint under Order 6 Rule 17 CPC submitted before the first appellate court also creates doubts about the genuineness of the PoA. It was never the case on behalf of the plaintiffs before the trial court and in the suit that the PoA was handed over by the plaintiffs to original Defendant 1 and that despite his demands


he never returned the same. Having found and realised that the non-production of the PoA had gone against them, subsequently, before the first appellate court, the plaintiffs sought to make out a case that the PoA was handed over by Plaintiff 2 to original Defendant 1 and that despite his demands, never returned the same.

(Para 22)

In view of the above and for the reasons stated above and as the PoA is not produced on record; the executant of the PoA in favour of Plaintiff 2 has not stepped into the witness box; there is a non-compliance of Section 33(1)(c) of the Registration Act; and Plaintiff 2 is claiming title on the basis of the PoA alleged to have been executed by the original owner which is not forthcoming and that Plaintiff 1 is claiming the title on the basis of the sale deed dated 29-9-1968 executed by Plaintiff 2 as a PoA holder of the original owner which is not forthcoming, the trial court was justified and right in dismissing the suit and refusing to pass a decree for a declaration of title in favour of the plaintiffs. The same was rightly confirmed by the first appellate court. The High Court has committed a serious error in decreeing the suit. The impugned judgment and order of the High Court are unsustainable both, on law as well as on facts.

(Para 24)

Prem Singh v. Birbal, (2006) 5 SCC 353; *H. Siddiqui v. A. Ramalingam*, (2011) 4 SCC 240 : (2011) 2 SCC (Civ) 209; *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558; *Sebastiao Luis Fernandes v. K.V.P. Shastri*, (2013) 15 SCC 161 : (2014) 5 SCC (Civ) 180; *J. Yashoda v. K. Shobha Rani*, (2007) 5 SCC 730 : (2007) 3 SCC (Cri) 9; *Rajni Tandon v. Dulal Ranjan Ghosh Dastidar*, (2009) 14 SCC 782 : (2009) 5 SCC (Civ) 520; *Amar Nath v. Gian Chand*, (2022) 11 SCC 460 : (2023) 3 SCC (Civ) 230, *cited*

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Per B.V. Nagarathna, J. (disagreeing)

Under clause (f) of Section 18 “all other documents” which do not require registration under Section 17 are also optionally registrable such as the power of attorney, document relating to adoption, etc. A power of attorney is not a compulsorily registrable document when it is duly notarised. It carries the presumption of being valid in view of Section 85 of the Evidence Act. Since, a power of attorney does not come within the ambit of Section 17 or clauses (a) to (e) of Section 18, registration of a power of attorney is optional. An attorney holder may execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor or principal, provided he has been specifically given power to sell the property of the principal.

(Para 58)

Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351; State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, referred to

Section 32 speaks about persons to present document for registration. A power of attorney has a special authority to present a document on behalf of the principal at the registration office.

(Para 60)

Chhotey Lal v. Collector of Moradabad, 1922 SCC OnLine PC 48, referred to

Under Section 33(1)(c), if a power of attorney has been executed before and authenticated by Magistrate, 1st Class of Komilla (Bangladesh) authorising the attorney to execute a sale deed for a house in India, it is sufficient to prove its execution.

(Para 61)

Atal Chakravarty v. Sudhi Gopal Pandey, (1969) 73 CWN 947, referred to

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

(Para 64)

Registration of a document is evidence of its execution by its executor. Certificate by registering officer under Section 60 of the Registration Act, 1908 is relevant for proving its execution. Proof by evidence afforded by the contents of the documents is of considerable value.

(Para 65)

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

(Para 66)

On a conjoint reading of the two documents, namely, sale deeds, it is established that the initial sale deed dated 3-9-1968 by Plaintiff 2 D is as a power-of-attorney holder of B, to himself as a buyer. The power of attorney is

dated 1-8-1968, the details of which are referred to in the said sale deed inasmuch as the power of attorney was executed by the original owner *D* before the 1st Class Magistrate, Komilla, East Pakistan, which is evident on a reading of both the documents. Thereafter, Plaintiff 2 executed a sale deed dated 29-10-1968 in favour of Plaintiff 1 as the absolute owner of the suit scheduled property. Therefore, there is compliance of Section 33(1)(c) of the Registration Act, 1908 inasmuch as the power of attorney has been executed before the 1st Class Magistrate, Komilla, East Pakistan. Hence there is no substance in the contention of the Senior Counsel appearing for the appellant-defendants that the requirements of Section 33(1)(c) of the Registration Act, 1908, had not been complied with while executing the power of attorney dated 1-8-1968 and therefore, no validity could be attached to the said document.

(Para 70)

It is evident that Plaintiff 2 had the authority as per Section 32(c) to present a document for registration in his capacity as the attorney of *B*, the original owner of the suit property.

(Para 71)

Further, non-production of the power of attorney in the suit is also not fatal to the case of the plaintiffs.

(Para 72)

Amar Nath v. Gian Chand, (2022) 11 SCC 460 : (2023) 3 SCC (Civ) 230; *Gian Chand v. Amar Nath*, 2008 SCC OnLine HP 264, referred to

Production of the original power of attorney is not an indispensable requirement to establish the validity of execution of a sale deed. It would therefore follow that production of a power of attorney is not a necessary requirement to prove a sale deed before a court of law executed through a power of attorney.

(Para 76)

Section 67 of the Evidence Act deals with proof of documents such as a sale deed as in the instant case. The proof of signature or the handwriting of the executant on a document is sufficient to prove a document which is sale deed dated 29-10-1968, in the instant case. There is no dispute that the said sale deed is not signed by Plaintiff 2 or that it is not his signature or that he is not the executor of the document. The admission of the signature of the said document by Plaintiff 2 is proof of the signature on the document which is sufficient for proof of the document of sale deed of sale in favour of Plaintiff 1. Further, the same is a registered sale deed which is a document conveying title. Hence, Plaintiff 1 has acquired title from Plaintiff 2 and from the original owner of the land in question. Therefore, under the circumstances, Plaintiff 1 has proved her right, title and interest in the land in question. There is no contra evidence produced by the

defendants so as to defeat the validity of sale deeds. The said documents speak for themselves. Therefore, there is no substance in the contentions of the appellants arising under the provisions of the Registration Act, 1908. Thus, Plaintiff 1 has acquired title to the land in question. Further, when a sale deed is executed on the strength of deed of power of attorney, the non-production of the deed of power of attorney in the suit is not fatal to the case of the plaintiff.

(Para 77)

In the present case, sale deed dated 3-9-1968 was executed on the strength of the power of attorney which was executed in conformity with Section 33(1)(c) of the Registration Act, 1908 because the power of attorney has been duly executed before the 1st Class Magistrate, Komilla, East Pakistan as noted from the two sale deeds. There is no contra evidence produced by the defendants in that regard. Since

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the requirements of execution of a sale deed are duly complied with, and there is no reason to doubt the recitals of sale deed which has been proved in accordance with law, it would follow that the statutory presumption under Section 60 of the Registration Act could be invoked in the instant case.

(Para 78)

A registered document carries with it, by virtue of it being registered, the presumption as to the authority of the person executing it. In the present case, the trial court and the first appellate court failed to treat the endorsement made by the District Sub-Registrar on the body of sale deed, as evidence in respect of the authority of Plaintiff 2 to execute sale deed. This is to be considered in light of the fact that at no point of time did the original owner, namely, B dispute the execution of power of attorney in favour of Plaintiff 2.

(Para 83)

Ishwar Dass Jain v. Sohan Lal, (2000) 1 SCC 434; *Chhotey Lal v. Collector of Moradabad*, 1922 SCC OnLine PC 48; *Jugraj Singh v. Jaswant Singh*, (1970) 2 SCC 386; *Rattan Singh v. Nirmal Gill*, (2021) 15 SCC 300, referred to

Prima facie, the endorsement made on sale deed dated 3-9-1968, could be considered as determinative evidence of the conveyance of title to the suit property by its original owner, especially where the defendants have not set up a case to establish any independent title over the suit property. When such a presumption arises, the onus would be on a person who challenges such presumption, to successfully rebut it.

(Para 84)

Prem Singh v. Birbal, (2006) 5 SCC 353, referred to

The defendant has not rebutted the presumption of validity of sale deed dated 3-9-1968.

(Para 86)

In short, there is no reason to disbelieve the recitals contained in the registered sale deed dated 3-9-1968 merely on the ground that the document conferring power of attorney in favour of Plaintiff 2 was not produced before the trial court.


(Para 87)

In the instant case, the High Court was therefore right in holding that when a document has been duly registered, there is a presumption of correctness and it can be rebutted only by strong evidence to the contrary. But the defendants have not led any evidence in order to rebut the presumption as might be drawn on the basis of the said endorsement on the body of Sale Deed No. 1010394, dated 3-9-1968 accepting original Plaintiff 2 as the attorney of the original owner, B. The same is a vital piece of evidence which has been ignored by the trial court as well as the first appellate court. The High Court is further right in holding that original Plaintiff 2 was duly nominated and constituted as the attorney of B (original owner of the suit land) and on the strength of the said power of attorney, Plaintiff 2 transferred land in favour of himself. As the absolute owner, Plaintiff 2 sold the said land to Plaintiff 1. Thus, Plaintiff 1 had every right to recover the said suit land, description of which has been provided in Schedule 'C' of the plaint by removing and demolishing all obstructions from the defendants. The High Court was therefore right in decreeing the suit.

(Para 88)

Gita Rani Saha v. Manik Majumder, RSA No. 1 of 2005, order dated 5-4-2018 (Trip), matter referred to larger Bench

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Advocates who appeared in this case:

Rana Mukherjee, Senior Advocate [Rajan K. Chourasia (Advocate-on-Record), Pijush Kanti Roy, Ms Kakali Roy, Dinesh Kr. Bhati and Uday Prakash Yadav, Advocates], for the Appellants;

Hrishikesh Baruah (Advocate-on-Record), Advocate, for the Respondents.

Chronological list of cases cited

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3. RSA No. 1 of 2005, order dated 5-4-2018 (Trip)417e-f, 420a, 420b, 422d, *Gita Rani Saha v. Manik Majumder* 422g, 425c-d, 428f, 428g, 429a-b, 431g-h, 432b-c, 433e-f, 433f-g, 447b-c

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5. (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351, *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana* 437c

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12. (2005) 12 SCC 77, *State of Rajasthan v. Basant Nahata* 437d-e

13. (2000) 1 SCC 434, *Ishwar Dass Jain v. Sohan Lal* 444g-h

14. (1970) 2 SCC 386, *Jugraj Singh v. Jaswant Singh* 445b

15. (1969) 73 CWN 947, *Atal Chakravarty v. Sudhi Gopal Pandey*

438c-d


16. 1922 SCC OnLine PC 48, *Chhotey Lal v. Collector of Moradabad*

438b-c, 445a

The Opinions* of the Court were delivered by

M.R. Shah, J. (*Nagarathna, J. disagreeing*)— Feeling aggrieved and dissatisfied with the impugned judgment and order dated 5-4-2018¹ passed by the High Court of Tripura at Agartala in Regular Second Appeal No. 1 of 2005, by which the High Court has allowed the said appeal preferred by the original plaintiffs and has decreed the suit by quashing and setting aside the concurrent findings recorded by both the courts below, the original defendants have preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under : That one Braja Mohan Dey was the owner and in possession of Schedule 'A' property. He was alleged to have taken a loan of Rs 10,000 from his tenant, namely, Dharendra Chandra Saha, original Plaintiff 2. The original owner, Braja Mohan Dey went to East Pakistan. It was alleged that he had executed a power of attorney ("PoA") in East Pakistan, ostensibly in favour of original Plaintiff 2

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to enable repayment of the alleged loan amount by sale of the subject land to himself (original Plaintiff 2) as his PoA holder. That original Plaintiff 2, on the basis of the alleged loan amount and PoA alleged to have been executed by the original owner, executed in his favour sale deed dated 3-9-1968 as PoA holder of the original owner. Thereafter original Plaintiff 2, by virtue of the said PoA, transferred Schedule 'A' property to his wife Gita Rani Saha (original Plaintiff 1) (now deceased) vide sale deed dated 29-9-1968, allegedly for repayment of a sum of Rs 20,000 taken by him from his wife, out of which a sum of Rs 10,000 was alleged to have been handed over to the original owner Braja Mohan Dey.

3. That original Plaintiff 2 allegedly constructed a godown at the rear end of the grocery shop in another part of Schedule 'A' property (Schedule 'C' property). It was the case on behalf of the plaintiffs that

one Sarat Chandra Majumdar (original Defendant 1) tried to dispossess the plaintiffs from the said Schedule 'C' property. However, on the other hand, it was the case on behalf of the defendants that their predecessor-in-interest held out that Sarat Chandra Majumdar was in possession of the suit land for more than thirty years and was running a business from the said property, while denying that the plaintiffs had acquired any right, title or interest as claimed over the suit land. The original defendants also claimed to be in peaceful possession of the property for over forty years and it was their case that they were paying the municipal taxes and land revenue and other statutory dues. The plaintiffs alleged that the defendants had started a pucca construction on Schedule 'C' property and forcibly dispossessed them from the said property. Therefore, the plaintiffs filed a civil suit being TS No. 201 of 1985 before the learned trial court for a declaration of title over the suit land and recovery of *khas* possession from the defendants (the appellants herein).

4. The said suit was resisted by the defendants by filing a written statement denying all the allegations as well as their right of possession in respect of the disputed suit property. At this stage, it is required to be noted that though the original Plaintiff 2 claimed the ownership on the basis of the sale deed dated 3-9-1968 executed by Plaintiff 1 in his own favour on the basis of the alleged PoA executed by the original owner, however, the same was not produced before the learned trial court and in the suit.

5. The learned trial court vide its judgment and decree dated 11-9-1995 dismissed the suit and held that the plaintiffs were not entitled to relief sought as no right, title or interest was established in favour of Plaintiff 2, inter alia, for want of PoA for proper execution of the sale deed in his favour. At this stage, it is required to be noted that Issue 6 was, "have the plaintiffs proved their alleged right, title and interest in the suit land?" The learned trial court also held that the sale deeds in favour of Plaintiff 2 and Plaintiff 1, respectively did not have the endorsements of the Sub-Registrar that it was executed by the PoA of Braja Mohan Dey (original owner) and further that even in an earlier suit between Plaintiff 2 and Sarat Chandra Majumdar, the said PoA

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was not produced. The learned trial Judge also came to the conclusion that the provisions of Section 33(1)(c) of the Registration Act, 1908 have not been complied with, when according to the plaintiffs the alleged PoA was executed at Kumilla, East Pakistan, now Bangladesh, which is a foreign country.

6. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial court dismissing the suit, the original plaintiffs preferred an appeal before the first appellate court. In the appeal before the first appellate court, the plaintiffs filed an application under Order 6 Rule 17 CPC for amendment of the plaint in TS No. 201 of 1985. The amendment sought for was to the effect that the missing PoA i.e. the fulcrum of the case was allegedly handed over by the plaintiffs to original Defendant 1 and that despite demands, he never returned the same. Vide order dated 31-1-1998, the first appellate court rejected the prayer for amendment of the plaint by observing that allowing the amendment at that stage would mean a remand of the suit for fresh trial. That after framing the points for consideration, the first appellate court dismissed the appeal and confirmed the judgment and decree passed by the learned trial court dismissing the suit. The first appellate court also found that though Plaintiff 2 had acquired title over the suit land on the basis of the sale deed executed by him in his favour on the basis of the PoA alleged to have been executed by its true owner Braja Mohan Dey, but failed to produce the same before the court and as such in the absence of PoA, genuinity of the sale deed dated 3-9-1968 cannot be presumed to be correct and on the basis of that sale deed, subsequent sale deed dated 29-9-1968 in favour of Plaintiff 1 by Plaintiff 2 also cannot be treated as genuine.

7. Feeling aggrieved and dissatisfied with the judgment and order passed by the first appellate court dismissing the appeal and confirming the judgment and decree passed by the learned trial court dismissing the suit, the plaintiffs preferred the second appeal before the High Court under Section 100 CPC.

8. In the second appeal, the High Court, while admitting the appeal, framed the following substantial question of law:

“Whether a sale deed executed by the attorney of the vendor can be challenged by a third party only on the ground that the attorney executive in the deed was not duly authorised by a power of attorney.”

9. Subsequently, the High Court reframed the following substantial questions of law:

“(1) Whether the endorsement made on Sale Deed No. 1-10394 dated 3-9-1968 [Ext. 11] in respect of the power of attorney is substantive evidence in respect of the power of attorney authorising Plaintiff 2 to sell the said land as demised in the sale deed dated 3-9-1968?

(2) Whether the defendants had fundamental onus to discharge in respect that the power of attorney was not in existence or forged and as such, the sale deed dated 3-9-1968 cannot be treated as the

instrument of a valid transfer?"

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10. By the impugned judgment and order¹, the High Court has allowed Second Appeal No. 1 of 2005 by setting aside the concurrent findings recorded by the courts below by drawing a statutory presumption in respect of existence of PoA by virtue of endorsement. While holding so, the High Court has considered Section 33(1)(c) of the Registration Act. Consequently, the High Court has decreed the suit and has directed the appellants—original defendants to hand over the vacant possession of the suit land to the original plaintiffs.

11. Feeling aggrieved and dissatisfied with the impugned judgment and order¹ passed by the High Court allowing the second appeal and quashing and setting aside the judgments and orders of the courts below dismissing the suit and consequently decreeing the suit in favour of the original plaintiffs, the original defendants have preferred the present appeal.

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


12.1. The learned counsel appearing on behalf of the appellants—original defendants has vehemently submitted that the High Court has committed a serious error in law by setting aside the concurrent findings of the courts below in the second appeal. This is particularly when both the courts below concurrently found that Plaintiff 2 is alleged to have acquired title over the suit land on the basis of the sale deed dated 3-9-1968 executed by him in his own favour on the basis of the PoA executed by its true owner Braja Mohan Dey, but failed to produce the same before the court and as such in the absence of PoA, genuinity of the sale deed dated 3-9-1968 cannot be presumed to be correct. Further, on the basis of the sale deed dated 3-9-1968, subsequent sale deed dated 29-9-1968 in favour of Plaintiff 1 by Plaintiff 2 also cannot be treated as genuine. Therefore, the very execution of the sale deed dated 3-9-1968 is doubtful and it cannot be said that the same has been executed validly.

12.2. It is further submitted that the High Court, while drawing a statutory presumption, has failed to consider that when execution of the sale deed is doubtful and the cloud over the execution has not been

cleared, no statutory presumption could be drawn in respect of existence or regularity of the PoA by virtue of an endorsement, when the PoA which was allegedly executed in a foreign country could not be produced and execution of the PoA has been done contrary to Section 33(1)(c) of the Registration Act.

12.3. It is submitted that the High Court has erroneously relied on the judgment of this Court in *Prem Singh v. Birbal*². Relying upon the aforesaid decision, the High Court has seriously erred in holding that there is a presumption that "a registered document is validly executed".

12.4. It is further submitted that despite the original plaintiffs having sale deeds in their favour, Plaintiff 1 sought a declaration of the title. It is submitted that assuming that the plaintiffs were dispossessed from Schedule 'C' property of which relief was claimed, then an application/proceeding under Section 6 of

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the Specific Relief Act, 1963 could have also been filed, which was not done because the plaintiffs in the suit knew that there was a cloud in their title to the suit land.


12.5. It is urged that even the original owner of the land, Braja Mohan Dey, who was alleged to have executed the missing PoA, was never made a party to the suit. He was neither a party to the suit nor was examined as one of the witnesses by the trial court in support of the case of the plaintiffs. It is submitted that even the sale deeds executed by virtue of the said PoA were not proved by examining the registering authorities or by production of documents registering such sale.

12.6. Now so far as the effect of Section 33(1)(c) of the Registration Act, it is submitted that insofar as the PoA was concerned, no evidence was led to the effect that the same was in compliance of the provisions of Section 33(1)(c) of the Registration Act. It is urged that as such the trial court has observed that the plaintiffs had not produced the PoA before the court and there was no explanation/averment made in the plaint for such non-production. It is submitted that even the subsequent conduct/attempt on the part of the plaintiffs seeking amendment of the plaint before the first appellate court deserves consideration. It is submitted that having found that non-production of the PoA by the plaintiffs would come in their way, and in fact had gone against them, the plaintiffs tried to make out altogether a new case by averring that the copy of the PoA was handed over to original

Defendant 1 and despite several requests, he never returned the same. It is submitted that the same was never the case of the plaintiffs when the suit was filed and there was no such amendment prayed for in the plaint.

12.7. The learned counsel appearing on behalf of the appellants has heavily relied upon the decision of this Court in *H. Siddiqui v. A. Ramalingam*³ (paras 13 & 15) in support of his submission that once the issue of alleged PoA was raised, the High Court ought not to have decided the second issue framed by it in that case without deciding on the first issue i.e. that of impact of non-production of the PoA and its existence thereof. It is submitted that in the present case, the High Court ought to have decided the issue of non-production of PoA by the plaintiffs in the first instance and then would have drawn the statutory presumption.

12.8. It is further submitted that in the present case, the learned trial court also specifically observed that no endorsement was made by the Sub-Registrar on the documents in compliance with Section 26 and Section 58 of the Registration Act. It is contended that it was neither stated in the deed that the plaintiff has the PoA by which he was empowered to execute the deed in his favour nor was an averment made in the plaint to that effect. It is submitted that the evidence produced by the plaintiffs i.e. two sale deeds dated 3-9-1968 and 29-9-1968 based on the purported PoA, has not been proved by production of official records or through the Registrar being examined as a witness. It is urged that the PoA is the fulcrum of the case on which the plaintiffs were claiming

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their rights, the plaintiffs never produced in any form. It is further urged that it was incumbent on the part of the plaintiffs to produce PoA as the plaintiffs in the suit were having their rights, title or interest through the PoA which is the basic document.

12.9. The learned counsel appearing on behalf of the appellants has further submitted that Sections 101 to 103 of the Evidence Act, 1872 provide that a party who avers the title must prove the title and that such a party is not relieved of the onus. It is submitted that in the present case even the plaintiffs had not discharged their initial burden of proving the title. Reliance is placed upon the decision of this Court in *Anil Rishi v. Gurbaksh Singh*⁴; and *Sebastiao Luis Fernandes v. K.V.P. Shastri*⁵.

12.10. It is further submitted that Section 65 of the Evidence Act provides for circumstances under which secondary evidence may be given without filing primary evidence. It is submitted that in the present case the plaintiffs have failed to prove the primary evidence i.e. PoA on the basis of which the secondary evidence i.e. the sale deeds were executed. Reliance is placed on the decision of this Court in *J. Yashoda v. K. Shobha Rani*⁶. It is submitted that therefore in the absence of the principal evidence (PoA), the significance of the two sale deeds, produced by the plaintiffs is diluted.

12.11. It is further contended that in the impugned judgment and order¹, the High Court while holding against the appellants and upsetting the concurrent findings of the courts below, inter alia, has held that there was a statutory presumption in favour of the plaintiffs insofar as the PoA is concerned. It is submitted that the said finding is erroneous inasmuch as the statutory presumption would not be available to the plaintiffs and the documents in question since the document (PoA) itself has not been produced before the courts below to ascertain whether the document was in order or in compliance of Section 33(1)(c) of the Registration Act.

12.12. The learned counsel appearing on behalf of the appellants has also relied upon the decisions of this Court in *Rajni Tandon v. Dulal Ranjan Ghosh Dastidar*⁷; and recent decision of this Court in *Amar Nath v. Gian Chand*⁸, in support of his submission on Section 33(1)(c) of the Registration Act.

12.13. Making the above submissions and relying upon the aforesaid decisions, it is vehemently submitted that the High Court has erred in allowing the second appeal and quashing and setting aside the concurrent findings of the courts below and thereby decreeing the suit while exercising the power under Section 100 CPC. Therefore, it is prayed to allow the present appeal and set aside the impugned judgment and order¹ passed by the High Court and restore the judgment and decree passed by the learned trial court.

13. The present appeal is opposed by Shri Hrishikesh Baruah, learned counsel appearing on behalf of the respondents — original plaintiffs.

13.1. It is vehemently submitted that the land which is in

possession of Defendant 1 is founded on the title of Plaintiff 1 based on the sale deed dated 3-9-1968 which has been executed on the basis of the PoA in favour of Plaintiff 2. It is submitted that therefore the defendants are not entitled in law as well as in equity to raise a dispute about the existence of the same.

13.2. It is submitted that as such the original defendants tried to take forceful possession of Schedule 'C' property by breaking the godown and taking away the goods. Plaintiff 2 informed the police station concerned and thereafter made a prayer before the Court of the SDM, Sardar for drawing up proceedings under Section 144 CrPC. On a police enquiry report, proceedings under Section 144 CrPC were started. During the proceedings, a prohibitory order was passed. The defendants entered the possession of Schedule 'C' property. It is submitted that, in fact, the learned Executive Magistrate directed the defendants to vacate Schedule 'C' property/land and hand over the same to the plaintiffs. However, in the revision petition filed by the defendants, the learned Revisional Court set aside the same on technical grounds. The plaintiffs approached the High Court by way of revision petition. The High Court disposed of the case by directing that the plaintiffs can initiate a fresh case under Section 145 CrPC regarding Schedule 'C' property. It is submitted that thereafter the plaintiffs filed a petition under Section 145 CrPC. However, on 27-9-1985, as the defendants started construction of a *pucca structure* on Schedule 'C' property, the plaintiffs were constrained to file the suit.

13.3. It is submitted that as such the High Court has rightly drawn the statutory presumption in favour of the plaintiffs. It is submitted that as observed and held by the High Court, the defendants have not led any evidence to rebut the presumption. It is submitted that as there was an endorsement in the sale deed and that it is a vital piece of evidence, the High Court has not committed any error in drawing the statutory presumption.

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

submitted that in that case, the PoA executed has to be authenticated by the persons concerned mentioned therein. Further, the plaintiffs have proved execution of the PoA by the original owner

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

13.5. It is further submitted that Section 34 of the Registration Act contemplates an enquiry which relates to various aspects mentioned in sub-section (3) including:

(i) enquiring into the fact as to whether such document was executed by the persons by whom it purports to have been executed;

(ii) satisfying himself as to the identity of the persons appearing before him; and

(iii) in case of any person appearing as a representative assign or agent satisfying himself as to the right of such person so to appear.

That on completion of enquiry as contemplated under the Registration Act, the registering authority may direct registration and issuance of a certificate in terms of Sections 60(1) and 60(2) of the Act. Therefore by virtue of Section 60(2) of the Registration Act, there is a statutory presumption which arises to the effect that the document has been registered in the manner provided by the Act, which means that it has been registered after due compliance of the enquiry contemplated under Sections 33(1)(c) and 36 of the Registration Act.

13.6. It is submitted that in the present case Plaintiff 2 had executed the first sale deed dated 3-9-1968 which is a registered document. That on the foundation of the said sale deed, the second sale deed dated 29-9-1968 had been executed in favour of Plaintiff 1 and therefore the owner of the property is Plaintiff 1. It is contended that on the foundation of the aforesaid registered document, the title has to flow. Otherwise, it would lead to a situation wherein a registered document will have no effect. That in the present case there is no challenge to the sale deeds. Therefore, the legal effect of the execution of the sale deeds has been proved.

13.7. It is submitted that the defendants are asking for production of a PoA which was used by the predecessor-in-interest of Plaintiff 1 to execute the sale deed in his favour. This burden to provide the PoA on the foundation of which the first sale deed was executed is an onerous burden and not contemplated in law. That as such the defendants are

nothing but rank trespassers. They have never set up their title in the property. They have never asserted that they have obtained possessory right from a person with title. Therefore, they have no right to challenge the title of Plaintiff 1.

13.8. Relying upon the recent decision of this Court in *Amar Nath*⁸, it is submitted that as observed and held by this Court that when a PoA holder executes the sale deed, he executes in terms of Section 32(a) of the Registration Act and therefore he does not need to produce the PoA. Only when the PoA holder executes a further PoA, then only the second PoA holder will have to produce the PoA between him and the first PoA and not otherwise.

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

14. I have heard the learned counsel for the respective parties at length. At the outset, it is required to be noted that in the present case, the plaintiffs instituted the suit for declaration of title, to which they were laying claim by virtue of the two sale deeds, one dated 3-9-1968 (executed by Plaintiff 2 in his favour on the basis of the alleged PoA alleged to have been executed by the original landowner — Braja Mohan Dey) and the second sale deed dated 29-9-1968 (executed by Plaintiff 2 in favour of Plaintiff 1 as a PoA holder of the original owner). Both, the learned trial court as well as the first appellate court held that the plaintiffs have failed to prove their title as the PoA on the basis of which Plaintiff 2 claimed the right/title is not forthcoming and/or not produced before the court. Therefore, both, the learned trial court as well as the first appellate court held that the requirement of Section 33 (1)(c) of the Registration Act has not been satisfied. However, by drawing the statutory presumption under Section 60 of the Registration Act, the High Court has believed the sale deeds dated 3-9-1968 and 29-9-1968 and has held that the plaintiffs have proved their title. But, by the impugned judgment and order¹ and drawing the statutory presumption, the High Court while exercising the powers under Section 100 CPC, has set aside the concurrent findings recorded by the courts below.

15. When the plaintiffs claimed title on the basis of the aforesaid two sale deeds dated 2-9-1968 and 29-9-1968, it was for the plaintiffs to prove even the execution of the sale deeds. The defendants were not

required to challenge the sale deeds in the suit filed by the plaintiffs, who prayed for a decree for a declaration of title in their favour. When Plaintiff 2 claimed title on the basis of the PoA executed by the original owner and thereafter executed the sale deed in favour of Plaintiff 1 as PoA of the original owner, the conditions provided under Section 33(1) (c) of the Registration Act are required to be strictly complied with.

16. Sections 32 and 33 of the Registration Act, which are relevant for our purpose, read as under:

"32. Persons to present documents for registration.—Except in the cases mentioned in ^a[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 authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

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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 recognised, namely—

(a) if the principal at the time of executing the power-of-attorney resides in any part of ⁹[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 ⁹[India], a power-of attorney executed before and authenticated by a notary public, or any court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend

at any registration office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend:

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in the Court.

[*Explanation.*—In this sub-section, “India” means India, as defined in clause (28) of Section 3 of the General Clauses Act, 1897 (10 of 1897)].

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

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

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

17. According to the plaintiffs and it is not in dispute that the original owner was residing in East Pakistan. According to the plaintiffs, the original landowner executed the PoA in favour of Plaintiff 2 at Kumilla, Bangladesh. The original PoA is not produced on record.


18. As per Section 32 of the Registration Act, every document to be registered under the Registration Act shall be presented at the proper registration office by some person executing or claiming under the same, or, by the agent of such a person, representative or assign, duly authorised by PoA executed and authenticated in the manner mentioned in Section 33(1)(c) of the Registration Act. Section 33 of the Registration Act provides that for the purposes of Section 32, only those powers of attorney shall be recognised as are mentioned in

Section 33(1). As per Section 33(1)(c) of the Act, if the principal at the time of execution of the PoA does not reside in India, a PoA executed before and authenticated by a notary public, or any court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government shall be valid.

19. In the present case, as such, the requirement of Section 33(1)(c) of the Act has not been satisfied at all. Section 32 of the Act is to be read along with Section 33(1)(c) of the Registration Act. Only in a case where the execution of the PoA is as per Section 32 read with Section 33(1)(c) of the Act, there shall be statutory presumption under Section 60 and/or under the provisions of the Registration Act.

20. Therefore, the High Court has committed a grave error in drawing the statutory presumption in favour of the plaintiffs and more particularly with respect to alleged PoA alleged to have been executed by the original owner in favour of Plaintiff 2. As such, there were concurrent findings recorded by both the courts below on non-compliance and/or non-fulfilling the conditions mentioned in Section 33(1)(c) of the Registration Act. By drawing the statutory presumption and without properly appreciating and/or considering the fact that there is a non-compliance of Section 33(1)(c) of the Registration Act there cannot be any statutory presumption, the High Court has set aside the concurrent findings recorded by both the courts below, in exercise of powers under Section 100 CPC.

21. Even the conduct on the part of the plaintiffs, more particularly on the part of Plaintiff 2, executing the second sale deed in favour of Plaintiff 1 — his own wife as a PoA of original landowner deserves serious consideration. It is required to be noted and even according to the plaintiffs, on the basis of the PoA alleged to have been executed by the original landowner — Braja Mohan Dey, Plaintiff 2 executed the registered sale deed in his own favour dated 3-9-1968. If that be so, in that case, there was no reason for him to execute the subsequent sale deed in favour of Plaintiff 1 — his own wife as a PoA of the original landowner. Once he became the owner on the basis of a registered sale deed dated 3-9-1968, which was executed by him in his own name as a PoA of the original owner, he could have executed the sale deed in favour of Plaintiff 1 as the owner and not as a PoA of the original owner.

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22. Even another conduct on the part of the plaintiffs submitting the application to amend the plaint under Order 6 Rule 17 CPC submitted

before the first appellate court also creates doubts about the genuinity of the PoA. It was never the case on behalf of the plaintiffs before the trial court and in the suit that the PoA was handed over by the plaintiffs to original Defendant 1 and that despite his demands he never returned the same. Having found and realised that the non-production of the PoA had gone against them, subsequently, before the first appellate court, the plaintiffs sought to make out a case that the PoA was handed over by Plaintiff 2 to original Defendant 1 and that despite his demands, never returned the same.

23. The amendment sought under Order 6 Rule 17 CPC was rightly refused by the first appellate court. The plaintiffs tried to make out altogether a new case which was not even the case of the plaintiffs earlier. This conduct on the part of the plaintiffs also deserves serious consideration and it creates serious doubts on the genuinity of the PoA. In that view of the matter, the High Court has committed a serious error in drawing a statutory presumption and the authenticity of the sale deeds. There may be a statutory presumption as per Section 60 of the Registration Act where all other requirements of execution of the sale deed, required to be complied with under the Registration Act are complied with and the genuineness of the PoA on the basis of which the sale deed was executed is not doubted.

24. In view of the above and for the reasons stated above and as the PoA is not produced on record; the executant of the PoA in favour of Plaintiff 2 has not stepped into the witness box; there is a non-compliance of Section 33(1)(c) of the Registration Act; and Plaintiff 2 is claiming title on the basis of the PoA alleged to have been executed by the original owner which is not forthcoming and that Plaintiff 1 is claiming the title on the basis of the sale deed dated 29-9-1968 executed by Plaintiff 2 as a PoA holder of the original owner which is not forthcoming, I am of the opinion that the learned trial court was justified and right in dismissing the suit and refusing to pass a decree for a declaration of title in favour of the plaintiffs. The same was rightly confirmed by the first appellate court. The High Court has committed a serious error in decreeing the suit. The impugned judgment and order¹ of the High Court is unsustainable both, on law as well as on facts.

25. In view of the above and for the reasons stated above, the present appeal succeeds and is allowed. The impugned judgment and order¹ passed by the High Court decreeing the suit is hereby quashed and set aside and the judgment and decree passed by the trial court, confirmed by the first appellate court, is hereby restored. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.V. Nagarathna, J. (disagreeing)— I have had the advantage of reading the judgment proposed by his Lordship M.R. Shah, J. However, I am unable to agree with the reasoning as well as the result arrived at by his Lordship. Hence, my separate judgment.

27. The defendants in Title Suit No. 201 of 1985 have assailed the judgment and decree dated 5-4-2018, passed by the High Court of Tripura in *Gita Rani Saha v. Manik Majumder*¹. By the impugned judgment, the judgment and decree dated 26-8-2004 passed in Title Appeal No. 02 of 1996 by the first appellate court i.e. the Court of the District Judge, West Tripura, Agartala, affirming the judgment and decree dated 11-9-1995 in Trial Suit No. 201 of 1985 has been set aside. Consequently, the suit has been decreed by the High Court. Hence, the appeal by the defendants in the suit.

28. For the sake of convenience, the parties herein shall be referred to in terms of their rank and status before the trial court.

29. The case of the plaintiffs in a nutshell is stated as under : The suit property was owned and possessed by Braja Mohan Dey and Plaintiff 2, namely, Dharendra Chandra Saha was a tenant running a shop in a hut located within the suit property. Braja Mohan Dey took a loan of Rs 10,000 from Plaintiff 2 and since he was unable to repay the loan, he sold the land in favour of Plaintiff 1 in lieu of the loan amount.

30. However, soon after the sale, Braja Mohan Dey went to East Pakistan (now Bangladesh) and could not complete registration of the sale deed in favour of Plaintiff 2. Therefore, he executed a power of attorney dated 1-8-1968, in favour of Plaintiff 2 before the 1st Class Magistrate, Komilla, Komilla District, East Pakistan thereby appointing Plaintiff 2 as his attorney i.e. on behalf of the seller, Braja Mohan Dey, to execute a sale deed and transfer the property to the buyer as his Attorney.

31. On the strength of the power of attorney dated 1-8-1968, Plaintiff 2 executed and registered a sale deed dated 3-9-1968 in his own favour as the attorney on behalf of the seller, Braja Mohan Dey. Plaintiff 2 thereby became the owner of the suit property. In his capacity as the absolute owner of the suit property, Plaintiff 2 then executed a sale deed dated 29-10-1968, in favour of his wife-Plaintiff 1, namely, Gita Rani Saha. The said sale deed was registered on 9-11-1968. That the suit land stood in the name of Plaintiff 1 who duly paid municipality tax, land revenue, etc.

32. That on one portion of the suit property described as Schedule

'A' property in the plaint, Plaintiff 2 was running a grocery business under the name M/s Dipak Bhandar. That the land falling to the eastern side of Schedule 'A' property, described as Schedule 'B' property in the plaint, was sold by Plaintiff 2 to Makhan Chand Deb, who subsequently sold the said land to Gauranga Chandra Dey. Defendant 1 was Gauranga Chandra Dey's tenant in respect of Schedule 'B' property.

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

34. Thereafter, the Executive Magistrate took cognizance of Miscellaneous Case No. 02 of 1981 and by an order dated 13-7-1984 directed the defendants to vacate the suit premises, failing which, possession thereof would be forcefully recovered with the aid of police authorities. However, the order dated 13-7-1984 was set aside by the Additional District and Sessions Judge by an order dated 30-1-1985 on the ground that there was a delay of two months in conversion of the proceedings initially registered under Section 144 of the Code of Criminal Procedure to proceedings under Section 145 of the Code. The order of the Additional District and Sessions Judge dated 30-1-1985 was sustained by the Gauhati High Court, while granting liberty to Plaintiff 2 to initiate fresh proceedings in this regard. That accordingly fresh proceedings were initiated.

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

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

36.1. The fact that Braja Mohan Dey was the original owner and possessor of the suit property, was denied. It was averred that the

contents of the plaint regarding the loan obtained by Braja Mohan Dey, in lieu of which the suit property was sold to Plaintiff 2, were totally false. That no power of attorney was executed by Braja Mohan Dey in favour of Plaintiff 2 in respect of the suit property.

36.2. That Plaintiff 2 was a tenant under Defendant 1 in a room located in the northern portion of Schedule 'A' property.

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

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

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37. The Court of the Assistant District Judge, West Tripura, Agartala by its judgment and decree dated 11-9-1995 dismissed TS No. 201 of 1985. The salient findings of the trial court are as under:

37.1. That the sale deed dated 3-9-1968 did not contain an endorsement by the Sub-Registrar to the effect that the sale deed was executed by Plaintiff 2 in his capacity as the attorney of Braja Mohan Dey. The endorsement made by the Sub-Registrar on the sale deed dated 3rd September was a simple endorsement merely stating that the sale deed had been executed by Plaintiff 2.

37.2. That it was not stated in the sale deed dated 3-9-1968 itself that Plaintiff 2 was making the sale on the strength of the power of attorney executed in his favour by Braja Mohan Dey.

37.3. That the plaintiffs did not produce before the trial court, the power of attorney which formed the basis for the sale deed dated 3-9-1968. That although in another suit, being TS No. 79 of 1973, Plaintiff 2 had deposed that the document conferring power of attorney on Plaintiff 1, was handed over by him to Defendant 1, no such submission was made in the present case.

37.4. That the sale deed dated 3-9-1968 could not be held to be properly executed for want of power of attorney authorising such execution. Therefore. Plaintiff 2 could not be said to have any right. title

or interest over the suit property. Consequently, it could not be held that the transfer made by Plaintiff 2 in favour of Plaintiff 1 was valid.

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

38. Being aggrieved, the plaintiffs preferred TA No. 2 of 1996 before the first appellate court. By judgment dated 26-8-1995, the first appeal was dismissed and the judgment of the trial court was confirmed. The relevant findings of the first appellate court are encapsulated as under:

38.1. That the plaintiffs failed to prove that the power of attorney was handed over to Defendant 1. That since the power of attorney stated to be executed by Braja Mohan Dey in favour of Plaintiff 2 was neither produced before the court, nor was it proved that the same was handed over to Defendant 1, a question had arisen as to existence and genuinity of the power of attorney.

38.2. That since the said power of attorney formed the basis for the sale deed dated 3-9-1968, the sale deed could not be considered to be legally executed.

39. Being aggrieved, the plaintiffs preferred Regular Second Appeal No. 1 of 2005 before the High Court of Tripura at Agartala. By the impugned judgment dated 5-4-2018¹, the second appeal was allowed and the judgments of the trial court and the first appellate court were set aside.

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

“(1) Whether the endorsement made on Sale Deed No. 1-10394 dated 3-9-1968 in respect of the power of attorney is a substantive evidence in respect of the power of attorney authorising Plaintiff 2 to sell the said land as demised in the sale deed dated 3-9-1968?

(2) Whether the defendants had fundamental onus to discharge in respect that the power of attorney was not in existence or forged and as such, the sale deed dated 3-9-1968 cannot be treated as the instrument of valid transfer?”

41. The following findings were recorded by the High Court in the impugned judgment¹:

41.1. That facts as to the authority of Plaintiff 2 to execute the sale

deed dated 3-9-1968 were recited therein and having been satisfied about the power of Plaintiff 2 to execute the sale deed, the same was allowed by the Sub-Registrar for being registered.

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

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

41.4. That the trial court and the first appellate court had wrongly shifted the onus on the plaintiffs, while the burden ought to have been on the defendants to prove their case which was contrary to the statutory presumption of validity of the sale deed dated 3-9-1968. That the defendants failed to rebut the presumption of validity of the sale deed even though the onus was squarely on them.

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

43. We have heard Shri Rana Mukherjee, learned Senior Advocate appearing on behalf of the appellants and Shri Hrishikesh Baruah, learned advocate appearing on behalf of the respondents, and perused the material on record.

44. The learned Senior Counsel for the appellant-defendants at the outset contended that the High Court was not right in allowing the second appeal preferred by the plaintiffs by drawing a presumption as to validity of sale deed dated 3-9-1968. That the High Court committed a serious error in law while setting aside the concurrent findings of the trial court and the first appellate court to hold that sale deed dated 3-9-1968 was valid even though the power of attorney forming the basis of such sale deed was neither produced nor proved. That there may be a statutory presumption under Section 60 of the Registration

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

45. It was further contended that even if it was to be assumed that a power of attorney was executed by Braja Mohan Dey in favour of Plaintiff 2, the same would still not be valid in the eye of the law owing to reasons of non-satisfaction of the statutory requirements of Section 33(1)(c) of the Registration Act, 1908. That it was an undisputed fact that as on the date on which the power of attorney is stated to be executed, Braja Mohan Dey was residing in East Pakistan. That a power of attorney executed in a foreign country, in order to be valid would have to be executed in accordance with Section 33(1)(c) of the Registration Act, 1908. However, in the instant case, there is no evidence to demonstrate that the power of attorney was executed in accordance with the said statutory provision. That since the execution of the power of attorney was not in accordance with Section 33(1)(c), no statutory presumption can be drawn under Section 60 of the Registration Act, 1908, as to the validity of sale deed dated 3-9-1968.

46. It was next submitted that the conduct of Plaintiff 2 required consideration inasmuch as he executed the second sale deed in favour of his wife, as the power of attorney of the original owner, even though he could have executed the same in his capacity as owner of the suit property by virtue of the sale made in his favour on 3-9-1968.

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

48. With the aforesaid averments, it was prayed that the impugned judgment¹ of the High Court be set aside and the judgment of the trial court which was affirmed by the first appellate court, be restored.

49. Per contra, the learned counsel for the respondent-plaintiffs supported the impugned judgment¹ of the High Court and contended that the High Court rightly drew a statutory presumption as to the validity of sale deed dated 3-9-1968. That it is trite law that registration of a document is a solemn act and the recitals of a registered document are presumed to be valid unless such a presumption is rebutted by strong evidence to the contrary. That since the Sub-Registrar had accepted sale deed dated 3-9-1968 for registration, it is to be presumed that the Sub-Registrar had done so only on satisfying himself as to the fact that the person who was executing the document was the proper person and competent to do so.

50. It was submitted that the endorsement made on sale deed dated 3-9-1968 could be considered as *prima facie* evidence as to the title to the suit property. That accordingly, there would arise a presumption as to validity of sale deed. While such presumption is a rebuttable presumption, the defendants in the present case had failed to discharge the burden of rebutting the same.

51. Section 60(2) of the Registration Act, 1908 was pressed into service, to contend that registration of a document was proof enough of the fact that the said document had been registered in the manner provided under the Registration Act, 1908, and that the facts mentioned in the endorsement have occurred as mentioned therein. In that regard, it was contended that since sale deed dated 3-9-1968 was a registered document, a statutory presumption may be drawn as to the fact that the registration was completed after due compliance of the provisions of the Act.

52. That the trial court and the first appellate court cast an onerous burden on the plaintiffs to produce the power of attorney which formed the basis of sale deed dated 3-9-1968 to prove sale deed which is a deed of conveyance of title. That such a burden was not contemplated under law and on that ground, the present civil appeal may be dismissed. It was urged that production of power of attorney was not required in order to prove a registered sale deed.

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

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

54.1. (i) Whether the statutory requirements of Section 33(1)(c) of the Registration Act, 1908 had been complied with in the instant case while executing the power of attorney dated 1-8-1968?

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

54.3. (iii) Whether the plaintiffs have proved sale deeds dated 3-9-1968 and 29-10-1968?

54.4. (iv) What order?


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

"32. Persons to present documents for registration.—Except

in the cases mentioned in ^a[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

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

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

(a)-(b) * * *

(c) if the principal at the time aforesaid does not reside in ⁹[India], a power-of-attorney executed before and authenticated by a notary public, or any court, Judge, Magistrate, ¹⁰[Indian] Consul or Vice-Consul, or representative ¹¹[***] of the Central Government:

* * *

34. Enquiry before registration by registering officer.—(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised 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;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.


(5) Nothing in this section applies to copies of decrees or orders.

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58. Particulars to be endorsed on documents admitted to registration.—(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under Section 89, there shall be endorsed from time to time the following particulars, namely—

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(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

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60. Certificate of registration.—(1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented

for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

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

56. Sections 67 and 85 of the Evidence Act, 1872, read as under:

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

*

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85. Presumption as to powers-of-attorney.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any court, Judge, Magistrate, [Indian] Consul or Vice-Consul, or representative of the [Central Government], was so executed and authenticated.”

57. Section 17 of the Registration Act speaks about documents of which registration is compulsory, while Section 18 deals with documents of which registration is optional. Clause (f) of Section 18 states that all other documents not required by Section 17 to be registered, may be registered at the option of the parties. In other words, the documents which are compulsorily registrable are listed under Section 17 and such list is exhaustive. The documents, registration of which is optional, are specified in clauses (a) to (e) of Section 18 but this list is not exhaustive.

58. Under clause (f) of Section 18 “all other documents” which do not require registration under Section 17 are also optionally registrable such as the power of attorney, document relating to adoption, etc. A power of attorney is not a compulsorily registrable document when it is duly notarised. It carries the presumption of being valid in view of

Section 85 of the Evidence Act. Since a power of attorney does not come within the ambit of Section 17 or clauses (a) to (e) of Section 18, registration of a power of attorney is optional. An attorney holder may execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor or principal, provided he has been specifically given power to sell the property of the principal.

59. The nature and scope of power of attorney has been explained by this Court speaking through R.V. Raveendran, J. in *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana*¹². The relevant paragraphs of the judgment read as under : (SCC pp. 666-67, paras 20-21)

"20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In *State of Rajasthan v. Basant Nahata*¹³ this Court held : (SCC pp. 90 & 101, paras 13 & 52)

'13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

* * *

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in

exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.'

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

60. The relevant provisions of the Registration Act, 1908, could be discussed. Section 32 speaks about persons to present document for registration. A power of attorney has a special authority to present a document on behalf of the principal at the registration office vide *Chhotey Lal v. Collector of Moradabad*¹⁴.

61. Under Section 33(1)(c), if a power of attorney has been executed before and authenticated by Magistrate, 1st Class of Komilla (Bangladesh) authorising the attorney to execute a sale deed for a house in India, it is sufficient to prove its execution vide *Atal Chakravarty v. Sudhi Gopal Pandey*¹⁵. On the other hand, if a power of attorney is not executed and authenticated in compliance with Section 33(1)(c), the same is invalid. Thus, if a principal does not reside in India and power of attorney executed before and authenticated by a notary public or any court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, the same is valid.

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


63. Section 58 speaks about particulars to be endorsed on documents admitted for registration, namely:

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act;

and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and

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any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

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


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

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

66. In the instant case, what is sought to be proved is title by sale deed and not the power of attorney as it is sale deed which conveys title and sale deed has been executed in accordance with the provisions

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

67. A primary plank in the arguments advanced on behalf of the appellant-defendants is that the requirements of Section 33(1)(c) of the Registration Act had not been complied with while executing the power of attorney dated 1-8-1968 and therefore, no validity could be attached to the said

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document. Consequently, sale deed dated 3-9-1968 which was executed on the strength of the said power of attorney could also not be presumed to be valid.

68. In order to determine whether the statutory requirements of Section 33(1)(c) of the Registration Act, 1908 had been complied with while executing the power of attorney, the recitals of sale deed dated 3-9-1968 may be referred to. On perusal of Annexure CA-1 (Ext. 11 before the trial court) which is a copy of deed of sale dated 3-9-1968 executed by the power-of-attorney holder (Plaintiff 2) in favour of himself, the following facts emerge:

68.1. That Shri Braja Moha Dey is the owner of the land in question after getting *rayati jote* allotment order from the government land authorities.

68.2. That due to the need for construction of huts and for urgent family expenditure, the seller Braja Moha Dey had approached the buyer, that is, Shri Dharendra Chandra Saha, (Plaintiff 2) to lend some money, as the buyer was the tenant of the said land (suit scheduled property) and the buyer agreed to lend the money to the seller.

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

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

of the debt that the seller had to pay.


68.5. The seller acknowledged this condition that in discharging the liability of loan of Rs 10,000 towards the buyer and to provide a registered sale deed in favour of the buyer, on 1-8-1968 executed a power of attorney before the 1st Class Magistrate, Komilla, Komilla District, East Pakistan appointing Shri Dharendra Chandra Saha — Plaintiff 2 as his attorney i.e. on behalf of the seller to execute a sale deed and transfer the property to the buyer as his Attorney.

68.6. That the buyer can obtain mutation against the seller in the government records by creating a record-of-rights in his name including his legal heirs and the successors without any objection.

69. In Annexure CA-2 (Ext. 12), which is a copy of sale deed dated 29-10-1968 the following recitals are recorded:

69.1. That the scheduled land is in absolute ownership and possession of the owner, namely, Shri Dharendra Chandra Saha (Plaintiff 2) by virtue of a registered sale deed dated 3-9-1968.

69.2. That since the original owner, Shri Braja Moha Dey, could not repay a sum of Rs 10,000 (Rupees ten thousand) to the seller (Shri Dharendra Chandra Saha) he executed a power of attorney dated 1-8-1968 appearing before the 1st Class Magistrate, Komilla Sadar, District Komilla, East Pakistan appointing Shri Dharendra Chandra Saha (Plaintiff 2) as his legal attorney giving power to sell or transfer himself the property in question the land in question.

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69.3. That on the strength of the aforesaid power of attorney dated 3-9-1968, Plaintiff 2 sold the said property to himself vide registered deed dated 3-9-1968 as a result he became the absolute owner and in possession of the land along with the house standing thereon as a buyer.

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

70. On a conjoint reading of the aforesaid two documents, namely, sale deeds, it is established that the initial sale deed dated 3-9-1968 by Plaintiff 2 Shri Dharendra Chandra Saha is as a power-of-attorney holder of Braja Mohan Dey, to himself as a buyer. The power of attorney is dated 1-8-1968, the details of which are referred to in the said sale deed inasmuch as the power of attorney was executed by the original owner Shri Dharendra Chandra Saha before the 1st Class Magistrate.

Komilla, East Pakistan, which is evident on a reading of both the documents. Thereafter, Plaintiff 2 executed a sale deed dated 29-10-1968 in favour of Plaintiff 1 as the absolute owner of the suit scheduled property. Therefore, there is compliance of Section 33(1)(c) of the Registration Act, 1908 inasmuch as the power of attorney has been executed before the 1st Class Magistrate, Komilla, East Pakistan. Hence there is no substance in the contention of the learned Senior Counsel appearing for the appellant-defendants that the requirements of Section 33(1)(c) of the Registration Act, 1908, had not been complied with while executing the power of attorney dated 1-8-1968 and therefore, no validity could be attached to the said document.

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

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power of attorney executed and authenticated in manner mentioned therein.

Therefore, it is evident that Plaintiff 2, had the authority as per Section 32(c) to present a document for registration in his capacity as the attorney of Braja Mohan Dey, the original owner of the suit property.

72. Further, non-production of the power of attorney in the suit is also not fatal to the case of the plaintiffs. In this regard, reliance may be placed on a recent judgment of this Court in *Amar Nath v. Gian Chand*⁸.

73. The facts of *Amar Nath case*⁸ are that the plaintiff therein had executed a power of attorney in favour of the second defendant therein and on the strength of such power of attorney, the second defendant executed a sale deed in favour of the first defendant. However, the plaintiff challenged the sale made in favour of the first defendant, inter alia, on the ground that the second defendant could not have executed a sale deed in the absence of the original power of attorney and the

Sub-Registrar was required to verify this aspect from the second defendant. It was contended that sale deed executed without producing the power of attorney was without authority as Plaintiff 2 was not competent to transfer the possession in the absence of the original power of attorney. The suit was dismissed by the trial court and the first appellate court. The High Court in second appeal reversed¹⁶ the decision of the trial court and the first appellate court and decreed the suit in favour of the plaintiff. In doing so, the High Court noted that it was unclear from the endorsement on sale deed as to by whom Plaintiff 2 was identified to be the power of attorney.

74. This Court in *Amar Nath case*⁸, in a civil appeal challenging the decision of the High Court, set aside the same and held that a power-of-attorney holder, while executing a sale deed, need not produce the original document conferring power of attorney. That a sale would not be liable to be disturbed solely on the ground that the power of attorney forming the basis of such sale was not produced before the Sub-Registrar at the time of registration.

75. On examining the scheme of Sections 32 to 34 of the Registration Act, the following observations were made : (*Amar Nath case*⁸, SCC pp. 475, 477, 478 & 480, paras 33-35 & 40)

"33. The argument of the plaintiff that for a proper and legal presentation of a document, the first defendant was obliged to produce the original power of attorney, does not appear to be sound.

...

34. In other words, when a person empowers another to execute a document and the power of attorney, acting on the power, executes the document, the power-of-attorney holder can present the document for registration under Section 32(a). Section 32(a) of the Registration Act deals with the person executing a document and also the person claiming under the same. It also provides for persons claiming under a decree or an order being entitled to present a document. Section 32(b) speaks about the representative or assignee of "such a person". The words "such a person" in Section 32 (b) are intended to refer to the persons covered by Section 32(a). Finally, Section 32(c) provides for the agent of "such a person" which necessarily means the persons who are encompassed by Section 32(a). Besides agent of the person covered by Section 32(a), Section 32(c) also takes in the agent of the representative or assignee. Now the words "representative" or "assignee" are to be found in Section 32(b). Thus, Section 32(c) deals with agents of the persons covered by Section 32(a) and

agents of the representative or assignee falling under Section 32(b). It is in respect of such an agent that there must be due authorisation by a power of attorney, which in turn, is to be executed and authenticated in the manner provided for in Section 33. However, the person, who has actually signed the document or executed the document for the purpose of Section 32(a) does not require a power of attorney to present the document. It may be open to the principal, who has entered obligations under the document, to present the document. Section 32(c) must alone be read with Section 33 of the Act. Thus, when Section 32(c) of the Registration Act declares that a document, whether it is compulsorily or optionally registrable, is to be presented, inter alia, by the agent of such a person, representative or assignee, duly authorised by power of attorney, it must be executed and authenticated in the manner and hereinafter mentioned immediately in the next following section. Section 33 by its very heading provides for power of attorney recognisable for the purpose of Section 32. Section 32(a) cannot be read with Section 33 of the Act. In other words, in a situation, if a document is executed by a person, it will be open to such a person to present the document for registration through his agent. The agency can be limited to authorising the agent for presenting the document for it is such a power of attorney, which is referred to in Section 32(c). It is in regard to a power-of-attorney holder, who is authorised to present the document for registration to whom Section 33 would apply.

35. In the facts of this case, the second defendant was armed with the power of attorney dated 28-1-1987 and if it was not cancelled and he had executed the sale deed on 28-4-1987, he would be well within his rights to present the document for registration under Section 32(a) of the Act.

36.-39. * * *

40. For reasons, which we have indicated, Section 32(c) read with Section 33 and Section 34(2)(c) are interrelated and they would have no application in regard to the document presented for registration by a power-of-attorney holder who is also the executant of the document. *In other words, there is really no need for the production of the original power of attorney, when the document is presented for registration by the person standing in the shoes of the second defendant in this case as he would be covered by the provisions of Section 32(a) as he has executed the document though on the strength of the power of attorney.* To make it even further clear, the inquiry contemplated under the Registration Act, cannot

extend to question as to whether the person who executed the document in his capacity of the power-of-attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not.”

(emphasis supplied)

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76. In short, the law laid down in *Amar Nath*⁸ supports the position that production of the original power of attorney is not an indispensable requirement to establish the validity of execution of a sale deed. It would therefore follow that production of a power of attorney is not a necessary requirement to prove a sale deed before a court of law executed through a power of attorney.

77. Section 67 of the Evidence Act deals with proof of documents such as a sale deed as in the instant case. The proof of signature or the handwriting of the executant on a document is sufficient to prove a document which is sale deed dated 29-10-1968, in the instant case. There is no dispute that the said sale deed is not signed by Plaintiff 2 or that it is not his signature or that he is not the executor of the document. The admission of the signature of the said document by Plaintiff 2 is proof of the signature on the document which is sufficient for proof of the document of sale deed of sale in favour of Plaintiff 1. Further, the same is a registered sale deed which is a document conveying title. Hence, Plaintiff 1 has acquired title from Plaintiff 2 and from the original owner of the land in question. Therefore, under the circumstances, Plaintiff 1 has proved her right, title and interest in the land in question. There is no contra evidence produced by the defendants so as to defeat the validity of sale deeds. The said documents speak for themselves. Therefore, there is no substance in the contentions of the appellants arising under the provisions of the Registration Act, 1908. Thus, Plaintiff 1 has acquired title to the land in question. Further, when a sale deed is executed on the strength of deed of power of attorney, the non-production of the deed of power of attorney in the suit is not fatal to the case of the plaintiff.

78. The appellant-defendants herein contended that that there may be a statutory presumption as per Section 60 of the Registration Act, 1908, only where all other requirements of execution of sale deed are complied with and there is no doubt as to the genuineness of the power of attorney. In the present case, sale deed dated 3-9-1968 was executed on the strength of the power of attorney which was executed

in conformity with Section 33(1)(c) of the Registration Act, 1908 because the power of attorney has been duly executed before the 1st Class Magistrate, Komilla, East Pakistan as noted from the two sale deeds. There is no contra evidence produced by the defendants in that regard. Since the requirements of execution of a sale deed are duly complied with, and there is no reason to doubt the recitals of sale deed which has been proved in accordance with law, it would follow that the statutory presumption under Section 60 of the Registration Act could be invoked in the instant case.

79. It is trite that registration of a document is a solemn act of parties and the recitals of a registered document are presumed to be valid unless such a presumption is rebutted by strong evidence to the contrary, vide *Ishwar Dass Jain v. Sohan Lal*¹⁷. This is because, as already stated, the document speaks for itself.

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80. In *Chhotey Lal v. Collector of Moradabad*¹⁴ the Privy Council considered the question as to the presumption of validity of a power of attorney which formed the basis of a registered mortgage deed which was later challenged. The Privy Council noted that since the Sub-Registrar had accepted the document for registration, it is prima facie evidence that the conditions have been satisfied and after registration of the document, the burden of proving any alleged infirmity rests on the person who challenges the registration.


81. Similarly, in *Jugraj Singh v. Jaswant Singh*¹⁸, this Court reiterated the legal position as to the presumption of regularity of official acts, and held that it would be presumed that a Sub-Registrar registering a document would have proceeded with the registration only on satisfying himself as to the fact that the person who was executing the document was the proper person.

82. Reliance may also be placed on the decision of this Court in *Rattan Singh v. Nirmal Gill*¹⁹. In the said case, the issue pertained to the validity of a general power of attorney (hereinafter "GPA") and consequently of sale deed executed on the strength of the GPA. The plaintiff therein, being the executor of the GPA contended that the GPA was obtained fraudulently and was therefore invalid. This Court, while holding that no case of fraud was made out, upheld the validity of the GPA and sale deed executed on the strength of the GPA. The relevant observations of this Court as to the presumption of validity of

documents and burden of proof required to rebut such presumption, are extracted as under : (*Rattan Singh case*¹⁹, SCC p. 332, para 74)

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

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

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84. Prima facie, the endorsement made on sale deed dated 3-9-1968, could be considered as determinative evidence of the conveyance of title to the suit property by its original owner, especially where the defendants have not set up a case to establish any independent title over the suit property. When such a presumption arises, the onus would be on a person who challenges such presumption, to successfully rebut it, vide *Prem Singh v. Birbal*². In that context, the question that would arise is, whether the defendants have rebutted the presumption of validity of sale deed dated 3-9-1968.

85. In order to answer this question, the following facts may be considered:

85.1. The trial court and the first appellate court have concurrently found that the defendants do not have any title over the suit land and against such finding the defendants have not preferred an appeal. They have thus accepted this finding which has attained finality.

85.2. The original owner, namely, Braja Mohan Dey has not initiated any proceeding to dispute the execution of power of attorney in favour

of Plaintiff 2.


85.3. The order of the Sadar Munsif dated 17-7-1974, in TS No. 69 of 1974 records that by way of a sale deed dated 3-9-1968, Plaintiff 2 had purchased the suit property and was paying municipal taxes as the owner of the premises which finding is binding on the parties herein as the same has not been upset by any court of law. Sarat Chandra Majumdar, original Defendant 1 in the present suit, was the plaintiff therein.

85.4. Notwithstanding the fact that the original defendant had become aware of sale deed dated 3-9-1968 and of the power of attorney that formed the basis of such sale deed, no steps were taken by the defendant to challenge Plaintiff 2's title over the suit property. It was only in the written statement filed in the present suit that it was vaguely claimed that Sarat Chandra Majumdar was the title holder of the suit property and Plaintiff 2 was a tenant therein. This, without there being any legal basis or evidence.

86. In light of the said facts, it can be stated that the defendant has not rebutted the presumption of validity of sale deed dated 3-9-1968.

87. In short, there is no reason to disbelieve the recitals contained in the registered sale deed dated 3-9-1968 merely on the ground that the document conferring power of attorney in favour of Plaintiff 2 was not produced before the trial court.

88. In the instant case, the High Court was therefore right in holding that when a document has been duly registered, there is a presumption of correctness and it can be rebutted only by strong evidence to the contrary. But the defendants have not led any evidence in order to rebut the presumption as might be drawn on the basis of the said endorsement on the body of Sale Deed No. 1010394, dated 3-9-1968 accepting original Plaintiff 2 as the attorney of the original owner, Braja Mohan Dey. The same is a vital piece of evidence

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which has been ignored by the trial court as well as the first appellate court. The High Court is further right in holding that original Plaintiff 2 was duly nominated and constituted as the attorney of Braja Mohan Dey (original owner of the suit land) and on the strength of the said power of attorney, Plaintiff 2 transferred land in favour of himself. As the absolute owner, Plaintiff 2 sold the said land to Plaintiff 1. Thus, Plaintiff 1 had every right to recover the said suit land, description of which has been provided in Schedule 'C' of the plaint by removing and demolishing all obstructions from the defendants. The High Court was therefore right in decreeing the suit.

89. Consequently, the present appeal is dismissed. The impugned judgment of the High Court of Tripura in *Gita Rani Saha v. Manik Majumder*¹, by which, the judgment and decree dated 26-8-2004 passed in Title Appeal No. 2 of 1996 by the first appellate court in Title Appeal No. 2 of 1996 affirming the dismissal of Title Suit No. 201 of 1985 by the Asst. District Judge No. 1, Tripura has been set aside, is affirmed. The parties are directed to bear their respective costs.

ORDER OF THE COURT

90. Hon'ble M.R. Shah, J. and Hon'ble B.V. Nagarathna, J. pronounced separate reportable judgments of the Bench comprising his Lordship and her Ladyship. In view of the difference of opinion in the matter, the Registry is directed to place the papers before the Hon'ble the Chief Justice of India for appropriate orders for constituting a larger Bench to decide the controversy.

¹ Arising from the Judgment and Order in *Gita Rani Saha v. Manik Majumder* (Tripura High Court, RSA No. 1 of 2005, dt. 5-4-2018) [**Matter referred to larger Bench**]

* **Ed.** : Nagarathna, J. delivered a disagreeing opinion.

¹ *Gita Rani Saha v. Manik Majumder*, RSA No. 1 of 2005, order dated 5-4-2018 (Trip)

² *Prem Singh v. Birbal*, (2006) 5 SCC 353

³ *H. Siddiqui v. A. Ramalingam*, (2011) 4 SCC 240 : (2011) 2 SCC (Civ) 209

⁴ *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558

⁵ *Sebastiao Luis Fernandes v. K.V.P. Shastri*, (2013) 15 SCC 161 : (2014) 5 SCC (Civ) 180

⁶ *J. Yashoda v. K. Shobha Rani*, (2007) 5 SCC 730 : (2007) 3 SCC (Cri) 9

⁷ *Rajni Tandon v. Dulal Ranjan Ghosh Dastidar*, (2009) 14 SCC 782 : (2009) 5 SCC (Civ) 520

⁸ *Amar Nath v. Gian Chand*, (2022) 11 SCC 460 : (2023) 3 SCC (Civ) 230

^a *Substituted* for "Section 31 and Section 89" by Act 39 of 1948, Section 3 (w.e.f. 3-9-1948).

⁹ *Substituted* for "the States" by Act 3 of 1951, Section 3 and Schedule (w.e.f. 1-4-1951).

¹⁰ *Substituted* by the A.O. 1950, for "British".

- ¹¹ The words "of His Majesty or" omitted by the A.O. 1950.
- ¹² *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana*, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351
- ¹³ *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77
- ¹⁴ *Chhotey Lal v. Collector of Moradabad*, 1922 SCC OnLine PC 48 : (1921-22) 49 IA 375 : AIR 1922 PC 279
- ¹⁵ *Atal Chakravarty v. Sudhi Gopal Pandey*, (1969) 73 CWN 947
- ¹⁶ *Gian Chand v. Amar Nath*, 2008 SCC OnLine HP 264
- ¹⁷ *Ishwar Dass Jain v. Sohan Lal*, (2000) 1 SCC 434
- ¹⁸ *Jugraj Singh v. Jaswant Singh*, (1970) 2 SCC 386
- ¹⁹ *Rattan Singh v. Nirmal Gill*, (2021) 15 SCC 300

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