

7th December, 2023

THE CONUNDRUM OF CANCELLATION OF POWER OF ATTORNEY

1. Power of Attorney

- 1.1 According to the Power of Attorney Act of 1882, a Power of Attorney (for short 'POA') is any instrument that empowers any specified person to act in the name of the person who is originally executing the document.
- 1.2 The instrument will be legally binding since it has been extended by the person carrying it out. Aside from the definition provided in the Act, the rules governing POA have been subjected to extensive scrutiny and modifications, as the government has limited the use of such instruments that expressly result in the sale of immovable property.

2. Cancellation of Power of Attorney

- 2.1 The principal-agent relationship through a POA shall cease to exist at the fulfillment of the purpose for which the POA was prepared for, or it can be revoked at any time at the will of the parties involved by the expression of revocation of authority in the form of issuing a revocation notice. Otherwise in cases of death, insanity, or insolvency, the POA is automatically revoked or cancelled.
- 2.2 The donor/principal of the POA must obtain cancellation deed registration from the office of the same sub-registrar who registered the POA in the first place.
- 2.3 The holder shall be notified of the cancellation deed pertaining to the POA by informing them of the same and providing them a copy of the deed. This deed must include all required information on the grounds for cancellation, the date, and any other potential consequences of such revocation.

3. The Landmark Case on Cancellation of Power of Attorney

- 3.1 In *Amar Nath v/s. Gian Chand & Anr.* 2022 SCC OnLine SC 102, the Supreme Court heard an appeal against a High Court ruling stating that the production of a genuine copy of a POA was required for the execution of a sale deed under Section 18 of the Registration Act, 1908.

A. Factual Matrix

- a) The plaintiff had made an oral arrangement with defendant 1 to sell property for Rs.55000/-. On 28.01.1997, the plaintiff executed a special POA in favor of defendant 2 for the purpose of selling property for Rs. 55000.
- b) The plaintiff claimed that because defendant 1 was unable to arrange funds, the original POA was handed to the plaintiff on 02.02.1987, and it was revoked the same day.
- c) The plaintiff claimed that defendant 2 applied for a copy of the POA and fraudulently completed the sale deed on 28.04.1987 for Rs. 30,000 without permission since the POA was regarded to have been terminated in the eyes of law upon being handed over to him the plaintiff.
- d) As a result, the plaintiff filed a complaint for a permanent injunction declaring that he was the owner in possession of the property and that the mutation indicating the sale in favor of defendant 1 was null and invalid.
- e) Defendant 2, on the other hand, claimed that he never renounced the original POA prior to the execution of the transaction and therefore the sale was legitimate. Furthermore, the defendant claimed that the plaintiff got Rs.10,000 as part of the purchase price, with the balance Rs.20,000 paid at the time of registration.

B. Litigation Timeline

- a) The plaintiff asserted that because the initial POA was cancelled, the completed sale deed was null and invalid, and he later filed an action seeking a permanent injunction on the sale and claiming that he was the owner of the aforementioned property.
- b) The Trial Court rejected the plaintiff's contention that the second defendant did not have his POA at the time of the transaction.



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- c) The Court concluded that cancellation needed registration as well, and that simply writing 'terminated' on the original POA did not signify that the POA had been cancelled until notification was given to the second defendant.
- d) On the question of whether the sale was influenced by the original copy of the POA, the Court ruled that, under Section 18A of the Registration Act of 1908, the sale document should be accompanied by a genuine copy of the POA, and the original was not necessary.
- e) The High Court ruled that the second defendant lacked the legal capacity to execute the sale agreement since the POA given to him on January 28, 1987 had been revoked on February 2, 1987.
- f) The High Court further pointed out that Section 18 of the Act expressly specifies that the Registering Authority must view the actual copy of the special POA.
- g) The Court found that the first defendant was aware of the status of the POA since he was present at the moment of its cancellation based on the testimony provided by PW6 (i.e. Dev Raj).
- h) The plaintiff was pronounced the owner in possession of the land by the High Court, and the mutation proving the sale in favour of the first defendant was ruled null and void.

C. Findings of the Supreme Court

- a) The Court examined provision 18 of the Registration Act and determined that the submission of the certified copy of the POA along with the original of the sale deed was completely acceptable because the provision did not demand the production of the original copy.
- b) As a result, the plaintiff's allegation that the failure to produce the original POA was fatal to legal registration was summarily dismissed, and the prior court's interpretation of Section 18A was found to be incorrect.
- c) The Bench held that the inquiry intended by the Registration Act could not extend to the question of whether the person who executed the document in his capacity of POA had a valid POA or not to carry out the document, because the document sought to be registered was a sale deed and not the POA in question.
- d) The Bench noted that there was a sale agreement in favour of the first defendant, that the property was supposed to be sold for Rs.55,000, and that the POA was unquestionably registered. Furthermore, on 02.06.1987, the plaintiff wrote to defendant 2 regarding the anticipated sale and the POA, demonstrating his assertion that the POA was revoked four months early on 02.02.1987.
- e) The Bench noted that the plaintiff confessed not canceling the POA at the Sub-Registrar Office and even admitted not sending any notice of cancellation to either defendant 2 or defendant 1.
- f) The Bench determined that the High Court had no basis in overturning the concurrent conclusions of the lower courts in a Second Appeal. The Bench ruled that there must be cancellation of a registered POA and that it must be brought to the attention of the third party at the very least.
- g) Furthermore, noting that there was no express restriction on price in the POA, the Bench held that while defendant 2 could be held guilty of breach of duty for acting against the interests of the principal, defendant 2 selling the property for Rs.30,000 rather than Rs.55,000 could not invalidate or render the sale null and void. As a result, the contested judgment was reversed.