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## **SC ON PRODUCTION OF ORIGINAL POWER OF ATTORNEY DURING REGISTRATION**

### **A. Introduction:**

Supreme Court (“**SC**”) in *Amar Nath* case<sup>1</sup> held that production of original power of attorney (**POA**) at the time of registering another document is not necessary and inquiry contemplated under the Registration Act, 1908 (the **Act**) cannot extend to the question as to whether the person who executed the document in his capacity of the POA holder of the principal, was having a valid POA.

### **B. Brief Facts:**

1. Gian Chand , plaintiff (“**Chand**”) intended to sell portions of property owned and possessed by him to Amar Nath, the 1<sup>st</sup> defendant (“**Nath**”). In this regard he entered into an oral agreement. Plaintiff executed a Special Power of Attorney (**SPOA**) in favour of Yashpal Singh, the 2<sup>nd</sup> defendant (“**Singh**”) for the purpose of registration.
2. Negotiations fell through as Nath was unable to arrange the sale consideration. Singh surrendered the original SPA to Chand, who in turn informed Singh that the SPOA stood cancelled.
3. Singh, being a deed writer, obtained a certified copy of the SPOA and executed a sale deed in favour of Nath. Chand contended that the Singh cannot execute a sale deed in the absence of original SPOA. The sale deed was without authority and the sub-registrar was supposed to verify this aspect from the Singh under Sections 32 to 34 of the Act. Section 18A of the Act contemplates production of true copy.
4. Chand sued for relief of declaration by way of permanent injunction that he is the owner in possession of the property and the mutation of the sale in favour of Nath is null and void. It was further prayed for rendition of accounts (against the Singh).
5. Trial court dismissed the suit for declaration as Chand was not the owner in possession of the property, but decreed the rendition of accounts by Singh. The same was upheld by the first appellate court. Aggrieved by the concurrent judgment, Chand approached the High Court of Himachal Pradesh (“**HC**”) in second appeal.

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<sup>1</sup> *Amar Nath V. Gian Chand and Another* MANU/SC/0105/2022.

6. HC set aside the concurrent findings of the lower court. Aggrieved by the judgment of the HC Nath approached the SC challenging the legality and correctness of the HC judgment .

### C. Judgment & Reasoning:

SC held:

1. Section 18A of the Act prescribes production of true copy of a document which is sought to be registered. Here, the document sought to be registered was the sale deed.
2. Relying on *Rajni Tandon* case,<sup>2</sup> held that if a document is executed by a person, it will be open to that person to present the document for registration through his agent. Here, Singh was armed with the SPOA. Since it was not cancelled and he had executed the sale deed, he had the right to present the document for registration.
3. Also relying on privy council observation made in *Jambu Prasad* case,<sup>3</sup> held that the Singh having presented the sale deed as executant, the presentation and registration cannot be questioned.
4. Referring to the letter by the Chand addressed to the Singh, observed that Chand spoke about the sale of land and requested Singh to hasten the process as he was in dire need of money. There was no mention of the surrender of SPOA or its cancellation. Court concluded that by writing the word 'cancelled' upon SPOA being surrendered by Singh cannot be accepted.
5. Relying on *Daya Shanker* case,<sup>4</sup> held that registered the SPOA could have been cancelled only vide a registered document which would have brought it into the public domain.
6. Section 32(c), 33 and 34(2)(c) are inter related and they would have no application in regard to the document presented for registration by the SPOA holder, who is also the executant of the document. Therefore, the production of original SPOA does not arise, when the document is presented for registration by the person standing in the shoes of the executor and who executed the document on the strength of the SPOA.
7. The inquiry contemplated under the Act cannot extend to the question as to whether the person who executed the document in his capacity of the POA holder of the principal, was indeed having a valid POA or not to execute the document.

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<sup>2</sup> *Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and Ors.* MANU/SC/1338/2009.

<sup>3</sup> *Jambu Prasad v. Muhammad Navab Aftab Ali Khan and Anr.* MANU/PR/0042/1914.

<sup>4</sup> *Daya Shanker and Ors. v. Rajendra Kumar and Ors.* MANU/UP/1902/2016.