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WHEN TITLE TO PROPERTY IS NOT CONFERRED?

The Supreme Court, (SC) in *Ramesh Chand's* case,¹ reiterated the established legal position that executing documents like agreement to sell, issuance of General Power of Attorney (GPA) and receipt of consideration do not confer a valid title to an immovable property.

Brief Facts.

- This case involved a property dispute between two brothers Ramesh Chand (**Ram**) and Suresh Chand (**Suresh**).
- The suit property originally belonged to their father Late Kundan Lal (**KL**).
- Suresh claimed that he had acquired title from his father KL through an agreement to sell, a GPA, an affidavit along with receipt of consideration, and a registered will, all dated 16.05.1996. He contended his brother, Ram was living in the property as a licensee.
- Crucially, no sale deed was executed by KL.
- Suresh filed a suit for possession before the Trial Court (**TC**) to which Ram filed a counterclaim.
- Ram argued that the property was orally transferred to him by their father KL in July 1973 and that the documents relied upon by Suresh were null and void.
- The TC decreed the suit for possession in Suresh's favor and dismissed Ram's counterclaim.
- The High Court of Delhi (**HC**) dismissed Ram's Regular First Appeal, confirming the TC's decision. Ram then appealed to SC.

Question of Law.

Whether the impugned documents allegedly executed by KL in favour of Suresh would confer a valid title over the suit property?²

Ram's Contentions.

- No title of ownership is conferred merely on the basis of an agreement to sell, GPA, affidavit, receipt of consideration or will.
- As per Section 54 of the Transfer of Property Act, 1882 (**TPA**) immovable property can be sold only by a registered instrument.

¹ *Ramesh Chand (Deceased) through Legal representatives vs. Suresh Chand and Another* 2025 SCC OnLine SC 1879.

² Paragraph 10 of the Judgement.

- The Will was not proved in accordance with the law, particularly Section 68 of the Indian Evidence Act, 1872³ (IEA) and Section 63 of the Indian Succession Act, 1925 (ISA).

SC's Judgment & Reasoning.

SC analyzed the legal standing of the documents relied upon by Suresh and:

- Emphasized the distinction between a 'sale' and a 'contract for sale' under Section 54 of the TPA.
- Held that sale is a transfer of ownership, whereas a contract for sale (agreement to sell) is merely a document creating a right to obtain another document (a sale deed).
- Cited its previous judgment in *Suraj Lamp* case⁴ where it held that an agreement of sale does not create any interest or charge in the property. At best, it would only enable to seek specific performance for the execution of a sale deed.
- Held that a GPA creates an agency where the grantor authorises the grantee to perform specific acts on his behalf. It is not an instrument of transfer.
- Noted that an agent acts in a fiduciary capacity and cannot use the power of attorney for his own benefit. The GPA in this case did not confer a valid title on Suresh. A 'will' is defined under the ISA⁵ as a "*legal declaration of a testator with respect to his property which he desires to be carried into effect after his death.*"
- Clarified that a Will is a "posthumous disposition" and not a transfer *inter vivos* (a transfer between living persons). It comes into effect only after the death of the testator and is revocable at any time during the testator's life.
- Highlighted the stringent requirements for proving a will under Section 63 of the ISA and Section 68 of the IEA.
- Held that the documents relied upon by Suresh did not confer valid title and hence set aside the HC's judgment.

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³ Section 68 of the *Bhartiya Sakshya Adhiniyam (BSA) 2023*.

⁴ *Suraj Lamp and Industries Private Limited v. State of Haryana* (2012) 1 SCC 656.

⁵ Section 2(b) of the *Indian Succession Act, 1925*.