



NO TRANSFER OF PROPERTY USING POWER OF ATTORNEY

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Analysis of Supreme Court Judgement - three-judge bench presided over by Justice R. V. Raveendran in the matter of *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr. And Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614]

In a landmark judgment that is expected to send a large number of property owners into a tizzy, the Supreme Court held that the GPA method of immovable property sales is not a valid form of transfer of property. A three-judge bench presided over by Justice R. V. Raveendran in the matter of *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.* said that property can be lawfully transferred only through registered sale deeds. "A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property," the bench said, after interpreting various provisions of the law concerning property sales. However, the bench said the judgment will not affect "genuine transactions" under the GPA. The apex court said there can be no mutation of property in municipal and revenue records on the basis of such documents.

The court could not make the order applicable with prospective effect as it had not laid down any new law. However, it said that those who had already bought property through GPA before its judgment could use the documents to apply for regularisation of allotments and leases by development authorities. "Nothing prevents affected parties from getting registered deeds of conveyance to complete their title. The said transactions may also be used to obtain specific performance or to defend possession under section 53A of TP (Transfer of Property) Act," the court said.

In order to ensure that GPA continues to serve its purpose, the court said its judgment will not affect the validity of sale agreements and powers of attorney executed in genuine transactions. "For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance." The court further said that a person can enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings. In that connection he can execute an agreement of sale and grant a power of attorney that will allow the developer to further sell the property to prospective purchasers.

Going into the legality of such transfers, the court said any contract of sale which was not a registered sale deed would fall short of the requirements of the relevant provisions of the Transfer of Property Act and could not confer any title.

The court said a transfer of property by way of sale could only be by a sale deed. "In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred," the bench said. This is a vital decision concerning those who opt for GPA transactions and would require them to understand the interpretation of the aforesaid position which will help mitigating hardships and avoid lengthy litigation.

Further, in *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [2004 (8) SCC 614] this Court held:

"Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

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It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

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 authorizes 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 1A 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. In *State of Rajasthan vs. Basant Nehata - 2005 (12) SCC 77*, this Court held :

"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. 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, then only the ownership in the immovable property will be transferred to purchaser in view of the judgement of the Supreme Court (*Supra*).

The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein." In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another...."