



VALIDITY OF AGREEMENT TO SELL, GENERAL POWER OF ATTORNEY AND WILL IN TRANSACTIONS RELATING TO IMMOVABLE PROPERTY

Recently, the Hon'ble Supreme Court of India in the case titled "*Ghanshyam vs. Yogendra Rath* [2023 SCC Online SC 725]" vide judgement dated **02.06.2023** (Copy of the Judgement has been attached herewith as **Annexure – I**) has outlawed an Agreement to Sell, General Power of Attorney ("GPA") and Will as valid means of conveyance. The Court's dictum laid down that recognizing a GPA and Will as documents of title or as documents conferring rights in an immovable property is in strict violation of the statutory law.

Brief factual context of the case is as follows,

Mr. Ghanshyam ("hereinafter referred to as the "**Appellant**") was the owner of the property situated in Delhi ("hereinafter referred to as the "**Suit Property**"). He entered into an Agreement to Sell dated 10.04.2002 with Mr. Yogendra Rath ("hereinafter referred to as the "**Respondent**") and was in receipt of the entire amount of the sale consideration from the Respondent. On the very same day, the Appellant executed a Will bequeathing the Suit Property to the Respondent and also executed a GPA in favor of the Respondent. Consequently, the possession of the Suit Property was handed over to the Respondent, however, no sale deed was executed between both the parties.

Further, on request of the Appellant, the Respondent allowed him to occupy the premises of the Suit Property for a period of 3 months as 'Licensee'. However, the Appellant failed to vacate the Suit Property after expiry of the abovementioned period, to which the Respondent filed a suit against the Appellant seeking latter's eviction from the Suit Property and recovery of mesne profits. The Respondent claimed his ownership rights over the Suit Property on the averment that he is the rightful owner of the Suit Property by virtue of Agreement to Sell and Will dated 10.04.2002, GPA, memo of possession and receipt pertaining to the sale consideration.

It was argued by the Appellant that the abovementioned documents cited by the Respondent had been manipulated on blank papers and that there was no concrete evidence establishing the ownership of the Respondent over the Suit Property. Following this, the Appellant filed a first appeal and thereafter, a second appeal before the High Court of Delhi, both of which were decreed in favor of the Respondent.

Subsequently, the Appellant filed this present Appeal before the Hon'ble Supreme Court of India.

The judgment of the Supreme Court is as follows,

The Court while adjudicating the appeal held that an agreement to sell is neither a document of title nor a deed of transfer of property by sale and as such, may not confer absolute title upon



the Respondent in view of Section 54 of the Transfer of Property Act, 1882. However, the factors such as entering into an agreement to sale, payment of entire sale consideration and being put in possession by the Appellant, proves that the Respondent holds de-facto possessory rights in part performance of the agreement to sell.

Further, the Bench opined that the Appellant simply being a licensee and the license having been terminated, has no right to remain in possession of the Suit Property but to restore the possession to the Respondent, who holds the rightful possessory title over it.

SCOPE OF A WILL – On the issue whether any title can be conferred through a Will, the Court observed that a Will comes into effect only after the death of the executant and not before it. Thus, a Will would have no force until and unless, the testator or the person making it dies.

SCOPE OF A GPA – It was observed that non-execution of any document by the GPA holder consequent to execution of a GPA, renders the latter useless. Thus, the GPA executed by the Appellant was considered to be meaningless and inconsequential since no sale deed was executed to give effect to transfer of title and ownership rights upon the Respondent.

The Court by placing reliance on ***Suraj Lamp Industries Pvt. Ltd vs. State of Haryana [(2009) 7 SCC 363]***, ***Imitiaz Ali vs. Nasim Ahmed [AIR 1987 Del 36]***, ***G. Ram vs. Delhi Development Authority [AIR 2003 Del 120]*** deprecated the transfer of immovable property through an agreement to sell, GPA and Will instead of a registered conveyance/sale deed and laid down that title and interest of an immovable property do not stand transferred unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882 is executed and duly registered under Section 17 of the Indian Registration Act, 1908.

Similarly, the Supreme Court in another case titled ***Shiv Kuma & Anr vs. Union of India*** vide judgement dated **14.10.2019** while considering the validity of transactions in form of GPA, Will and sale agreements, opined that no ownership rights could be accrued from such transactions as they are not a legal mode of transfer and does not lead to creation of interest and title in the immovable property.

In addition to the aforementioned cases, the Supreme Court in ***Greater Bombay Cooperative Bank Limited vs. Nagraj Ganeshmal Jain & Ors [(2017) 15 SCC 316]*** vide judgement dated 26.07.2017, while placing reliance on ***Suraj Lamp Industries (supra)*** ratioed as follows,

“15. Immovable property can be transferred only by a registered document. There can be no transfer of any right, title or interest in any immovable property except by way of a registered document”.

“16. This Court clearly held that an agreement to sell which is not a registered deed of conveyance would not meet the requirements of Sections 54 and 55 of the Transfer of Property Act. With respect to Section 53-A of the Transfer of Property Act, it is well settled that the same can only be used as a defense in proceedings initiated by the transferor or by any person claiming under him”.



Similar view was reiterated by the High Court of Delhi in the case titled ***Rajbala Ghiloria vs. Ashok Kumar Sethi*** [2021 SCC Online Del 4801].

Therefore, in view of the aforementioned discussion and on review of several judgments dealing with the concept of General Power of Attorney, Will, Agreement to Sell, it appears that a transfer relating to an immovable property can only be made by executing a registered deed of conveyance.

In the absence of such a registered document duly stamped, no right, title, interest in an immovable can be transferred. Transactions in nature of SA/GPA/Will/ATS cannot be treated as concluded or completed transfer in the eyes of law, except to the limited extent of Section 53A of the Transfer of Property Act, 1882. The above shall not only apply to freehold property but also to transfer leasehold property. Time and again, various courts in India have directed to put an end to such modes for transferring immovable property.

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