

HIGH COURT OF ANDHRA PRADESH

* * * *

FIRST APPEAL No. 492 of 2024

Between:

Konkanala Suryaprakasha Rao (died) and others

....APPELLANTS

AND

Kampa Bhaskara Rao and another

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **08.10.2025**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

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! Counsel for the Appellants : Sri P. Rajasekhar,
Assisted by
Smt.Nimmagadda Revathi

Counsel for Respondents No.3 to 8 : Sri K. V. Vijay Kumar

< Gist :

> Head Note:

? Cases Referred:

1. (2012) 1 SCC 656
2. 2004 (6) ALD 175 (FB)
3. 2025 SCC OnLine SC 443
4. 2018 (3) ALT 49
5. 2014 (5) ALT 714
6. (2012) 4 SCC 148
7. (1997) 1 SCC 496

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

FIRST APPEAL No. 492 of 2024

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri P. Rajasekhar, learned counsel, assisted by Smt. Nimmagadda Revathi, learned counsel for the appellants and Sri K. V. Vijay Kumar, learned counsel for the plaintiff/respondents No.3 to 8.

2. The 1st respondent is the original plaintiff/deGREE holder. Respondents No.3 to 8 are his legal representatives brought on record on the death of the 1st respondent. The 2nd respondent is the defendant/judgment debtor. In spite of service, the 2nd respondent did not enter appearance in the appeal.

3. The appellants are the claim petitioners in E.A.No.42 of 2019 in E.P.No.111 of 2019 filed by the plaintiff/deGREE holder for execution of the decree passed in O.S.No.16 of 2016 on the file of the VIII Additional District Judge, Prakasam at Ongole (in short 'learned Court'). The appellants filed the claim petition under Order 21 Rule 97 of Code of Civil Procedure (in short 'CPC'). The same was rejected by Order and Decree dated 05.08.2024, against which the present appeal has been filed.

I. Facts:

i) O.S.No.16 of 2016:

4. The plaintiff/1st respondent filed O.S.No.16 of 2016 against the 2st respondent/defendant for specific performance of the agreement of sale, dated 01.07.2006 for direction to execute a registered sale deed and in case of his

failure, to get it executed by due process of law. The suit was decreed *ex parte* on 12.04.2017. Decree for specific performance in respect of the suit schedule property after receiving the balance sale consideration of Rs.16,00,000/- with future interest @12% per annum from 09.12.2013 was granted. In case of the defendant's failure, the plaintiff was set at liberty to obtain registered sale deed by due process of law by depositing the balance consideration within a specified time.

5. The decree dated 12.04.2017 passed in O.S.No.16 of 2016 attained finality. The decree holder deposited the balance of sale consideration pursuant to the decree.

ii) E.P.No. 59 of 2017:

6. The 1st respondent/decreed holder filed E.P.No.59 of 2017 for obtaining the registered sale deed from the Court. The registered sale deed was executed by the Court on 21.02.2018.

iii) E.P.No.111 of 2019 and E.A.No.42 of 2019:

7. Later on, the 1st respondent/decreed holder filed E.P.No.111 of 2019 for delivery of possession of the property. The VIII Additional District Judge, Prakasam at Ongole ordered for delivery of possession.

8. The appellants filed claim petition in E.A.No.42 of 2019 under Order 21 Rule 97 CPC. They contended that the 2nd respondent intended to sell the schedule property for the purpose of discharging the mortgage debt due to the wife of the 1st respondent against the security of the schedule property under registered simple mortgage deed dated 25.11.2004 in favour of the 1st

respondent's wife. They set up the case that the 2nd respondent alienated the schedule property to the 1st appellant on 17.01.2007 for a total consideration of Rs.15,00,000/- which was paid to the 2nd respondent. The original registered sale deed dated 13.04.2004 of the 2nd respondent and the possession of the schedule property was delivered to the 1st appellant. The registered sale deed was not executed, but the 2nd respondent executed the registered General Power of Attorney-cum-Sale Agreement dated 17.01.2007 in favour of the 1st appellant. The General Power of Attorney-cum-Sale Agreement contained a clause for execution of the regular sale deed either in his own favour or in favour of any other person of his choice. It was alleged that the 2nd respondent discharged mortgage debt of the 1st respondent's wife on 23.04.2007 and the 1st respondent's wife executed a registered discharge deed on 23.04.2007, which were handed over to the 1st appellant. The 1st appellant's further case was that the 1st appellant leased out the schedule property to the 2nd appellant (the wife of the 1st appellant) under the lease agreement dated 26.06.2008 for a period of two years and basing upon the said lease, the 2nd appellant started Bar and Restaurant in the schedule premises, namely, M/s.Chandra Restaurant & Bar, Chirala by obtaining bar licence and ever since the 2nd appellant is running the same and paying the rent to the 1st appellant and the lease is being renewed from time to time. The bar licence was also being renewed from time to time. They further stated about the payment of the house tax assessment, mutation and other taxes to the Municipality. From the receipt of the notice in E.P.No.111 of 2019 filed by the 1st respondent/deed holder against the 2nd

respondent/judgment debtor for delivery of possession under Order 21 Rule 35 CPC the appellants obtained knowledge of the decree for specific performance in favour of the decree holder. Based on the General Power of Attorney-cum-Sale Agreement dated 01.07.2006 by the 2nd respondent in favour of the 1st appellant, terming the decree as collusive and Sale Agreement dated 01.07.2006 by 2nd respondent in favour of 1st respondent as ante-dated, the claim was filed resisting the delivery of possession to the decree holder.

9. The plaintiff/decreed holder filed counter denying the material contents of E.A.No.42 of 2019. He submitted that the 2nd respondent executed the agreement of sale in favour of the 1st respondent/decreed holder on 01.07.2006 much prior in time to the General Power of Attorney-cum-Sale Agreement alleged to have been executed by the 2nd respondent in favour of the 1st appellant. The 2nd respondent either colluded with the 1st appellant or defrauded him by suppressing the earlier agreement of sale in favour of the 1st respondent. The plea was taken that in fact the judgment debtor/2nd respondent discharged the mortgage amount due to the decree holder's wife, and for that reason the 2nd respondent attested the discharge deed of the mortgage. The advance of Rs.15,00,000/- was received by the 2nd respondent from the decree holder pertaining to the agreement of sale deed dated 01.07.2006. The decree holder requested to dismiss the E.A.No.42 of 2019 being devoid of merits.

10. The learned VIII Additional District Judge, Prakasam at Ongole framed the following points for determination:

1. “Whether the petitioners can resist the claim of the petitioners to take possession of the property?
2. Whether Ex.P1 is valid and if so, he got the rights upon Ex.P1 agreement cum sale of General Power of Attorney?
3. Whether the petitioners are entitled for declaration as prayed for?”

11. The parties led the evidence. On behalf of the appellants PWs.1 to 3, viz., PW.1-Kankanala Surya Prakasha Rao, PW.2-Boddu Aparna, PW.3-Yenumala Yanadi Rao, were examined and Exs.P1 to P22, viz., Ex.P1-Original registered GPA cum Agreement of sale dated 17.01.2007, Ex.P2-Registered Sale deed dated 13.04.2004 executed in favour of 2nd respondent by Damarla Venkateswarlu and others, Ex.P3-Registered mortgage deed dated 25.11.2004 executed by 2nd respondent in favour of 1st respondent's wife, Ex.P4-Discharge receipt dated 23.04.2007 executed by 1st respondent wife in favour of 2nd respondent, Ex.P5-Lease agreement dated 26.06.2008 between the petitioners, Ex.P6-Lease agreement dated 05.05.2017 between the petitioners, Ex.P7-Proceedings of Prohibition and Excise Superintendent dated 30.06.2011, Ex.P8-Tax receipt dated 31.01.2017, Ex.P9-Tax receipt dated 26.09.2017, Ex.P10-Tax receipt dated 28.02.2018, Ex.P11-Tax receipt dated 31.07.2018, Ex.P12-Tax receipt dated 05.02.2019, Ex.P13-Tax receipt dated 03.06.2022, Ex.P14-Bar license dated 05.07.2017, Ex.P15-Proceedings extending the license dated 27.06.2020, Ex.P16-CC of agreement of sale dated 01.07.2006, Ex.P17 to Ex.P19- part payment endorsements, Ex.P20-CC of registered sale deed dated 13.04.2004, Ex.P21-CC of legal notice dated 15.12.2015 and Ex.P22-CC of postal track dated 16.12.2015 were marked. On behalf of the Decree

Holder/respondents RW.1-Kampa Bhaskara Rao was examined and Ex.B1-CC of sale deed dated 21.02.2018 executed by the Court in favour of 1st respondent was marked.

iv) Orders in EP/EA(s):

12. The learned VIII Additional District Judge recorded the finding on point No.1 that the petition by the appellants under Order 21 Rule 97 CPC was maintainable. On points No.2 and 3, a finding was recorded that the claim of the appellants could not be accepted. The learned VIII Additional District Judge held that Ex.P1-General Power of Attorney-cum-Sale Agreement dated 17.01.2007 was not proved and valid, and based thereon the appellants would not get any rights over the schedule property and could not claim to be the absolute owner of the scheduled property. The learned Court relied upon the decision of the Hon'ble Apex Court in ***Suraj Lamp and Industries Private Limited v. State of Haryana***¹. It also considered the evidence of the 1st appellant as PW.1 about payment of consideration and on the point of possession and recorded that it was nowhere in Ex.P1 that possession of the schedule property was delivered to the 1st appellant. The learned Court disbelieved the appellants that they purchased the property for consideration of Rs.15,00,000/-. It observed that from the documents placed, the decree holder / the 1st respondent made payment of Rs.15,00,000/- to the 2nd respondent under agreement of sale in the year 2006 and part of the balance was paid subsequently till 09.12.2023 and the remaining balance amount was paid

¹ (2012) 1 SCC 656

under the decree. So, it disbelieved the appellants' case of the sale consideration of Rs.15,00,000/- for which the appellants' claimed to have purchased under the General Power of Attorney-cum-Agreement of Sale (Ex.P1). The learned Court held that the appellants could not be permitted to resist the claim of the 1st respondent and they were not entitled for the declaration as prayed for. Thus, deciding the points 2 and 3 against the appellants, E.A.No.42 of 2019 was dismissed by Order and decree dated 05.08.2024.

13. Challenging the said order and decree, the present appeal has been filed under Section 96 CPC.

II. Arguments:

i) Appellants' counsel:

14. Sri P. Rajasekhar, learned counsel for the appellants, submitted that the judgment in the case of ***Suraj Lamp and Industries Private Limited*** (supra) was of no help to the 1st respondent. He submitted that the said judgment is prospective and does not affect the transactions already entered into. He submitted that, so the General Power of Attorney-cum-Agreement of Sale, dated 17.01.2007 (Ex.P1) with delivery of possession validly transferred title to the 1st appellant. He submitted that the original registered sale deed dated 13.04.2004 (Ex.P2), in favour of 2nd respondent, and the discharge mortgage debt receipt, were delivered to the appellant No.1 under General Power of Attorney-cum-Agreement of Sale (Ex.P1), which show that the agreement of sale in favour of 1st respondent dated 01.07.2006 was ante-dated. The 1st appellant created lease in favour of 2nd appellant and the appellants

have been in possession of the E. P. Schedule property. Consequently, the adjudication must have been made in favour of the 1st appellant with respect to his right, title and interest in the subject property. E.A.No.42 of 2019 deserved to be allowed. Learned counsel for the appellants also placed reliance in ***Gurram Seetharam Reddy v. Gunti Yashoda***².

ii) Respondents' Counsel:

15. Sri K. V. Vijay Kumar, learned counsel for the decree holders / respondents 3 to 8, submitted that there is no illegality in the Order of the learned Court. He submitted that there could be no transfer in favour of the 1st appellant by the General Power of Attorney-cum-Agreement of Sale. He submitted that additionally the agreement of sale in favour of the 1st respondent/decreed holder was prior in time and consequently, the General Power of Attorney-cum-Agreement of Sale even if it be taken as executed in favour of the 1st appellant, being on subsequent date would not have the effect of transferring the title to the 1st appellant. He further submitted that the transfer of possession could also not be proved from the evidence on record and Ex.P1 did not evidence the transfer of possession. He submitted that once based on the agreement of sale (Ex.A1) in favour of the 1st respondent, suit for specific performance has been decreed and the sale deed has been executed by the Court, the respondents/decreed holder are entitled for execution of the decree by delivery of possession and the appellants have no right to resist or obstruct delivery of possession.

² 2004 (6) ALD 175 (FB)

III. Points for determination:

16. In view of the aforesaid submissions, the points for consideration and determination before us are as follows:

- A.** Whether the appellants are entitled for adjudication of their alleged right, title and interest in the property, in their favour, so as to resist the execution of the decree by delivery of possession to the decree holder?
- B.** Whether the Order/Decree dated 05.08.2024 in E.A.No.42 of 2019 in E.P.No.111 of 2019 in O.S.No.16 of 2016 under challenge in the appeal calls for any interference by this Court?

IV. Analysis:

17. We have considered the submissions of the learned counsels for the parties and perused the material on record.

18. Learned counsel for the appellants placed reliance in ***Gurram Seetharam Reddy*** (supra), on the point of maintainability of appeal under Section 96 of CPC against the Order of the Execution Court passed under Order 21 Rule 58 (4), 98 and 100 claim petitions. In the said case (Full Bench) answered as under in para-42(a) that the Appeal was maintainable under Section 96 CPC as under:

“42. For the foregoing reasons, we hold that:

- a) Against the orders passed under Rule 58(3) and Rules 98 and 100 of Order 21, C. P. C. regular appeals under Section 96 and not miscellaneous appeals under Section 104 read with Order 43, Rule 1 CP. C. are maintainable and that the judgment of this Court in *Nookaraju's case* (supra) does not represent the correct position of law.

- b)
- c)”

19. On the said aspect, Order 21 Rule 103 CPC specifically provides that where any application has been adjudicated upon under Rule 98 or Rule 100, the Order made thereon shall have the same force and be subject to same condition as to an appeal or otherwise as if it were a decree. Consequently, the present appeal under Section 96 CPC is competent.

Point-A:

20. It is not in dispute that Ex.A1 in O.S.No.16 of 2016 is an agreement of sale in favour of the 1st respondent/decreed holder which is dated 01.07.2006. Ex.P1 filed in E.A.No.42 of 2019, the General Power of Attorney-cum-Agreement of Sale in favour of the 1st appellant is dated 17.01.2007. The agreement of sale (Ex.A1) is thus prior in time. There is nothing on record that Ex.A1 is ante-dated. On the contrary, the 1st appellant (PW.1) in his cross-examination deposed “*I do not know whether the 1st respondent obtained an agreement to sell from 2nd respondent in respect of the schedule property prior to 2007*”.

21. In O.S.No.16 of 2016 the learned VIII Additional District Judge in its judgment recorded that P.Ws.2 and 3 – Mota Srinivasarao and Dasari Gopi, who are attestors of Ex.A1 agreement of sale categorically deposed that the transaction under Ex.A1 took place in their presence and they acted as attestors. So, to prove Ex.A1, the decreed holder produced the attestors of the agreement of sale, and the learned Court returned finding in favour of the decreed

holder/respondents. Based on Ex.A1, the suit for specific performance was decreed and pursuant to the decree, sale deed (Ex.B1) has been executed by the Court in favour of the decree holder/1st respondent, on 21.02.2018.

22. Order 21 Rules 97, 98 & 101 CPC read as under:

Resistance to delivery of possession to decree-holder or purchaser

97. Resistance or obstruction to possession of immovable property.—

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.—

(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order

the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

23. Under Order 21 Rule 97 CPC, where a decree holder of a decree for the possession of the immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining the possession of the property, he may make an application to the Court complaining of such resistance or obstruction and where any such application is made, the Court is required to adjudicate upon such application, in accordance with the provisions contained in Order 21. Rule 101 provides that all questions including the questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 and relevant to the adjudication of the application shall be determined by the Court dealing with the application. So, the Court has to adjudicate if the person resisting or obstructing, obtaining the possession of the property, has right, title or interest in the property.

24. The resistance by the 1st appellant to the decree holder obtaining the possession is on the ground that there is a special power of attorney cum

agreement of sale and under the same the possession was also delivered to the 1st appellant by the 2nd respondent/judgment debtor. The very basis of the claim is the special power of attorney, dated 17.01.2007.

25. In ***Suraj Lamp and Industries Private Limited*** (supra) the Hon'ble Apex Court held that a transfer of immovable 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 immovable property" can be transferred. It was further held that 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 the Transfer of Property Act, 1882 and will not confer any title nor transfer any interest in immovable property, except to the limited right granted under Section 53-A of the Transfer of Property Act. An agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the Transfer of Property Act enacts that sale of immovable 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.

26. In ***Suraj Lamp and Industries Private Limited*** (supra), on the point of scope of power of attorney, the Hon'ble Apex Court held that 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. It was held that the power of attorney was 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 ***Suraj Lamp and Industries Private Limited*** (supra) it was concluded that the special attorney / general power of attorney does not convey any title nor creates any interest in an immovable property. A direction was also issued that the Court will not treat such transactions as completed or concluded transfers or as conveyances. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records.

27. Paragraphs 18, 19, 20, 21, 23 and 24 of ***Suraj Lamp and Industries Private Limited*** (supra) read as under:

“18. It is thus clear that a transfer of immovable 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 immovable property can be transferred.

19. 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 the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable 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

20. 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 authorises 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 1-A 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.

21. In *State of Rajasthan v. Basant Nahata* [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)

“13. 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.

52. 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.

Scope of will**22. xxxxx*****Conclusion***

23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in *Asha M. Jain v. Canara Bank* [(2001) 94 DLT 841] , that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

28. The contention raised by Sri P. Rajasekhar, learned counsel for the appellants is, that the law as laid down in ***Suraj Lamp and Industries Private Limited*** (supra) is prospective. So, it does not apply to the General

Power of Attorney-cum-Agreement of Sale as in the present case in favour of the 1st appellant by the 2nd respondent, which is of the year 2007 i.e., before the judgment in ***Suraj Lamp and Industries Private Limited*** (supra).

29. We therefore proceed to consider if ***Suraj Lamp and Industries Private Limited*** (supra) is prospective. In other words, if the law as laid down therein would not apply to the General Power of Attorney dated 17.01.2007 as in the present case.

30. In ***Suraj Lamp and Industries Private Limited*** (supra) the Hon'ble Apex Court also considered the contention raised, that the declaration as made in the said case with respect to the GPA sales and SA/GPA/Will transfers made, create hardship to a large number of persons who had entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. The Hon'ble Apex Court in paragraph-26, reiterated that the well settled legal position is that SA/GPA/Will transactions were not 'transfers' or 'sales' and that such transactions could not be treated as completed transfers or conveyances. They could continue to be treated as existing agreements of sale and nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. It was further observed that those transactions might also be used to obtain specific performance or to defend possession under Section 53-A of the Transfer of Property Act, and if they were entered before the date of the judgment, they might be relied upon to apply for regularization of allotments/leases by the development authorities. It was made clear that if the

documents relating to “SA/GPA/Will transactions” had already been accepted/acted upon by the development authorities or by the municipal or revenue authorities to effect mutation, they need not be disturbed merely on account of the judgment in ***Suraj Lamp and Industries Private Limited*** (supra).

31. The Hon’ble Apex Court in ***Suraj Lamp and Industries Private Limited*** (supra) further made it clear in para-27 that, the observations made in the judgment were not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. Giving example, the Hon’ble Apex Court observed that 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, as also for the purposes as mentioned in paragraph 27 of ***Suraj Lamp and Industries Private Limited*** (supra).

32. Paragraphs 26 & 27 of ***Suraj Lamp and Industries Private Limited*** (supra) read as under:

“26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been

accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way 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. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.”

33. We are not in the agreement with the submission of the learned counsel for the appellants that the judgment has been made prospective.

34. In ***Kanishk Sinha v. State of West Bengal***³ the Hon’ble Apex Court held that whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to

³ 2025 SCC OnLine SC 443

persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.

35. What has been saved is, in paragraphs 26 and 27. But, so far as the basic principle i.e., the law laid down, that SA/GPA/Will transactions are not transfers or sales and they cannot be treated as complete transfers or conveyances which can be treated as existing agreement of sale, is only the reiteration of the well settled legal position, and it is so stated clearly, in paragraph-26. The legal position has not been said to apply only prospectively. In other words, the contention which is sought to be raised that the special power of attorney cum agreement of sale being of a date prior to the judgment in ***Suraj Lamp and Industries Private Limited*** (supra), and for that reason, it would convey the right, interest and title of the 2nd respondent to the 1st appellant, is unacceptable and it does not follow from ***Suraj Lamp and Industries Private Limited*** (supra) that the judgment shall apply prospectively in the way as submitted by the learned counsel for the appellants. The reason is that it is not a transfer or conveyance of transfer at all.

36. The only thing is that,

- i) Those may be used to obtain specific performance or to defend possession under Section 53A of the Transfer of Property Act;
- ii) The 'SA/GPA/Will transactions' may be relied upon to apply for regularization of allotments/leases by development authorities; and

- iii) If some mutation had already taken place prior to the judgment date, that need not be disturbed based merely on the decision in ***Suraj Lamp and Industries Private Limited*** (supra).

37. The SA/GPA executed even prior to the judgment in ***Suraj Lamp and Industries Private Limited*** (supra), thus retains its character as an agreement of sale, which can be used to defend possession under section 53-A of the Transfer of Property Act and also to obtain a specific performance. A person having an agreement of sale, based upon that, he can file suit for specific performance of contract and also defend his possession raising the plea of Section 53-A of the Transfer of Property Act. Undisputedly and as per the settled law the special / general power of attorney in favour of the 1st appellant, could be used only as an agreement of sale. An agreement of sale, it is also settled in law, and as per Section 54 of the Transfer of Property Act, is a contract that sale of such property shall take place on terms settled between the parties, but it does not have self-creation of any interest in or charge on such property. However, in the present case, the position is a bit different. It is not a simple case of a power of attorney in favour of the 1st appellant from the 2nd respondent. It is a case where already there exists an agreement of sale (Ex.A1) in favour of the 1st respondent/plaintiff/decreed holder from the same 2nd respondent/judgment debtor and based thereon the 1st respondent exercised his right to get the specific performance by filing a suit which has already been decreed and the sale deed also executed by Court.

38. The appellants did not file any suit for specific performance.

39. We are of the further view that the 1st appellant, even cannot derive any benefit or advantage basing upon ***Suraj Lamp and Industries Private Limited*** (supra), with respect to the mutation entries made in favour of the 1st appellant or based on lease by the 1st appellant in favour of the 2nd appellant, mutation entry if also made in favour of 2nd appellant. The reason is that the prior agreement of sale (Ex.A1) in favour of 1st respondent which resulted into concluded contract under the Court's decree cannot be negated, or overturned by the later General Power of Attorney-cum-Sale Agreement in favour of the 1st appellant. In ***Suraj Lamp and Industries Private Limited*** (supra) the question was with respect to the general power of attorney etc., its scope and its effect on transfer of right, title or interest. The effect of the general power of attorney-cum-agreement of sale, executed by the same person, who had already executed an agreement of sale in favour of another person and based upon which that another person had obtained a decree of specific performance of contract was not on issue for consideration.

40. It is also well settled in law that the mutation entry in the revenue records does not create title nor has any presumptive value on title, but only enables the person to pay the land revenue. On the said aspect, the learned Court has also placed reliance in ***C.Narendranath v. Government of Andhra Pradesh, rep. by its Principal Secretary***⁴ and in ***Koyyada Andalu v. Lingala Sathyanarayana***⁵.

⁴ 2018 (3) ALT 49

⁵ 2014 (5) ALT 714

41. So far as the limited right under Section 53A of the Transfer of Property Act is concerned, in the present case the claimant appellants' case as per their EA is not of 'part performance' under Ex.P1. Their case is of 'out and out transfer' in favour of 1st appellant and to extinguishment of right and title of the 2nd respondent. It cannot be so, pursuant to SPA/GPA-cum-Agreement of Sale.

42. In ***Raheja Universal Ltd. V. NRC Ltd.***⁶ the Hon'ble Apex Court held that Section 53A of the Transfer of Property Act does not create title of the transferee in the property in question, but gives him a very limited right, that too, subject to the satisfaction of the conditions as stated in Section 53A of the Transfer of Property Act itself.

43. In ***Reheja Universal Ltd.*** (supra), the Hon'ble Apex Court also referred to ***State of U.P. v. District Judge***⁷ in which it was held that protection under Section 53A of the Transfer of Property Act is available as a shield only against the transferor, the proposed vendor. It has nothing to do with the ownership of the proposed transferor who remains full owner of the said lands till they are legally conveyed by sale deed to the proposed transferees.

44. In the present case, in favour of the 1st respondent the agreement of sale executed prior to the special power of attorney has already ended into a concluded contract by the execution of Court Sale Deed pursuant to the decree in favour of 1st respondent.

⁶ (2012) 4 SCC 148

⁷ (1997) 1 SCC 496

45. Consequently, we are of the view that the appellants have no right to resist or obstruct the delivery of the possession to the decree holder. The decree holder is entitled for delivery of possession.

Point-B:

46. In view of the consideration made in Point-A, we hold that the Order dated 05.08.2024 under challenge in the appeal calls for no interference. The Appeal deserves to be dismissed.

Conclusions:

47. We sum up our conclusions as under:

On Point-A, we hold that the Special General Power of Attorney dated 17.01.2007 in favour of the 1st appellant does not confer or create any right, title and interest in favour of the 1st appellant, nor based thereon the lease in favour of the 2nd appellant by the 1st appellant confers any right to the 2nd appellant, so as to object to the execution of the decree in favour of the 1st respondent/decreed holder for delivery of possession of the E.P.schedule property or to resist/obstruct delivery of possession.

On Point-B, the Order/decreed under challenge in appeal calls for no interference.

Result:

48. The Appeal is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 08.10.2025
Dsr

Note:

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