IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23.09.2021
PRONONOUNCED ON	02.02.2022

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.A.No.856 of 2021

Dr.Elizabeth Rajan
Daughter of late Mr.Thanarajan,
Residing at 621, 9th Avenue SW,
Rochester Minnesota
United States of America 55902
Rep. through her Power of Attorney
Holder Mr.Aliff Sultan Fazelbhoy,
Having his office address at:
M/s. ALMT Legal, 1st Floor,
Free Press House, 215 Free Press Journal Marg,
Nariman Point, Mumbai-400 021. ... Appellant

Vs.

1. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai-600 028.

2. The Sub-Registrar-Tirupporur,
   No.29, South Mada Street,
   Thirupporur - 603 110.

3. Mr.Ranjit Jacob,
   S/o. Mr. Thomas Jacob,
   No.127, Harington Road,
   Chennai - 600 031.

4. M/s.Oriental Hotels Ltd.
   Registered Office at Taj Coromandel Hotel,
   No.37, Nungambakkam High Road,
   Nungambakkam, Chennai - 600 034. ... Respondents

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PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.08.2019 passed in W.P. No.25049 of 2019.

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For Appellant : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.P.V.Balasubramaniam
for M/s.BFS Legal

For Respondents : Mr.D.Ravichander,
State Government Counsel for RR 1 and 2

Ms.Lita Srinivasan for R3

Mr.R.Subramanian for R4

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The interesting question that arises for consideration in this appeal is, whether a Power of Attorney executed outside India is in compliance with Section 14 of the Indian Notaries Act, 1952 and its authentication.

2. When the question as to whether the entry of the sale deed dated 18.02.2005 registered as Doc.No. 894 of 2015 should be removed, came up for consideration, the learned Single Judge dismissed the writ petition even at the admission stage itself holding that such a relief could not be granted in exercise of the jurisdiction under Article 226 of the Constitution of India and the writ petitioner filed the instant appeal questioning the said order.

3. The sale deed in dispute dated 18.02.2005 was executed by the writ petitioner/appellant's father one, Mr.Dhanarajan, represented by his Power of Attorney. The said General Power of Attorney was executed in Malaysia on 05.05.2004. The appellant has challenged the sale deed, which has been registered by the Power of Attorney that was executed in Malaysia, contending that the Power of Attorney is contrary to the provisions of Section 14 of the Notaries Act, 1952 which does not include Malaysia in the reciprocal arrangements for recognition of notarial acts done by foreign notaries, since Malaysia is not a signatory to the Convention dated 05.10.1961. In other words, the registration of sale deed without a valid Power of Attorney is invalid and liable to be set aside.

4. The writ petitioner is none other than the daughter of the original owner Mr.Dhanarajan. The third respondent is his Power of Attorney and the fourth respondent is the purchaser under the sale deed. The writ petition is filed in the year 2019, after 14 years of the execution of the sale deed.

5. To determine the validity of the execution of a Power of Attorney outside India, in this case Malaysia, the relevant provision of

law that need to be referred is Section 14 of the Notaries Act, 1952, which is reproduced below :

> ***"14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.*** *—If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification."*

6. Sections 32 (c) and 33 of the Registration Act, 1908, are also relevant and the same read as hereunder :

> *"**32. Persons to present documents for registration**.— Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,—*
>
> *(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.*
>
> ***33. Power-of-attorney recognisable for purposes of section 32** — (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—*
>
> *.....*
>
> *(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-*

Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court."

7. Any Power of Attorney executed outside India needs authentication under Indian laws. It is a requirement that Power of Attorney has to be executed in the presence of certain designated officers. India is a signatory to the Convention on Abolishing the Requirement of Legislation for Foreign Public Documents (in short "the Convention") and based on this treaty India is bound to recognize a notarial act performed in any of the other signatory country.

8. It is pointed out by the learned Senior Counsel for the appellant that, Malaysia is not a signatory to the said convention. Therefore, under the said convention the notarial acts performed in Malaysia shall not be recognized in India. A list of countries who have signed/ratified the said convention are listed out in the said Convention.

9. Therefore, Malaysia, where the Power of Attorney in question is executed, is not a party to the convention and thus, whether the notarial act which had taken place before a notary public at Malaysia is authenticated has to be seen. The document need to be legalized and the ratification process is quite similar. However there is an additional requirement of embassy legalization by the consul office of the country in which the document is to be used. There are also countries that require further authentication for international acceptance of Notarized documents.

10. Section 14 of the Notaries Act deals with the reciprocal recognition of the acts done by foreign notaries. If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by Notaries within India are recognized for all or any limited purpose of that country or place, the Central Government may, by notification in the official gazette, declare that the notarial acts lawfully done by Notaries within such country or place shall be recognized within India for all purposes or for limited purposes as may be specified in the notification. It was argued that since there is no such notification of the Central Government in the official Gazette, this Court cannot grant recognition to the Notarial acts done by Notary public of Malaysia.

11. Section 85 of the Indian Evidence Act states that the court shall presume that every document purported to be Power of Attorney which has been duly executed before and authenticated by a notary public can be taken to have been so executed and authenticated. Section 85 therefore creates a presumption of authenticity in favour of Notarized Power of Attorney which is as follows :

> *"**85. Presumption as to powers-of-attorney** — The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated."*

12. A Three-Judge Bench of the Hon'ble Supreme Court in ***Jugraj Singh v. Jaswant Singh*, (1970) 2 SCC 386** held as follows :

> *"8. The short question in this case is whether Mr Chawla possessed such a power of attorney for executing the document and for presentation of it for registration. Now, if we were to take into account the first power of attorney which was executed in his favour on May 30, 1963, we would be forced to say that it did not comply with the requirements of the law and was ineffective to clothe Mr Chawla with the authority to execute the sale deed or to present it for registration. That power of attorney was not authenticated as required by Section 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to show that he was a Notary Public. In any event there was no authentication by the Notary Public (if he was one) in the manner which the law would consider*

adequate. The second power of attorney however does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that that power of attorney is also duly authenticated in accordance with our laws. The only complaint is that the Notary Public did not say in his endorsement that Mr Chawla had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under Section 85 of the Indian Evidence Act and Section 33 of the Indian Registration Act."

13. A learned Single Judge of the Delhi High Court in **National and Grindlays Bank Ltd., V. M/s.World Science News & Others, AIR 1976 Delhi 263,** held as follows :

"10. The document in the present case is a power of attorney and again on the face of it shows to have been executed before, and authenticated by, a notary public. In view of Section 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. Once the original document is produced purporting to be a power of attorney so executed and attested, as stated in S. 85 of the Evidence Act, the Court has to presume that it was so executed and authenticated. The provision is mandatory, and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have been duly fulfilled. There is no doubt that the section is not exhaustive and there are different legal modes of executing a power of attorney, but, once the power of attorney on its face shows to have been executed before, and authenticated by, a notary public, the Court has to so

presume that it was so executed and authenticated. The authentication by a Notary Public of a document, purporting to be a power of attorney and to have been executed before him is to be treated as the equivalent of an affidavit of identity. The object of the section is to avoid the necessity of such affidavit of identity. Under Section 57 sub-section (6) of the Evidence Act, the Courts have to taken judicial notice of the seals of Notaries Public and when the seal is there, of which judicial notice is taken, there is no reason why judicial notice should not be taken of the signatures as well. What is argued by Shri Rameshwar Dial, learned counsel for defendants 1 to 3, is that the Notary Public in Section 85 or Section 57 of the_Evidence Act merely means notaries appointed under the Notaries Act 1952. The argument is that where a document purports to be a power of attorney, before the Court can presume it to be so executed and authenticated as is contemplated by S. 85, it should have been authenticated by Indian Consul or Vice-Consul or the representative of the Central Government and not by a notary public of a foreign country. For one thing Notaries Act 1952 was not there when Evidence Act which was the first Act of 1872 was enacted. Secondly, the purpose of Sections 57 and 85 is to cut down recording of evidence. For such matters, like the due execution of a power of attorney in the present day of international commerce, there is no reason to limit the word "Notary Public" in S. 85 or Section 57 to Notaries appointed in India. The fact that notaries public of foreign countries have been recognised as proper authorities for due execution and authentication for purpose of section 85 of the Evidence Act is illustrated by the Supreme Court in case Jugraj Singh v. Jaswant Singh, 1971 (1) S.C.R. 38 (1). In this case the Supreme Court held that a power of attorney executed and authenticated before a notary public of California satisfied the test of S. 85 of the Evidence Act and S. 33 of the Indian Registration Act. If the interpretation of notary public is limited to notaries public appointed in this country only, it will become impossible to carry on commerce with foreign countries. Surely, S. 57 of the Indian Evidence Act which

enjoins upon the Courts to take judicial notice of seals of Notary Public, such judicial notice cannot be limited to Notaries appointed in India only. It seems clear if the entire sub-section is read. Once, this conclusion is reached, there is no reason to limit the meaning of the expression "Notaries Public" in S. 85 of the Indian Evidence Act to Notaries appointed in India only."

14. In the light of the above decisions, the question that arises for determination is whether Section 14 of the Notaries Act which speaks of reciprocal arrangement for recognition of Notarial Acts done by foreign notaries outside the country controls the applicability of Section 85 of the Evidence Act.

15. In this regard, it is relevant to note that the Notaries Act, 1952 is subsequent to the Indian Evidence Act, 1872. Sections 57 and 85 of the Indian Evidence Act enable the court to recognise facts without formal proof. Therefore, the purpose of Section 85 is to cut down recording of evidence for such matter like the due execution of Power of Attorney etc., in the present day international commerce. The words 'Notary Public' in Section 85 not only applies to Notaries appointed in India but also include the Notary Public of foreign countries. For raising the statutory presumption, Sections 57 and 85 do not require any recognition of notarial acts of the country or place, as the case may be where such Power of Attorney is executed or authenticated. In fact, there

is nothing in the language of Section 14 which requires that only those notarial Acts which are declared as recognized by the Central Government by notification in the official gazette, are to be recognized in India. As in the instant case, due execution of Power of Attorney in the time of global commerce, there is no reason to limit the word Notary Public in Section 85 of the Indian Evidence Act. Section 14 of the Notaries Act does not control the interpretation of Section 85 of the Indian Evidence Act.

16. In **Crocodile Int. Pte Ltd. & Anr V. Lacoste S.A. & Anr., 2008 (100) DRJ 547**, relying upon the "Convention Abolishing The Requirement of Legalization For Foreign Public Documents", a Division Bench of the Delhi High Court held that the Diplomatic or Consular Officers were empowered to administer oath and to take any affidavit and also to do the notarial act which a Notary Public may do in the State where the Diplomatic or Consular service is functioning. The documents notarized by such officers were, therefore, deemed to be validly notarized in India.

> *"16. The grant of leave subject to the objections of the defendant with regard to the admissibility and the mode of proof of contents of the document is a matter which is purely procedural in nature and does not determine any right or obligation in the suit pending before the learned single Judge. So also the objection regarding the need for legalization and apostilling of the affidavit sworn by Shri Christian London has been correctly dealt with by the*

learned single Judge who has, relying upon the "Convention Abolishing The Requirement of Legislation For Foreign Public Documents", held that the Diplomatic or Consular Officers were empowered to administer oath and to take any affidavit and also to do the notarial act which a Notary Public may do in the State where the Diplomatic or Consular service is functioning. The documents notarised by such officers were, therefore, deemed to be validly notarized in India. The Court has, in our opinion, rightly held that even though there might be no reciprocity between India and another country under Section 14 of the Notaries Act, 1952, the notarial acts of the Notaries in the foreign country could be given legal recognition by the courts and authorities in India. That aspect is covered even by the decision of this Court in Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil."

17. The Court has held that even though there might be no reciprocity between India and another country under Section 14 of the Notaries Act, 1952, the notarial acts of the Notaries in the foreign country could be given legal recognition by the courts and authorities in India. The Division Bench also observed that the said aspect was covered even by the earlier decision in ***Rajesh Wadhwav Dr. (Mrs.) Sushma Govil* 37 (1989) DLT 88.**

18. In the said case in ***Rajesh Wadhwa v. Dr. Sushma Govil*, AIR 1989 Delhi 144,** it is viewed by a learned Single Judge of the Delhi High Court that even though there might not be reciprocity between India and another country, the notarial acts of notary in the foreign

country could be given legal recognition by court. There is no gainsaying that Section 14 of Notaries Act has no bearing on the construction to be put on Section 85 of the Evidence Act. The relevant paragraphs of the said judgment are extracted hereunder :

> *"12. The Court also noticed the provisions of Section 14 of the Notaries Act and satisfied itself at first whether there is reciprocity of notarial acts of Notaries of India being recognised in U.S.A. and vice versa and it held that such a notarial act of Notary of U.S.A. is recognisable in India and thus, the said document is admissible in India. The Court also advised that it is high time that the Central Government should issue necessary notifications also under Section 14 of the Notaries Act. It is the contention of the learned counsel for the respondent that Notaries Act had not made illegal and well-established previous practice of recognising the notarial acts of Notaries of U.S.A. or England by the Indian Courts when such acts of Notaries of India are recognised by the said countries as well. Yogeshwar Dayal, J., in the case of National & Grindlays Bank (supra) has held such a power of attorney to be admissible in evidence and presumptions under Sections 57 & 85 of the Evidence Act were held to be available to such a document although he relied upon the case of Jugraj Singh (supra) for giving that finding. Sultan Singh, J., in Suit No. 671/77, Bank of India v. Ajaib Singh, decided on April 20, 1979, (24) followed the above case for giving the same opinion. However, independently of these two decisions of two Judges of this Court, I hold that the provisions of Section 14 of the Notaries Act do not place any bar in recognising the notarial acts of such countries wherein the notarial acts of Notaries of India are recognised. Even in Abdul Jabbar, AIR 1980 Allahabad 369, (25) it was held that Section 85 of the Evidence Act applies equally to documents authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of*

Section 85 of the Evidence Act. I agree with these observations. Hence, I repel this contention of the learned counsel for the appellant that the said power of attorneys endorsed by Notary Public of U.S.A. by themselves are not admissible in evidence.

13. Counsel for the appellant has, then, contended that till it is proved that the person who signed the said power of attorney was the duly appointed attorney, the court cannot draw any presumption under Secions 57 & 85 of the Evidence Act. I am afraid that the very purpose of drawing presumption under Sections 57 & 85 of the Evidence Act would be nullified if proof is to be had from the foreign country whether a particular person who had attested the document as a Notary Public of that country is in fact a duly appointed Notary or not. When a seal of the Notary is put on the document, Section 57 of the Evidence Act comes into play and a presumption can be raised regarding the genuineness of the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country."

19. From the above it is clear that in the said judgment, it is held that even though there might not be reciprocity between India and another country within the meaning of Section 14 of the Notaries Act, the acts of notaries in that foreign country could be given legal recognition by courts and authorities in India. Therefore, we are of the opinion that the notification under Section 14 of the Notaries Act, in other words, is not held to be mandatory.

20. At this juncture, it is relevant to refer to Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, which

provides for powers as to oaths and notarial acts abroad and the said provision reads as infra :

> *"**3. Powers as to oaths and notarial acts abroad.**— (1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in a State.*
>
> *(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person."*

The above provision enabls the administration of oaths by diplomatic and consular officers and to prescribed the fees leviable in respect of the official duties.

20.1. A *pari materia* provision is found in Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1959, enacted by Malaysia and the same is reproduced hereunder :

> *"Powers as to oaths and notarial acts abroad*
>
> *3. (1) Every diplomatic and consular officer exercising his functions in any country or place outside Malaysia may in that country or place administer any oath or affirmation and take any affidavit, and also do any notarial act which any notary public can do*

within Malaysia; and every oath, affirmation, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in any part of Malaysia.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath or affirmation in testimony of any oath, affirmation, affidavit or act being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

(3) The Yang di-Pertuan Agong may by order direct that so much of subsection (2) as relates to the proof of notarial acts done in any country or place outside Malaysia by diplomatic and consular officers of Malaysia shall apply in relation to notarial acts done by such persons as may be specified in the order, being persons serving in the diplomatic, consular or other foreign service of a Power which, by arrangement with the Yang di-Pertuan Agong, has undertaken to represent the interest of Malaysia in any country or place in which Malaysia has for the time being no diplomatic or consular representatives."

21. Placing reliance on the said provision, a learned Single Judge of the Calcutta High Court in ***K.K. Ray (Private) Ltd., In re*, 1967 SCC OnLine Cal 19,** held as follows :

"35.The Notary is now internationally known today in the modern world of commerce, industry and dealings between different nations and countries. Reciprocity between different countries is its essential basis. Without this reciprocity and mutual respect the whole system and rationale of notarial acts will break down, to the great detriment of commercial transactions throughout the world and their due administration by courts of law in different countries and will

jeopardise international commerce, law merchant and administration of justice. It is precisely to provide facilities of receiving affidavits, documents, protests of bills of exchange and other commercial papers that this institution of Notary Public grew up to fulfil a very practical need. Unnecessary or illogical impediments should not be put on his way. No doubt that does not mean that law of the Courts should not ensure reasonable authenticity and dependability of notarial acts. When I find that this notarial act of Elizabeth Levy has been certified by the County Clerk and by the Clerk of the. Supreme Court of New York, the Court of Record under its seal, and when I find that this Notary public is authorised to administer oath by the laws of the State of New York, U.S.A. and further that there is the certificate of the Consulate General of India, an office recognised expressly by Section 3 of the Indian Diplomatic and Consular Officers (Oath and Fees) Act, 1948 to administer oath and take affidavit, then the dependability and authenticity of such notarial act are in my judgment sufficiently ensured and cannot be doubted."

22. Section 139 of the Code of Civil Procedure designates the persons by whom oath on affidavit has to be administered. The Code of Civil Procedure (Amendment) Act, 1976, included the following : "(aa) any notary appointed under the Notaries Act, 1952;" and the objects and reasons for such amendment was that "Notaries" have power to administer oath under the Notaries Act, 1952. In the absence of statutory provision, Courts refused to accept affidavits sworn before the notaries. Section 139 is being amended to include a specific provision permitting the swearing of affidavits before notaries and the said provision reads as hereunder :

*"**139. Oath on affidavit by whom to be administered** - In the case of any affidavit under this Code-*

(a) any Court or Magistrate, or

(aa) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the State Government has generally of specially empowered in this behalf,

may administer the oath to the deponent."

23. In the light of the above discussion, it is clear that once the original document is produced purporting to be a Power of Attorney executed and attested as stated in Section 85 of the Evidence Act, the court has to presume that it was so executed and authenticated. The provision is mandatory and it is open to the court to presume that all the necessary requirement for the proper execution of Power of Attorney have been duly fulfilled.

24. Now coming to the Registration Act, 1908, Section 32(c) of the said Act states that every document should be registered under the said Act and the same shall be presented at the proper registration office. The object of Section 32 of the Registration Act is to prevent some outsider from presenting the document for registration with which he has no concern and in which he has no interest. This section applies for registration of Power of Attorney. However, it has no application if the Power of Attorney is produced merely for authentication in which case

the only requirement that has to be complied with are those that are set out in Section 33 of the Registration Act. The applicability of Section 32 would arise only when presented for registration and not when it is merely produced for authentication. Section 33(c) of the Registration Act, 1908, recognized the Power of Attorney for the purpose of Section 32. So, the above provisions in the Registration Act are clear as to who are the persons to present the document for registration and the Power of Attorney recognizable for the purpose of Section 32 of the Registration Act, 1908.

25. At this juncture, it is relevant to note that the Hon'ble Supreme Court in ***Jugraj Singh v. Jaswant Singh*, (1970) 2 SCC 386** held as follows :

> *"That power of attorney was not authenticated as required by Section 33 of the Indian Registration Act which in the case of an Indian residing abroad, requires that the document should be authenticated by a Notary Public. The document only bore the signature of a witness without anything to show that he was a Notary Public. In any event there was no authentication by the Notary Public (if he was one) in the manner which the law would consider adequate. The second power of attorney however does show that it was executed before a proper Notary Public who complied with the laws of California and authenticated the document as required by that law. We are satisfied that that power of attorney is also duly authenticated in accordance with our laws. The only complaint is that the Notary Public did not say in his endorsement that Mr Chawla had been identified to his satisfaction. But that flows from the fact that he*

endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. This makes the second power of attorney valid and effective both under Section 85 of the Indian Evidence Act and Section 33 of the Indian Registration Act."

26. It is also relevant to point out that the Hon'ble Supreme Court in ***Rajni Tandon v. Dulal Ranjan Ghosh Dastidar*, (2009) 14 SCC 782,** held as follows :

"10. The trial court recorded a finding that the power of attorney under which the sale/conveyance deed was executed was not registered and the same ought to have been registered as Mr Indra Kumar Halani executed the said sale deed on behalf of Nandlal Tantia as his constituted attorney and presented the same for registration. Hence, it was held to be in violation of the provisions of Sections 32 and 33 of the Act. Consequently, it was also held that the title in the said premises had not passed in favour of the appellant. The trial court accordingly dismissed the suit as the appellant-plaintiff did not acquire any right, title and interest by virtue of her purchase by the said deed of conveyance dated 28-2-1990.

.....

13. So far as Question (a) is concerned, it was held that since the power of attorney (Exhibit 10) is, admittedly, not a registered document and was simply notarised by a notary, therefore Indra Kumar Halani, was not authorised to execute and present the sale deed (Exhibit 1) before the Sub-Registrar for registration. It was, therefore, held by the High Court that no right and title had passed to the plaintiff on the basis of the

aforesaid sale deed. Accordingly, Issue 1 was decided in favor of the respondent-defendants."

In view of the above, the second respondent had registered the document and when the original owners themselves have not challenged the sale deed till their lifetime, the writ petitioner does not have any locus-standi to do so.

27. Section 31 of the Specific Relief Act, 1963 provides for cancellation of instruments and the said provision is as under :

> *"**Section 31**. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."*

28. The above section lays down that any person against whom a written instrument is void or voidable may file a suit to have it adjudged void or voidable and the discretion of the court is not arbitrary but it should be on sound reasons and guided by the judicial principles. Though the above provision enables the appellant to institute a suit before the jurisdictional Civil Court, being aware of the fact that the suit would be

barred by limitation, the appellant has sought to invoke the jurisdiction under Article 226 of the Constitution of India.

29. Even for filing the above writ petition under Article 226, there was enormous delay on the part of the writ petitioner, who is the daughter of the owner of the property, as the same had been filed after 14 years. It is apposite to refer to the judgment of the Hon'ble Supreme Court in **Chairman/Managing Director, Uttar Pradesh Power Corporation limited and others V. Ram Gopal, 2020 SCC OnLine SC 101,** wherein, it has been held as follows :

> *"15. Seen from a different perspective also, it is clear that the Respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the Respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation where the appellant belatedly challenged the promotion of his junior(s), this Court in P.S. Sadasivaswamy v. State of Tamil Nadu, (1975) 1 SCC 152 held as follows:*
>
> > *"2. … if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. … In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. …It is not*

that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters……"

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala, (2009) 2 SCC 479, this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". … It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

(emphasis supplied in original)

30. The writ court also relied on the decision of the Hon'ble Supreme Court reported in ***CCE v. Dunlop India Ltd.*****, (1985) 1 SCC 260,** wherein, at paragraph 3, it has been held as follows:

> *"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433 A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

31. The above discussion would go to show that it is a vexatious litigation filed by the appellant, as neither any reason was furnished for not going before the Civil Court nor explanation was given for the delay and laches. In such circumstances, it is too much to say that the court has to give indulgence to the appellant, who is guilty of delay and laches. In the light of the above, we do not find any error or infirmity in the order of the learned single judge and it needs to be confirmed.

32. Accordingly, the writ appeal is dismissed. However, there shall be no order as to costs.

[P.S.N., J.] [K.R., J.]
02.02.2022

Index : Yes / No
Internet : Yes
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To

1. The Inspector General of Registration,
   No.100, Santhome High Road,
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2. The Sub-Registrar-Tirupporur,
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PUSHPA SATHYANARAYANA, J.
AND
KRISHNAN RAMASAMY, J.

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W.A.No.856 of 2021

02.02.2022