



IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE KRISHNA RAO

SA/9/2024

Shri. Abhilash Chandra Roy ... *Appellant*

Versus

Smt. Sukhoda Roy ... *Respondent*

For the appellant : Mrs. Anjili Nag, Sr. Advocate
Ms. K. Bhawani

For the respondent : Mr. Ajoy Kumar Mondal, Advocate

Heard on : 01.07.2025, 02.07.2025
and 03.07.2025

Judgment on : 11.07.2025

KRISHNA RAO, J.

1. This second appeal is at the instance of the plaintiff of other Suit no. 3 of 2014 filed before the learned Civil Judge Senior Division North and Middle Andaman (Abhilash Chandra Roy Vs. Sukhoda Roy).

2. The plaintiff had filed the suit for specific performance of contract of the land measuring an area of 680 Sq. mtrs. Out of total area 0.19 hectares in survey No. 20/4 situated at Rampur



Village of Rangat Tehsil consisting of a double stories semi RCC residential house.

3. As per the case of the plaintiff one Nitya Nanda Roy (since deceased), husband of the defendant entered into an oral agreement with the plaintiff in the month of May 1988 with respect of the suit property for a total sale consideration of Rs. 82000/-. It is the case of plaintiff that on the same day the plaintiff had paid the total sale consideration of Rs. 82000/- being the full and final sale consideration and the plaintiff has taken possession of the suit property.

4. Due to some procedural requirement registration of the suit property could not be completed and accordingly the Nitya Nanda Roy along with his mother Smt. Sarathi Roy have jointly executed a Special Power of Attorney in favour of the plaintiff with respect of the suit property. As per oral agreement entered between the plaintiff and Nitya Nanda Roy, the plaintiff has taken possession of the suit property and had constructed double stories semi pucca house by spending about Rs. 10 lakhs in the suit property. It is also the case of the plaintiff that the plaintiff has also developed the suit land by planting fruit bearing trees.

5. Before completion of registration of sale deed Nitya Nanda Roy as well as his mother Sarthi Roy have passed away. After



their death, the plaintiff had requested the defendant being the legal heir of the deceased Nitya Nanda Roy for registration of sale deed with respect of the suit property, but one or the other pretext the defendant has not come forward for registration of sale deed. Subsequently the plaintiff has made a complaint before the Tehsildar, Rangat Tehsil against the defendant for taking appropriate action to get the sale deed registered in favour of the plaintiff as per the oral agreement entered between Nitya Nanda Roy and the plaintiff. On receipt of the complaint submitted by the plaintiff, Tehsildar had initiated a proceeding and issued notices upon the defendant. On receipt of the notice, the defendant had appeared before the Tehsildar and had agreed to execute necessary sale deed in favour of the plaintiff after disposal of the suit filed by the defendant before the learned Court of Civil Judge Senior Division at Port Blair. In the said proceeding, the defendant had requested the Tehsildar to stop proceeding without mentioning anything about the civil suit filed by the defendant. On receipt of the said representation, the Tehsildar had dropped the said proceeding with an advice to the plaintiff to seek remedy in an appropriate Civil Court.

6. On 15.06.2013 the plaintiff had sent a legal notice to the defendant calling upon the defendant for registration of sale deed with respect of the suit property but inspite of receipt of



the notice neither the defendant had sent any reply nor had come forward for registration of sale deed accordingly the plaintiff has filed the suit before the learned Civil Judge Senior Division at Mayabunder.

7. The defendant had entered appearance in the suit on receipt of summons and filed written statements along with counter claim praying for a decree for ejection of the plaintiff from the suit property and handing over the peaceful possession of the suit property to the defendant and for declaration that the defendant is lawful owner of the suit property.

8. The defendant says that the plaintiff is in permissive possession of the suit land as the husband of the defendant considering the hardship of the plaintiff permitted to occupy a small portion survey No.20/4 as the plaintiff was suffering for residential problem. The defendant says that the plaintiff is in occupation of an area of 150 Sq. mtrs. and not the land as claimed by the plaintiff. The defendant denied with regard to the oral agreement as well as the registered power of attorney.

9. Upon completion of pleadings the learned Civil Judge Senior Division at Mayabunder has framed the following issues:

- (i) Is the suit maintainable in its present form and prayer?



- (ii) Whether the plaintiff has got cause of action to file the suit?
- (iii) Is the plaintiff in possession of the property specifically described in the schedule of the plaint?
- (iv) Whether the plaintiff has got right title and interest about the suit property?
- (v) Is the plaintiff in occupation of an area of the suit land?
- (vi) Is the plaintiff is entitled to get decree as prayed for including the prayer in the alternative?
- (vii) To what other relief or reliefs is the plaintiff and the defendant entitled as per law and equity?
- (viii) Whether the counter claim is maintainable in law and equity?
- (ix) Is the defendant entitled to get a decree as prayed in the counter claim?

10. During evidence before the learned Trial Court, the plaintiff has examined two witness i.e. the plaintiff himself being PW-1 and another witness namely Manoranjan Haldar as PW-2. During evidence of the plaintiff, the plaintiff has exhibited altogether twelve documents namely;

- (i) Exhibit 1 – Registered special power of attorney dated 22.06.1988



- (ii) Exhibit 2 – Record of right of the suit property
- (iii) Exhibit 3 – no dues certificate issued by the Andaman and Nicobar State cooperative Limited Rangat Branch dated 13.8.1986
- (iv) Exhibit 4 – Memo No. 122/84-R/1418 dated 17.02.1987 issued by the Deputy Commissioner.
- (v) Exhibit 5 – Certificate issued by plant protection officer certifying that no agricultural dues is pending.
- (vi) Exhibit 6 – No dues certificate issued by the Tehsildar, Rangat Tehsil.
- (vii) Exhibit 8 – Land revenue receipt issued in the name of Nitya Nanda Roy and Sarathi Roy
- (viii) Exhibit 9 – Certified copy the application filed before the Tehsildar dated 03.08.2009.
- (ix) Exhibit 10 – Notice issued by the Tehsildar dated 09.11.2009.
- (x) Exhibit 11 – certified copy of the order sheet of the orders passed by Tehsildar.
- (xi) Exhibit 12 – copy of legal notice issued to the defendant along with the postal receipt and AD card.



11. The defendant has examined two witnesses namely Sukodha Roy as DW-1 being the defendant herself and Shri Nepal Biswas as DW-2. During the evidence the defendant has not disclosed any document.

12. By a judgement and decree dated 27.12.2018 the learned Civil Judge Senior Division as passed decree by directing the defendant to registered sale deed with respect of the suit property and the cost of registration to be paid by the plaintiff within one month from the date of passing of the judgement failing which the plaintiff will be at liberty to execute the order as per law. The counter claim filed by the defendant was dismissed.

13. The defendant being aggrieved and dissatisfied with the judgement and decree passed by the learned Civil Judge Senior Division at Mayabudner dated 27.12.2018 in other suit no. 3 of 2014 had preferred an appeal before the learned Additional District Judge at Mayabunder being Other Appeal No. 10 of 2019. The learned Additional District Judge had allowed the appeal preferred by the defendant and set aside the judgement and decree passed by the learned Civil Judge Senior Division at Mayabunder dated 27.12.2018 by dismissing the suit and allowed the counter claim filed by the defendant and directed the plaintiff to vacate and handover peaceful possession of the



suit property in favour of the defendant within two months from the date of the judgement in default the defendant is at liberty to put the decree into execution.

14. Being aggrieved and dissatisfied with the judgement and decree passed by the learned Additional District Judge at Mayabnder, the plaintiff has preferred the present second appeal before this Court. At the time of admission of the second appeal , this court has framed the following substantial question of law:

- (1) Whether a Power of Attorney holder becomes nonest in the eye of law, notwithstanding the provisions of Section 202 of the Indian Contract Act, 1872?
- (2) Whether specific performance of subject contract could be granted in favour of the appellant?
- (3) Whether the appellate court erred in appreciating the oral evidence of the parties?

15. Mrs. Anjili Nag, learned Senior Advocate representing the appellant/plaintiff submits that the husband of the defendant by an oral agreement in the month of May 1988 entered into a contract with the plaintiff for sale of 680 Sq.mtrs. in survey No 20/4 at Rampur village of Rangat Tehsil for a total sum of Rs. 82000/- and on the same day the plaintiff has paid the total sale consideration and has taken possession of suit property.



She submits that due to some procedural requirement sale deed could not be executed and as such the husband as well as the mother in law of the defendant have executed as Special Power of Attorney in favour the plaintiff with respect of the suit property and in the said Power of Attorney the husband and mother in law of the defendant have categorically admitted that they have received the total sale consideration of Rs. 82000/- from the plaintiff and have executed the power of attorney in favour of the plaintiff and have also handed over physical possession to the plaintiff.

16. Mrs. Nag submits that the Power of Attorney executed by the husband and the mother in law of the defendant in favour of the plaintiff coupled with the interest and as such after the death of the husband as well as the mother in law of the defendant it cannot be said that the power of attorney is terminated. Mrs. Nag submits that the learned Civil Judge Senior Division has properly consider that the plaintiff is in occupation of the suit property and has paid the total consideration of Rs. 82000/- and though the executants of the special power of attorney have passed away but the said power of attorney is coupled with interest and cannot be treated as terminated after the death of executants and accordingly passed decree in favour of the plaintiff.



17. Mrs. Nag in support of her submission relied upon the judgement in the case of **P.Ganashan (died) and others vs. P. Chinnu and others passed by the Madras High Court reported in Law finder Doc.- Id#2745635** wherein the Madras High Court has held that where agent has an interest in the subject matter, agent's authority continues despite principal's death provided agency is coupled with interests.

18. Mrs. Nag further relied upon the judgement in the case of **Sikha Pal and another vs. Shri Krishna Kamal Das and others of the Division Bench of this Court reported in Law finder Doc. ID#2468251** wherein the Hon'ble Division of this Court held interest created in favour of agent under a power of attorney continues despite death of the principal and agent is entitled to act under the authority granted in the said power of attorney.

19. Mrs. Nag submits that in the present case also the husband as well as the mother in law of the defendant have executed power of attorney in favour of plaintiff to sell out or dispose of the said part of the land or its part thereof to any person at any cost or as free gift, as our said attorney may think proper and found fit at his own discretion, as we have already received consideration to the sum of Rs. 82000/- and receipt of which we do hereby jointly severely acknowledges in cash in full



from the attorney Shri Abhilash Chandra Roy. She further submitted that in the power of attorney the executants have also admitted that physical of the possession of the suit property also handed over to the attorney on receipt of the consideration.

20. Mrs. Nag submits that during cross examination of PW-1, the plaintiff has categorically stated that the oral agreement between the plaintiff and Nitya Nanda Roy took place in the month of May, 1988 at the tea shop of one Satish Das at Rangat Bazar. She further submits that in the cross examination PW-1 has also stated that power of attorney was prepared by one Kunchi Parinchu since deceased upon request of the plaintiff, Naitya Nanda Roy and Sarathi Roy. She further submit that in the cross examination the plaintiff has further stated that the contents of power of attorney was read over by the staffs of Registration office.

21. Mrs. Nag submits that the plaintiff has examined another witness namely Manoranjan Halder being PW-2 and during his cross examination, the PW-2 has categorically stated that there was no written contract between Nitya Nanda Roy and the plaintiff but there was a oral agreement. She further submits that during cross examination of PW -2, the defendant has specifically put the suggestion that only 200 Sq. mtrs of land



was agreed to be sold to the plaintiff by Nitya Nada Roy due to his cordial relationship with the plaintiff.

22. Mrs. Nag submits that the special power of attorney dated 22.06.1988 is marked as exhibit 1 without any objection from the side of defendant. She submits that the defendant has brought on record being exhibit 2 to prove that the land bearing survey No. 20/4 measuring an area of 0.19 hectares was recorded in the name of Nitya Nanda Roy and Sarathi Roy who have orally agreed to sell an area of 680 sq.mtrs of land out of total area 0.19 hectares at Rampur village and have executed the power of attorney with respect of the said portion of land.

23. Mrs. Nag submits that due to unfortunate death of Nitya Nanda Roy and Sarathi Roy immediate after execution of power of attorney sale deed could not be executed. After their death, the plaintiff requested the legal heir i.e. the defendant herein for registration of sale deed but she one or the other pretext has not come forward to execute sale deed and accordingly on 3.08.2009 the plaintiff had submitted a complaint to the Tehsildar, Rangat Tehsil on the basis of which, the Tehsildar had initiated proceeding. On 12.11.2009 the defendant agreed to execute necessary sale deed in favour of the plaintiff after disposal of civil suit pending before the Court at Port Blair. She submits that the proceeding initiated by the Tehsildar was



disposed of on 02.02.2010 with the direction to the plaintiff to approach the Civil Court. The complaint submitted by the plaintiff is dated 03.08.2009 is marked as exhibit 9 and the proceeding of the Tehsildar is exhibited as exhibit 11. On 15.06.2013 the plaintiff has sent a notice to the defendant calling upon the defendant for registration of the sale deed but the plaintiff has not come forwarded inspite of receipt of the notice.

24. Mrs. Nag submits that during the cross examination of DW-1 the defendant admitted that the suit property of the present case is deferent from the suit property filed at Port Blair. The defendant further admitted that the plaintiffs resides in the part of the suit land since the year 1988. Defendant has also admitted that she has not filed any case against the plaintiff for evection and survey no. 20/4 is recorded in her name.

25. Mrs.Nag submits that during the cross examination, the defendant No.2 admitted that in the suit property there is a doubled storied house and the plaintiff is in possession of the said house having water and electric connection in his name. He has also admitted that the plaintiff has built the house 20/24 years ago. He has also admitted that the plaintiff is residing in the said land since the year 1988.



26. Mr. Ajay Mondal, learned advocate representing the defendant submits the case made out by the plaintiff in the plaint and the Special Power of Attorney which the plaintiff has relied upon are contradictory to each other. He submits that as per the case made out by the plaintiff in the plaint in the month of May 1988 the husband of the defendant entered into an oral agreement for sale of the suit property to the plaintiff and has received the total consideration of Rs.82000/- and has also handed over the possession of the suit property on the same day but the power of attorney is of dated 22.06.1988 and in the said power of attorney there is no mentioning about the oral agreement between the plaintiff and husband of defendant for sale of the suit property in the month of May, 1988 and receipt of the amount of Rs. 82000/-.

27. Mr. Mondal submits that the Nitya Nada Roy and Sarthi Roy expired immediately after the alleged execution of power of attorney but the plaintiff has not taken any steps for registration of the sale deed till the month of August, 2009 and as such suit filed by the plaintiff is barred by limitation. Mr. Mondal referred to paragraph 7 of the plaint and submitted that the plaintiff has categorically stated that the legal heirs have not done anything in positive for registration of sale but thereafter



till the month of August, 2009 the plaintiff has not taken any steps for registration of sale deed.

28. Mr. Mondal submits that the plaintiff has made the representation to the incompetent authority as the Tehsildar is not the authority for registration of the sale deed or can pass any order of Specific Performance of Contract and as such proceeding recorded by the Tehsildar is nonest in the eye of law and the same cannot be taken into consideration as admission of the defendant.

29. Mr. Mondal submits that the Tehsildar has disposed of the proceeding on 08.2.2010 by advising the plaintiff to approach the Civil Court but only on 15.06.2013 i.e. after the period of three years, the plaintiff has sent a legal notice to the defendant which is also time barred.

30. Mr. Mondal relied upon the judgement in the case of **Sabbir (dead) through LRs vs. Anjuman (since deceased) through LRs** reported in **2023 INSC 898** wherein the Hon'ble Supreme Court held that the limitation for filing the suit for specific performance, as per article 54 of the Schedule to the Limitation Act is three years i.e. from the date fixed for performance or if no such date is fixed when the plaintiff has notice the performance is refused. He submits that in the present case the Tehsildar by an order dated 08.02.2010 had



advised the plaintiff to file suit before the appropriate forum but the plaintiff has filed the suit after the period of three years i.e. on 10.09.2013, much after the period of three years.

31. Mr. Mondal submits that the plaintiff failed to prove the oral agreement entered between the plaintiff and the defendant. He submits that the PW-1 in the cross examination has stated the oral agreement was entered between the plaintiff and Nitya Nanda Roy in the tea shop of one Satish Das at Rangat but Satish Das has not examined. He submits that the plaintiff has to prove the oral agreement on which date in whose presence and how it was executed but in the present case the plaintiff fail to prove how the oral agreement was entered between the plaintiff and the defendant and whose presence the said agreement was entered between the parties. He submits that there is no money receipt is brought on record to prove that an amount of Rs. 82000/- was paid by the plaintiff to Nitya Nanda Roy. Mr. Mondal submits that the plaintiff has examined PW-2 Mr. Manaronjan Halder being one of the witness of the oral agreement but it is not the case made out by the plaintiff in the plaint that the oral agreement was entered between the plaintiff and Nitya Nanda Roy in presence of Manoranjan Halder. He further submit that as per the case of the plaintiff the power of attorney was prepared by Kunchi Puranchi but he was not



examined to prove that actual any power of attorney was entered between the parties or not.

32. Mr. Mondal submits that neither the plaintiff nor the witness of the plaintiff have stated about the contents of the alleged oral agreement and as such oral agreement is not proved. He submits that the plaintiff has prayed for specific performance of contract of the oral agreement. He further submits that the executants have died just after the execution of power of attorney and as such the power of attorney has lost its existence and the power of attorney cannot be taken into consideration after the death of executants. Mr. Mondal submits that the suit filed by the plaintiff is barred by non joinder of parties. He submits that after the death of the husband of the defendant the land was mutated only in the name of the defendant but the other legal heirs of Nitya Nanda Roy are also entitled to get share over the property left behind by Nitya Nanda Roy but the plaintiff has not made all the legal heirs of Nitya Nanda Roy as party to the suit.

33. Mr. Mondal submits that the learned Additional District Judge has rightly held that the validity of Special Power of Attorney has become nonest in the eye of law upon the death of the executants.



34. For the better understanding, Section 201 and 202 of the Contract Act are reproduced below:

“201 Termination of agency.- an agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business the agency being completed; or by either of the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated and insolvent under the provisions of any act for the time being in force for the relief of insolvent debtor.

202. Termination of Agency, where agent and interest in subject matter – where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest.

Illustration (a); ‘A’ gives authority to ‘B’ to sell ‘A’s land, and to pay himself, out of the proceeds, the debts due to him from ‘A’. ‘A’ cannot revoke his authority nor can be terminated by his insanity or death.”

A reading of the above Sections would go to show that in the normal course, an agency gets terminated naturally by the death of the principal. However, where an agent has himself/herself an interest in the property which forms the subject matter of agency, then the agency, cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

35. A power of attorney derives its basic principle from Chapter X of the Contract Act which provides for ‘agency along with Section 1 A and 2 respectively of the Power of Attorney Act, 1882. Agency is a fiduciary relationship between two persons, where one explicitly or implicitly agrees that the other will act



on their behalf to influence their legal relations with third parties, and the other similarly agrees to act in this capacity or does so based on an agreement. The relationship between the executant of a general power of attorney and the holder of the power is one of principal and agent. A principal is bound by the acts done by an agent or the contracts made by him on behalf of the principal. Likewise, power of attorney in the nature of contract of the agency authorises the holder to do acts specified by the executant, or represent the executant in dealing with third party.

36. In the case of **Sayad Abdul Kadar vs. Rami Reddy** reported in **(1977) 2 SCC 601**, the Hon'ble Supreme Court held that the relationship between the donor of the power and the donee of the power is one of the principal and agent having its genesis in a contract. It further observed that the term 'agency' refers to the relationship in which one person has the authority or ability to establish legal relation between a principal and third parties. This relationship arises when a person, known as the agent, has the authority to act on behalf of another, called the principal, and agrees to do so. Paragraph 10 of the said judgement reads as follows:

"10. The first contention of the appellant is that it was impermissible in law for three persons to jointly grant a power of attorney in favour of defendant no.34. baring the ipsy dixit of the learned counsel nothing was shown to us to make such a joint



power impermissible in law. The relation between the donor of the power and the donee of the power is one of the principal and agent and the expression 'agency' is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents so to act. The relationship has its genesis in a contract. If agency is outcome of a contract between the principal and the agent, in order to show that three principals jointly constituting an agent by a deed called 'power of attorney' was impermissible, provisions of Contract Act or the general law of contract should have been shown as having been violated by such a contract. Nothing of the kind was pointed out to us. On the contrary in Halsbury's Laws of England, Vol. I, 4th Edn., para 726, the following proposition has been stated:

"Co-principals may jointly appoint an agent to act for them and in such case become jointly liable to him and may jointly issue him".

We are in agreement with this view and, therefore, three principals could jointly appoint an agent."

37. It was submitted on behalf of the appellant that the Special Power of Attorney read with oral agreement to sale categorically states that the power of attorney was executed for a consideration, and the possession of the suit property was delivered to the holder. It was further submitted that in the May 1988, the executants have agreed to sell the suit property for a total sum of Rs. 82000/- and possession has also handed over to the plaintiff and subsequently when the conveyance deed could not be executed, the executants have executed special power of attorney admitting that the executants have received the total sale consideration of Rs. 82000/- and have also handed over the possession to the plaintiff, both should be read



together and construed harmoniously. It is because of the reason that power of attorney holder (agent) has an interest in the subject matter of the agency and the power of attorney is coupled with interest which makes the agency irrevocable by virtue of Section 202 of the Contract Act.

38. Section 201 of the Contract Act prescribes various ways of revocation of the authority given by the principal to his agent. A principal can terminate the contract of agency unless such revocation is precluded by Section 202 of the Contract Act. Section 202 of the Contract Act, as an exception to the general rule under Section 201, prescribes that where an agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot be terminated to the prejudice of such interest unless there is an express stipulation to the contrary.

39. Therefore, the essential of Section 202 of the Contract Act, are, first, there shall be relationship in the capacity of the 'principal and agent' between the parties and secondly, there shall be agent's interest in the subject matter of the agency. If both conditions are full filled, the agency becomes irrevocable and cannot be terminated unilaterally at the behest of the principal.



40. In the present case it is the case of the plaintiff that an oral agreement was entered between Nitya Nanda Roy and the plaintiff in the month of May 1988 with respect of the suit property for a total sum of Rs. 82000/- and on the same day Nitya Nanda Roy has received the total sale consideration from the plaintiff and handed over the physical possession of the suit property to the plaintiff. Due to some procedural requirement sale deed could not be executed and thus the Nitya Nanda Roy along with his mother have jointly executed special power of attorney on 22.06.1988 in favour of the plaintiff for a total consideration of Rs. 82000/-. The power of attorney is registered one and in the said power of attorney several powers have been given to the plaintiff with respect of the suit property. Clause 10, Clause 12 and Clause 14 of the power of attorney reads as follows:

“Clause 10. To sell out or dispose of the said part of land or its part(s) thereof to any person(s) at any cost or as a free gift as our said attorney may think proper and found fit at his own discretion, as we have already received consideration to the tune of a sum of Rs. 82000/- and receipt of which we do hereby jointly as severally acknowledges in cash in full from our said attorney Shri. Abhilash Chandra Roy duly executed and presented him this deed and physical possession over the said property being handed over to him being token of the receipt of the consideration as aforesaid; and

Clause 12. In our names and as our acts to execute proper sale deed or conveyance deed or gift deed in respect of the transfer of the said property, to present such deed (s) for registration, to admit execution, to seal and sign all documents, receipt of consideration etc. before the Sub Registrar or any Registration Officer, to have such deed(s) registered and also to do all such acts and things become necessary according to law for transfer of



the said property in to the name (s) of its purchaser (s) or conveyee (s) as fully and effectually in all respect, as I could do the same by me in person, if I was personally present at the time; and

Clause 14. It is further agreed and confirmed that in the event of the death of our present attorney before transferring the said property into the name (s) or its purchaser (s) or conveyee (s), this deed shall be continuing guarantee and guaranteed provisions to the legal heir of our present attorney that is his legal heirs shall be our next and immediate attorney in all respect in place of our present attorney Shri Abhilash Chandra Roy, as in such case there will be no need of executing any fresh deed of nomination or constitution or appointment in favour of such person who is the next and immediate heir to our present attorney and the powers being conferred over our present attorney shall then automatically rest with such heir to our present attorney and all actions of such persons in respect of the said part of land shall be binding on us and they have the same value as they have done by us jointly;"

41. Though in the power of attorney it is accepted that that the executants have received an amount of Rs. 82000/- but in the said power of attorney there is no averment with regard to the oral agreement as claimed by the plaintiff. In the power of attorney in clause 11 it is also specifically mentioned that the plaintiff being the attorney shall receive from the purchasers the sale proceeds of the said property, to give proper receipts and discharges for the same in our name as our acts. In Clause 12 it is also mention that the attorney shall execute proper sale deed or conveyance deed of gift deed in respect of the transfer of the said property, to present such deed (s) for registration, to admit execution, to seal and sign all documents, receipt all consideration etc. before the sub registrar or any other authority.



On combined reading of the Special Power of Attorney this Court find that the executants have never stated that there is any oral agreement between the plaintiff and executants for sale of the suit property in favour of the plaintiff.

42. As per the case of the plaintiff the oral agreement was entered between Nitya Nanda Roy and the plaintiff and in the said oral agreement the mother of Nitya Nanda Roy namely Sarathi Roy was not the party. The oral agreement is of May 1988 and the power of attorney is of 22.06.1988 i.e. after the period of one month from the oral agreement. In the power of attorney there is no whisper with respect of oral agreement. In the power of attorney it is mentioned that the plaintiff being the attorney can sell the property to any person and receive the amount and to register the deed but there is no clause that the attorney himself has a right to acquire the said property or to get sale deed registered in his favour

43. In the case of **Suraj Lamp and Industries Private Limited (2) though Director vs. State of Haryana and another** reported in **(2012) 1 SCC 656** the Hon'ble Apex Court had an occasion to assess the legal recognition and enforceability of sale agreement and sale of immovable property based upon the general power of attorneys transfer through Will of immovable property during the life time of a testator, etc. In



the said case, the court, in detail, evaluated the legality of those types to transactions in the light of Sections 5, 8, 53 A, 54, 55, 105 and 107 of the Transfer of property Act, 1982. After making an elaborate discussion, including on concept 'Transfer of Property' as depending under Section 5 and 'Sale' under Section 54 of the Transfer of Property Act, the Hon'ble Apex Court, about the scope of 'agreement of sale' was pleased to observe at paragraph 16 of the said judgement that, Section 54 of the TP Act makes it clear that a contract of sale, i.e., an agreement of sale does not, of itself, create any interest in or charge or such property.

44. Referring to its previous judgement in the case of **Naran Das Karson Das vs. S.A.Kamtam** reported in **(1977) 3 SCC 247**, the Hon'ble Apex Court observed that it has already been observed in the said judgement at paragraph 32 that, 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 the property but not amounting to an interest or easement therein. In the said judgement the Hon'ble Apex Court in paragraph 19 made it further clear 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 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 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 in its subject matter.”

45. With respect to the scope of power of attorney, in the very same judgement, the Hon’ble Apex Court was pleased to observed that, though under a power of attorney an 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 deeds, the same shall be read as if done by the donor, still, a power of attorney is, as is well known, a document of convenience.

46. In its concluding observations in the very same judgement the Hon’ble Apex Court observed that, a sale agreement or a general power of attorney of a Will transaction does not convey any title or create any interest in an immovable property. They cannot be recognised as deed 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 of mutations in the Municipal or revenue records. In the very same judgement at paragraph 26, the Hon’ble Supreme Court further observed that the sale agreement or general power of attorney of Will transaction can continue to be treated as existing agreement of sale. Nothing



prevents the affected parties from getting the registered deeds of conveyance to complete their title.

47. By the said judgement, it can be clearly inferred that the execution of power of attorney, much less and irrevocable power of attorney or an agreement of sale with respect of an immovable property, it is not *ipso facto* transferring any right or interest in favour of the beneficiary under the instrument, i.e., the attorney or agreement holder. The said judgement further makes it clear that in case, the agreement holder intends to perfect his or her title based upon the sale agreement, then, he or she is not prevented from getting the registered deed of conveyance of complete his or her title.

48. In the case of **Prahlad and other vs. Lad Devi and others** reported in **AIR 2007 Rajasthan 166**, in the said case also, with respect to sale of an immovable property, an agreement of sale was executed simultaneously. A power of attorney was also executed. The sale consideration was received and the agreement holder was put in possession of the suit property. The executant of both documents died subsequently, however, despite his death, the appellant No.1 executed a sale deed in favour of the appellant No. 2 who happens to be his wife, filed a civil suit for cancellation of sale deed and prayed for permanent injunction against the appellants. The suit was



decreed in favour of the respondents. As such the appellants approached the High Court of Rajasthan challenging the order of the trial court. The question before the High Court was the validity of the act done under the alleged power of attorney by the attorney holder who claims to be possessing some interest in the power of attorney and subsequent to the death of executant of the power of attorney. Thereafter, analysing the relevant provisions of law including Section 201 of the Contract Act, the learned judge of the Rajasthan High Court observed that, since on 06.05.2003, the power of attorney dated 28.05.1997 was no longer in effect, the appellant No.1 could not have signed the sale deed on 06.05.2003 as power of attorney holder. For, obviously on 06.05.2003, he had no such power of attorney on behalf of Mr. Jain. It further observed that the learned trial court had correctly concluded that on the basis of agreement to sell, the appellant could have filed the suit for specific performance against the respondents, which they have failed to do. With this, the appeal came to be dismissed. Thus, the Rajasthan High Court did not consider the power of attorney holder had any interest in the said power of attorney as such, to take shelter under Section 202 of the Contract Act.

49. In the case of **Wajid Pasha vs. The Chairman, Bangalore Development Authority, Bangalore and others** reported in



2014 (1) KCCR 676 the Hon'ble Karnataka high Court observed that, a power of attorney gets terminated automatically by the death of either of the parties. As soon as the person who executed power of attorney dies, the right given to the agent comes to an end. Once the agency is terminated on account of the operation of law or by the act of the principal, the agent cannot act on the basis of the power conferred upon him under the deed of power of attorney. In the said case, the court observed that in an agreement of sale, the person who was put in possession only has an right to enforce an obligation which the other party owed to him inasmuch as no title passes under an agreement of sale.

The three judgment would clearly go to show merely because a power of attorney holder is said to have put in possession of the subject property or merely because the power of attorney holder is said to have parted with some money in favour of the executant of the power of attorney, by that itself, it cannot be inferred that power of attorney has got any interest in the subject property.

50. The judgement relied by the plaintiff in the case of P. Ganeshan (supra) and Sikha Pal (supra) have described the settled possession of law but the said judgement is



distinguishable from the facts and circumstances of the present case.

51. Question No.1 is decided against the plaintiff in the facts and circumstance of the case.

52. The plaintiff has prayed for the following relief in the plaint;

a) The defendant to transfer the suit property to the plaintiff by a sufficient instrument following the terms of agreement.

b) For a permanent injunction restraining the defendant, her men, agents and/or representatives from disturbing the peaceful possession and enjoyment of the suit property by the plaintiff.

c) Cost of suit.

Or in the alternative;

d) Direct the defendant to pay the plaintiff the cost of the development, modifications and plantations done on the suit property along with interest on the earnest money he has received at the rate of 18% per annum from the date of the receipt of the same till the date of payment.

53. As per the case of the plaintiff in the month of May 1988 an oral agreement was entered between the plaintiff and Nitya



Nanda Roy for sale of the suit property for a total sum of Rs.82000/- and on the same day the plaintiff has paid the total sale consideration and Nitya Nanda Roy has handed over the possession to the plaintiff. The registered power of attorney is marked as exhibit 1. In the said power of attorney the receipt of amount of Rs. 82000/- is admitted by Mr. Nitya Nanda Roy. During the cross examination of the plaintiff it is admitted that the oral agreement between the plaintiff and the Nitya Nanda Roy to place in the month of May 1988 at the tea shop of one Satish Das. The plaintiff has not examined the said Satish Das, but during the cross examination of PW-2 namely Manoranjan Halder the said witness has stated that there was no written contract between Nitya Nanda Roy and plaintiff but there was a oral agreement. He has also stated that the said oral agreement took place in presence of PW-2, the owner of the hotel namely Satish Das and some others whose name he cannot recollect. During the cross examination of PW-2 a specific suggestion was given to the effect that *"Not a fact only 200 sq.mtrs. of land was agreed to be sold to the plaintiff by Nitya Nanda Roy due to his cordial relationship with the plaintiff"*.

54. During cross examination of DW-1 i.e. the defendant, she has admitted that the plaintiff resides in 150 sq.mtrs. of the land and rest is in our possession in survey No.20/4. The



defendant during her cross examination also admitted that the plaintiff resides in part of the suit land since the year 1988. From the trend of cross examination of the defendant and the answer given by the defendant during the cross examination by the plaintiff the defendant intend to make out a case that the plaintiff is not in possession of 680 sq.mtrs. in survey No 20/4 but on the other hand the defendant while filing the written statement file counter claim for eviction of the plaintiff and handing over the suit property. The suit property mentioned by the plaintiff in the plaint is 680 Sq.mtrs. of land out of total area 0.19 hectares in survey No. 20/4 situated at Rampur village under Rangat Tehsil which is under the possession of the plaintiff by alive fencing and double storied semi RCC residential house constructed therein. The defendant has not described any schedule property separately. The defendant in the cross examination stated that 150 sq. mtrs. of land is in possession of the plaintiff and at the time of cross examination of PW-2 the defendant has given suggestion that Nitya Nanda Roy agreed to sell an area of 200 sq. mtrs. only to the plaintiff due to cordial relationship with the plaintiff. This proved that the plaintiff is in possession of the total suit property. The defendant has denied with regard to the receipt of Rs. 82000/- but in the power of attorney it is categorically mentioned that



the plaintiff paid the amount of Rs. 82000/- to Nitya Nanda Roy and he has received the total amount during his life time. The payment of amount of Rs. 82000/- is also proved. Thus question No.3 is decided in favour of the plaintiff.

55. At the time of hearing of the instant appeal, the counsel for the defendant has raised an issue that Nitya Nanda Roy is having other legal heirs who are also entitled to get the suit property by way of inheritance but the plaintiff has not made them as party in the suit. Thus, the suit is barred by non joinder of parties. In the written statement as well as in the examination of chief on affidavit, the defendant has stated that after the death of her husband she has become the sole owner of the landed property (with the consent of other legal heirs i.e. her children). The defendant in her affidavit as well as in her deposition has stated that she has become the owner of the property after the death of her husband and as such at this stage the defendant cannot claim that plaintiff has not made the other legal heirs as party to the suit.

56. The defendant has raised another issue with regard to the limitation. As per the case of the plaintiff the oral agreement entered in the month of May 1988 and immediately thereafter Nitya Nanda Roy and his mother who are the joint recorded tenant of the suit property have passed away. The plaintiff at



the first time made a complaint to the Tehsildar on 03.08.2009 and when the Tehsildar has initiated a proceeding on the complaint of the plaintiff in the said proceeding, on 12.11.2009, the defendant has agreed to execute necessary sale deed in favour of the plaintiff after disposal of the Civil Suit pending before the Court at Port Blair. Thus, from May 1988 till November 2009 there is no limitation. On 08.02.2010 the Tehsildar on receipt of the request from the learned lawyer appearing for the defendant disposed of the revenue proceeding with the advice to the plaintiff to seek remedy in the appropriate Civil Court. In the order dated 08.02.2010 the Tehsildar has recorded as follows:

“Received a letter dated 6th February 2010 from Shri. Vinod Kumar Gupta, advocate for the respondent with the request to stop the proceedings without mentioning anything about the civil suit filed by his client. Under this circumstances no amicable settlement can be possible. Except amicable settlement this court have no jurisdiction to pass any order in this matter. Hence the applicant is advised to seek remedy in a appropriate civil court.”

The order passed by the Tehsildar in the revenue proceeding dated 08.02.2010 it is clear that the defendant has shown her intension that she not ready to come forward for settlement i.e. for registration of sale deed. Thus the cause of action arose for filing of the suit within three years from 08.02.2010 i.e. on 07.02.2013. The plaintiff has issued legal notice dated 15.06.2013 to the defendant calling upon the



defendant for registration of the sale deed but actually the plaintiff has sent the said notice by registered post on 16.07.2013 (exhibit 12) and the same was duly received by the defendant on 23.07.2013 which is admitted by the defendant in the written statement but the defendant has neither sent any reply nor has come forward for registration of sale deed, accordingly the plaintiff has filed the suit on 10.09.2013.

Counsel for the plaintiff relied upon paragraph 25 of the written statement wherein the defendant has stated that the cause of action for filing the counter claim arose only on getting the notice dated 23.07.2013 and on filing of the suit, thus the suit is not barred by limitation.

Considering the above this Court find that the order passed by the Tehsildar in the revenue proceeding dated 08.02.2010 it is clear that on the said date the defendant had refused for registration of sale deed but the plaintiff has sent the notice only on 16.07.2013 i.e. much after the period of three years from the date of refusal and has filed the suit thereafter.

In the case of **Sabbir (dead) through LRs (supra)**, the Hon'ble Supreme Court held that the limitation for filing the suit for specific performance, as per Article 54 of the Schedule to the Limitation Act, 1963 is three years 'from the date fixed for



performance or no such date is fixed, when the plaintiff has noticed performance is refused’.

In the present case as per the order of the Tehsildar dated 08.02.2010 the defendant refused for amicable settlement by registering a sale deed but the plaintiff has issued notice and filed the suit much after the period of three years, thus the suit is barred by limitation. Accordingly, question No.2 is decided against the plaintiff.

57. In view of the above the Second Appeal No. SA/9/2024 fails and accordingly the same is dismissed.

58. Decree be drawn accordingly. The Trial Court Records be sent back immediately.

(KRISHNA RAO, J.)