

(2015) 11 MAD CK 0019

In the Madras High Court

Case No : Writ Appeal (MD) Nos. 998, 999 of 2015, M.P.(MD) No. 1 of 2015 in W.A.(MD) No. 998 of 2015 and M.P.(MD) No. 2 of 2015 in W.A.(MD) No. 999 of 2015

The Inspector General of Registration and Others

APPELLANT

Vs

J. Barathan

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Constitution of India, 1950 — Article 141
Contract Act, 1872 — Section 201, 202, 203, 204, 205
General Clauses Act, 1897 — Section 23
Registration Act, 1908 — Section 10, 2(10), 23, 3, 3(1)

Citation : (2016) 1 CTC 369 : (2016) 1 LW 462 : (2015) 8 MLJ 769 : (2016) WritLR 57

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : K. Chellapandian, Addl. Advocate General assisted by A.K. Baskarapandian, Spl. Govt. Pleader, for the Appellant

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The Inspector General of Registration of the State of Tamil Nadu and the Sub-Registrar of Tallakulam, Madurai, have come up with the above writ appeals challenging a common order passed by a learned Judge in two writ petitions filed by the respondent herein, seeking a direction to the appellants to register and return a sale deed and a gift deed presented for registration.

2. We have heard Mr. K. Chellapandian, learned Additional Advocate General, appearing for the appellants and Mr. J. Barathan, the respondent, appearing in person.

3. Under a sale deed executed by one Mr. V. Balasubramanian on 15.12.2014, claiming to be the power agent of the owners Mrs. A. Balamani and her son, the

respondent purchased a house site, bearing Plot No. 8, in Re-survey No. 66/2 in Sriram Garden, Ulkadai Kodikulam Village, Madurai North Taluk, Madurai District. By a deed of gift, executed on the same day, namely 15.12.2014, the aforesaid Mr. V. Balasubramanian, the power agent of the land owners Mr. A. Balamani and her son, also gifted a small extent of land in favour of the Madurai City Municipal Corporation for the purpose of formation of a road in the lay-out known as "Sriram Garden".

4. The sale deed as well as the gift deed, executed by Mr. V. Balasubramanian, as the power agent of the actual owners, were submitted for registration to the 2nd appellant herein and necessary registration fee was also paid. On the sale deed, sufficient stamp duty had also been paid in the form of Non-Judicial Stamp Papers.

5. However, the 2nd appellant herein, after assigning pending document Nos. P-113 and P-114, respectively for the sale deed and the gift deed, kept the documents without completion of registration on the ground that the executant of the documents should furnish a life certificate to the effect that the principals were alive. This demand for the production of a life certificate made by the 2nd appellant was on the basis of a Circular, bearing No. 189/C1/2013, dated 02.02.2013, issued by the 1st appellant.

6. As per the said Circular, dated 02.02.2013, any document executed by a power agent and presented for registration should be accompanied by a life certificate containing the photograph of the principal. Such certificate should also be signed by a Registered Medical Practitioner or an officer belonging to Group-A Services of the Central or State Government. The Circular further indicated that the life certificate should have been issued within a period of 30 days preceding the date of presentation of the document for registration. The Circular also made it clear that if the deed of power of attorney itself had been registered within 30 days, immediately preceding the date of registration, then the document need not be accompanied by a life certificate.

7. Therefore, on the basis of the said circular, the 2nd appellant demanded a life certificate and kept both the sale deed and the gift deed pending for registration for the production of such a certificate.

8. But, the respondent, who was the purchaser of the plot of land under the sale deed, issued a legal notice to the 2nd appellant, enclosing a copy of the judgment of this court in Confederation of Real Estate Developers' Association of India Vs. State of Tamil Nadu, and claiming that the Circular, on the basis of which the demand was made, had itself been set aside by this Court and that therefore the 2nd appellant cannot make a demand. However, the 2nd appellant was unmoved. Therefore, the respondent herein filed two writ petitions in W.P. (MD) Nos. 5484 and 5485 of 2015, praying for the issue of a writ of mandamus to direct the 2nd appellant, respectively, to register the sale deed and the gift deed, executed on 15.12.2014 which were kept pending as Document Nos.

P-113 and P-114. Both the writ petitions were allowed by a learned Judge by a common order, dated 13.07.2015. Aggrieved by the said order, the appellants have come up with these appeals.

9. Before proceeding to consider the rival contentions, it is necessary to point out that the Circular, dated 02.02.2013, became the subject matter of controversy in quite a few proceedings before this Court and different benches took different views. Therefore, it is necessary to take note of some of the orders passed in a few cases where the Circular became the subject matter of dispute.

10. To begin with, one Mr. N. Murugesan filed a writ petition in W.P.(MD) No. 2986 of 2013. The prayer in the writ petition was for quashing the Circular, dated 02.02.2013. This writ petition was dismissed by a learned Judge, by an order dated 21.03.2014. The operative portion of the said order reads as follows:

"5. In my considered opinion, first of all, the petitioner has no locus standi to file the present writ petition as he is not individually affected by the impugned circular. Though the petitioner has questioned the impugned circular in general, he was not made out any valid ground to quash the same. This writ petition is devoid of merits. Therefore, this writ petition is liable to be dismissed and accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

11. The very same litigant, namely Mr. N. Murugesan, came up with a second writ petition in W.P.(MD) No. 9392 of 2014, seeking the very say relief, namely, to quash the Circular dated 02.02.2013. This time, the said N. Murugesan gave his writ petition, the colour of a public interest litigation and hence the writ petition came up before a Division Bench of this Court. This writ petition also met with the same fate as the first one. A Division Bench of this Court, to which one of us (VRSJ) was a party, dismissed the writ petition by an order dated 13.06.2014, pointing out the public interest sought to be protected by the Circular. Paragraphs 4 and 5 of the said order is extracted for easier appreciation as follows:

"4. The intention of the above circular is to protect innocent purchasers from being taken for a raid by persons dealing with properties as agents. Ever so many cases have come up before this Court, where the agents sell away the properties, even after the power of attorney is cancelled. Unfortunately, as per the Registration Rules, the documents of conveyance such as sale deeds are registered in Book-1. The deeds of power of attorney are registered in Book-4. Whenever, an encumbrance certificate is applied, it does not use to get reflected in the encumbrance certificate precisely. This has created lot of difficulties where unscrupulous persons were taking for a raid innocent purchasers in respect of huge properties. Therefore, the object of the circular is laudable. The power of the Inspector General to issue any such circular is not questioned on any legally tenable grounds by the petitioner. The only ground raised by the petitioner is as to how could a life certificate be taken to be valid for 30 days, when nobody can

guarantee the life span of any individual. Human life is so temporary and transient that no one would know the date and time of the final call. Therefore, it is contended by the learned counsel for the petitioner that such a prescription that the life certificate is to be valid for 30 days, is completely ridiculous.

5. As a point of philosophy what the petitioner says is correct. But man always lives in hope. Everyday we adjourn several cases to a future date promising to hear them on that date. This also falls under the same category as projected by the petitioner. Therefore, we do not see any reason to entertain this writ petition. Hence, it is dismissed. No costs. Consequently, miscellaneous petitions are closed."

12. After the dismissal of the first writ petition by a learned single Judge and the dismissal of a Public interest litigation by a Division Bench, yet another writ petition was filed by the Confederation of Real Estate Developers Association of India (CREDAI). It came up for hearing before yet another learned Judge in the Principal Bench. By a judgment dated 13.08.2014, reported in Confederation of Real Estate Developers" Association of India Vs. State of Tamil Nadu, , the learned Judge went into the provisions of the Registration Act, 1908 and the Rules framed thereunder and came to the conclusion that the Circular was ultra vires the Act and the Rules. Though the first judgment of the learned single Judge in W.P.(MD) No. 2986 of 2013 and the judgment of the Division Bench in W.P.(MD) No. 9382 of 2013 were brought to the notice of the learned Judge, the learned Judge felt that neither the Single Judge nor the Division Bench had considered the validity of the Circular with reference to the powers available to the Inspector General of Registration under the provisions of the Act and the Rules. Therefore, the learned Judge thought that the decision of the Single Judge and the Division Bench were not binding precedents. As a consequence, the learned Judge allowed the writ petition holding that the Inspector General of Registration was not competent to issue such a Circular.

13. Nevertheless, even while setting aside the Circular by the judgment dated 13.08.2014, the learned Judge recorded his appreciation for the Inspector General of Registration, for coming up with a laudable and praiseworthy step in the interest of public. Paragraph 25 of the order of the learned Judge passed in the writ petition filed by Confederation of Real Estate Developers Association of India (CREDAI) is extracted for easy appreciation as follows:

"25. Before parting, this Court place on record its appreciation towards the steps taken by the Inspector General of Registration in issuing the impugned Circular in order to prevent the fraudulent registration of the documents by the illegal Power Agents and as already stated supra, the object of the impugned Circular is really laudable and praiseworthy, but in the absence of any legal sanctity attached to the impugned Circular, this Court is unable stretch upon its hands to protect the said Circular. However, it is needless to mention that the Inspector General of Registration is empowered to make rules by virtue of Section 69(2) of the Act and enact the same after getting approval from the State Government and on its

publication. While doing so, the Inspector General of Registration shall consider the circumstances under which the production of "Life Certificate" itself does not arise as discussed in foregoing Paragraphs 21 to 25. Till such time the Rule is framed, the Registering Authority shall act as per the provisions of the Act."

14. The Government sought a review of the order dated 13.08.2014. But, the Review Application No. 264 of 2014 was also dismissed by the learned Judge, by an order dated 13.01.2015.

15. Thereafter, yet another person came up with a fresh writ petition in W.P.(MD) No. 2607 of 2015. The prayer in this writ petition was not for setting aside the Circular but, only for a direction to the Sub-Registrar to register a sale deed executed by a power agent, without insisting on the production of the life certificate of the principal. This writ petition was allowed by an order dated 26.03.2015, by a learned Judge, following the decision in Confederation of Real Estate Developers" Association of India Vs. State of Tamil Nadu, and also on the ground that the property involved in the said case was of a very small extent of about 330 sq.ft.

16. In the meantime, the judgment of the Division Bench of this Court, dated 13.06.2014, dismissing the public interest litigation W.P. (MD). No. 3392 of 2014 was taken on appeal by the writ petitioner to the Supreme Court in SLP(C) No. 30483 of 2014. The SLP was disposed of by the Supreme Court by an order, dated 03.08.2015. By this order, the Supreme Court virtually upheld the validity of the Circular with a clarification that it cannot be read futuristically. The Supreme Court also made it clear that the judgment passed on 03.08.2015 would supersede all the earlier Circulars issued by the State in relation to this. Since this order, dated 03.08.2015, passed by the Supreme Court holds the field as on date, it is necessary to extract the same in entirety. Therefore, the order of the Supreme Court is extracted as follows:

"In course of hearing, it is submitted by Mr. Subramonium Prasad, learned senior counsel appearing for the respondent that the circular issued by the State of Tamil Nadu has to be read in a purposive manner. According to the learned senior counsel, when the Power of Attorney Holder or Special Power of Attorney executes a sale deed before the registering authority, he has to give a certificate that the person who had executed the power of attorney in his favour was alive thirty days prior to the date of execution.

Mr. K.V. Vijayakumar, learned counsel appearing for the petitioner submits that is not the tenor of the language used in the circular. The grievance of the petitioner is justified as the circular is vague and it depicts a picture as if the Power of Attorney Holder as the executant has to give a certificate that the executant will remain alive for a period of thirty days from the date of execution of power of attorney.

Mr. Prasad, learned senior counsel has submitted that whatever the vagueness may be in the circular, the position is what he has stated today. Accordingly, we

clarify the circular.

We may hasten to add that the term "within a period of thirty days" has to be understood in the past tense, that is, the executant was alive thirty days prior to the date of execution of the sale deed. We may further emphasize that the clause can never be read futuristically and it has to relate to past.

We further clarify that the power of attorney in law does not subsist after the death of the principal and, therefore, the certificate as regards the past is necessary. Our interpretation of the circular shall be followed in letter and spirit and there shall be no further insistence by the State or the registering authority.

The present order shall supersede all circulars issued by the State relating to this."

17. It is only in the light of the mandate issued by the Supreme Court in the last three paragraphs of the above order, and not in the light of the judgment of the learned single Judge in CREDAI that we have to test the correctness of the order that is now under appeal before us.

18. The main contention of Mr. K. Chellapandian, learned Additional Advocate General, appearing for the appellants is that the Circular issued by the 1st appellant was a product of the experience gained in the past, about innocent purchasers being taken for a ride by persons claiming to hold valid documents of power of attorney. According to the learned Additional Advocate General, the validity of the Circular has now been upheld by the Supreme Court with a clarification and hence the order of the learned Judge cannot be sustained any longer.

19. However, Mr. J. Barathan, the respondent appearing in person, contended-

(a) that there is no provision in the Registration Act, 1908, except Section 69 , empowering the Inspector General of Registration to exercise the power of general superintendence over all the Registration Offices and inasmuch as the Circular relied upon by the appellants was not issued in terms of sub-section (2) of Section 69 , in the form of statutory rules, the appellants cannot act based upon the Circular;

(b) that though under Section 201 of the Indian Contract Act an agency gets terminated by the death of the Principal, the said rule has its own exception in cases where the agency is coupled with interest as indicated in Section 202 of the Act and hence even the death of a power agent cannot, in all cases, have a bearing upon the document executed by the power agent;

(c) that though the Supreme Court disposed of the SLP arising out of the order passed in a public interest litigation in W.P.(MD) No. 9392 of 2014, the judgment of the learned Judge in CREDAI, dated 13.08.2014, reported in 2014 (6) CTC 13, has not so far been reversed by any appellate court and hence the appellants are bound by the said decision, inasmuch as the appellants did not even bring the

said judgment to the notice of the Supreme Court;

(d) that when the statute prescribes a thing to be done in a particular manner, it shall be done only in that manner and not otherwise but, the first appellant issued a Circular that is not in accordance with the procedure prescribed by Section 69(2) of the Registration Act, 1908;

(e) that in any case, the power conferred upon the Inspector General of Registration is only to issue directions to his subordinates and such a power cannot extend to the issue of general instructions that would bind third parties like sellers and purchasers of properties;

(f) that the specific provisions incorporated in the Registration Act, 1908, more particularly Sections 23 , 35(1)(c) and 35(3)(c) were not even taken into account in the Circular on the basis of which the appellants acted; and

(g) that when the Circular was not even made known to the public, by prior publication, the appellants could not expect the members of the public to know about it and hence the Circular, on the basis of which the appellants acted, was also violative of Section 23 of the General Clauses Act.

20. Before taking-up the contentions of the respondent appearing in person, we owe a duty to clear the air of any doubt that one may have regarding the validity of the circular, dated 02.02.2013. The respondent is under a misconception that the Circular is no longer in force in view of the decision of the learned Single Judge in CREDAI, dated 13.08.2014. But, it is not correct. We have extracted the entire order of the Supreme Court, dated 03.08.2014, arising out of the order of the Division Bench of this Court in W.P.(MD) No. 9392 of 2014, dated 13.06.2014. The Supreme Court did not set aside the order of the Division Bench. On the contrary, the Supreme Court clarified the Circular. Not stopping at that, the Supreme Court went to the extent of issuing a direction that the interpretation given by the Apex Court shall be followed in letter and spirit and that the order of the Supreme Court shall supersede all circulars issued by the State. This direction issued by the Supreme Court cannot be treated as a dead letter, on the basis of the decision of the learned Single Judge in CREDAI. A direction such as the one issued by the Supreme court (extracted above), is binding on this court, all other courts, the Government and other authorities as well as the citizens.

21. As a matter of fact, the decision of the learned Single Judge in CREDAI is no longer valid. The Circular, set aside by the learned Single Judge, has been clarified by the Supreme Court with a positive mandate that the order of the Supreme Court will supersede all circulars. Therefore, the law as on date is that the Circular, dated 02.02.2013, is valid, subject to the clarification issued by the Supreme Court. As a consequence, the judgment of the learned Single Judge in CREDAI stands obliterated.

22. Keeping the above in mind, let us take up for consideration the contentions

raised by the respondent, one after another.

Contention No. 1.

23. As we have indicated earlier, the first contention of the respondent is that there is no provision in the Registration Act, 1908, except Section 69 , empowering the Inspector General of Registration to exercise the power of general superintendence over all the Registration Offices and that inasmuch as the Circular was not issued in terms of subsection (2) of Section 69 in the form of statutory rules, it is ultra vires the Act.

24. In order to test the correctness of the above contention, we may have a look at the nature of the Office of the Inspector General of Registration under the Act. Section 3(1) of the Act empowers the Government to appoint an Officer to be the Inspector General of Registration for the territories subject to such Government. The proviso to sub-section (1) of Section 3 authorises the Government to confer the powers of the Inspector General of Registration, even upon other officers when making an appointment. Since this post is contemplated under the Act to be persona designata, sub-section (2) of Section 3 permits the Inspector General of Registration to hold any other Office under the Government, simultaneously.

25. Section 10 confers powers upon the Inspector General of Registration even to appoint a Registrar, whenever the Registrar is absent otherwise than on duty.

26. A general power of superintendence and control over the Sub-Registrars is conferred upon the Registrars under Section 68(1) . In view of such a power conferred upon the Registrar, he is also conferred with the authority under sub-section (2) of Section 68 to issue any order consistent with the Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him.

27. While Section 68 speaks about the general power of superintendence of the Registrars, Section 69 speaks about the general power of superintendence of the Inspector General of Registration. Section 69(1) , which appears to have been misunderstood both in the decision in CREDAI and by the respondent herein, actually confers two different kinds of powers upon the Inspector General of Registration. The relevant part of Section 69(1) (without the clauses thereon), is extracted as follows:

"69. Power of Inspector General to superintend Registration Offices and make Rules.--(1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act--

..... "

28. A close reading of the above provision would show that two types of powers are conferred by Section 69(1) . The first is a power of general superintendence over all the Registration Offices in the territories under the State Government.

The second is the power to make Rules. It is only when the Inspector General of Registration seeks to exercise the second type of power conferred under sub-section (1) of Section 69 , the procedures stipulated for making Rules under sub-section (2) of Section 69 would come into play.

29. Therefore, the respondent is only partly right in contending that there is no provision except Section 69 which confers powers upon the Inspector General of Registration to exercise the power of general superintendence over the Registrars and Sub-Registrars. But, the respondent is thoroughly mistaken in thinking that section 69(1) confers only one power namely the rule making power. The respondent has omitted to take note of the fact that it confers 2 types of powers. It is only when the second type of power conferred by sub-section (1) of section 69 is sought to be exercised that sub-section (2) would come into play. The circular dated 2-2-2013 has to be traced to the power conferred by the first part of section 69(1) and hence the procedure prescribed in sub-section (2) for making rules has no application to the same. Hence we reject the first contention.

30. In any case, the validity of the Circular cannot any more be raised by the respondent, either on the basis of the decision in CREDAI or on an independent basis. This is in view of the directions issued by the Supreme Court in N. Murugesan, dated 03.08.2015.

Contention No. 2:

31. The second contention revolves around Sections 201 and 202 of the Indian Contract Act, 1872.

32. Section 201 lists out the circumstances under which an Agency is terminated. They are: (i) the revocation by the principal, of all the authority given to the agent; (ii) the renunciation of the business of agency by the agent; (iii) the completion of the business of the agency (in other words fulfilment of the contract); (iv) the death of the principal or the agent; (v) the unsoundness of mind of the principal or agent; and (vi) the adjudication of the principal as an insolvent.

33. A careful look at Section 201 of the Indian Contract Act would show that the circumstances listed out therein would fall under the following categories: (i) voluntary acts on the part of the principal; (ii) voluntary acts on the part of the agent; (3) involuntary acts on the part of the principal or the agent; (iv) force of circumstances.

34. That Section 201 admits of the above categories of termination, is also made clear by Sections 203 to 210 of the Act. Sections 203 and 204 speak about revocation of the agent's authority by the principal and Section 205 speaks about compensation for the agent in the case of revocation by principal and compensation for the principal in the case of renunciation by the agent. Sections 206 and 207 speak about the procedures to be followed for revocation or renunciation. Section 208 speaks about the coming into effect of the termination

of the agent's authority.

35. Section 209 imposes a duty upon the agent whenever the agency is terminated due to the death of the principal. Section 209 reads as follows:

"209. Agent's duty on termination of agency by principal's death or insanity.-- When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him."

36. Keeping in mind the scheme of Sections 203 to 210 of the Contract Act, let us now get back to Section 202 , on which heavy reliance is placed by the respondent in support of his contention that the agency does not get terminated when it is coupled with interest. Section 202 , together with the illustrations contained therein reads as follows:

"202. Termination of agency, where agent has an 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.

Illustrations

(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 this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."

37. It may be seen from Section 202 that it uses the phrase "Where the agent has himself an interest in the property which forms the subject-matter of the agency". From the traditions of common law, this phrase is what we normally refer to as "agency coupled with interest".

38. The fundamental question as to when an agency or power can be taken to be coupled with interest, has been a vexed question not merely in countries that follow the common law regime but also in other countries. In one of the earliest cases to come up before the Supreme Court of the United States in *Hunt v. Rousmanier's Administrators* -- 21 U.S. 174, a deed of power was executed by Rousmanier, authorising Hunt to sell a vessel and appropriate to himself 3/4th of the proceeds towards repayment of a loan taken from him. The power was stated to be given as collateral security for the repayment of the loan. A question arose as to whether it was an irrevocable power. In his opinion, Chief Justice Marshall pointed out that the document in question was an instrument containing no words of conveyance or of assignment, but only a simple power to sell and

convey. As the power of one man to act for another depends on the will and licence of that other, the power ceases when the will or this permission is withdrawn. Chief Justice Marshall therefore stated that the general rule is that a letter of authority made at any time be revoked, by the party who makes it and it is revoked by his death. Elaborating further, the Court pointed out as follows:

"Although a letter of attorney depends, from its very nature, on the will of the person making it and may in general be recalled at his will; yet if he binds himself for a consideration, in terms or by the nature of his conduct, not to change his will, the law will not permit him to change it. Rousmanier, therefore, could not, during his life, by any act of his own, have revoked, this letter of attorney. But does it retain its efficacy after his death? We think it does not. We think it will settle that a power of attorney though irrevocable during the life of the party, becomes extinct by his death."

39. Having stated so, Chief Justice Marshall held that the aforesaid general rule admits of one exception. The following passage from his opinion is of interest and hence it is extracted as follows:

"This general doctrine, that a power must be executed in the name of a person who gives it, a doctrine founded on the nature of the transaction, is most usually engrafted in the power itself. Its usual language is, that the substitute shall do that which he is empowered to do in the name of his principal. He is put in the place and stead of his principal, and is to act in his name. This accustomed form is observed in the instrument under consideration. Hunt is constituted the attorney, and is authorized to make, and execute, a regular bill of sale in the name of Rousmanier. Now, as an authority must be pursued, in order to make the act of the substitute the act of the principal, it is necessary that this bill of sale should be in the name of Rousmanier; and it would be a gross absurdity, that a deed should purport to be executed by him, even by attorney, after his death; for, the attorney is in the place of the principal, capable of doing that alone which the principal might do.

This general rule, that a power ceases with the life of the person giving it, admits of one exception. If a power be coupled with an "interest," it survives the person giving it, and may be executed after his death.

As this proposition is laid down too positively in the books to be controverted, it becomes necessary to inquire what is meant by the expression, "a power coupled with an interest?" Is it an interest in the subject on which the power is to be exercised, or is it an interest in that which is produced by the exercise of the power? We hold it to be clear, that the interest which can protect a power after the death of a person who creates it, must be an interest in the thing itself. In other words, the power must be engrafted on an estate in the thing."

40. However, a close scrutiny of the decision in *Hunt v. Rousmanier* would show that it is applicable only in cases where the title or estate in property is transferred by way of security, as such title or estate survives the death of the

grantor or assignor and the security continues good after such death. But where the power is only a common law power over property, the power ceases upon the death of the maker.

41. In an Article titled "Powers Coupled with An Interest", authored by James Lowndes and published in the Harward Law Review, it is pointed out that neither in the England nor in the United States are the decisions uniform as to the meaning of the words "power coupled with an interest".

42. In *Jeffries, Administrator v. The Mutual Life Insurance Company* (110 U.S. 305), a power was given to two attorneys at law to prosecute a claim against the Mutual Life Insurance Company on a policy of life insurance. The attorneys were given full power to compromise the suit as they should please and it was agreed that they should have a portion of the proceeds of the suit as compensation. The attorneys commenced prosecuting the claim, but the principal died in the meanwhile. The Administrator of the Testator (the principal who gave power) got substituted as the plaintiff in the claim against the Insurance Company. The attorneys made compromise with the Insurance Company and entered satisfaction in the suit. When the plaintiff sought to set aside the compromise, on the ground that the power given to the attorneys to compromise got terminated by the death of the principal, the U.S. Court held that the power given to the attorneys was coupled with interest and hence the authority to compromise was not impaired by the death of the principal.

43. But in a later case in *Missouri v. Walker* (125 U.S. 339) the U.S. Court impliedly over-ruled the decision in *Jeffries v. The Mutual Life Insurance Company* and reiterated the decision in *Hunt v. Rousmanier*. The Court observed that the interest coupled with a power, to make it irrevocable, must be an interest in the thing itself. If there was no actual assignment of the claim or any part of them, but the only interest that was coupled with the power was a control over the claims to the extent of the commissions for the agent, then the agency was not irrevocable.

44. Therefore, in cases where a Principal dies after creating a power that gives raise to a claim that it was coupled with interest, then the ghost of the Principal haunts not only his agent but also the court where such question arises.

45. In so far as India is concerned, the law of contracts is codified and hence the answer to the question on hand is to be found only in the Contract Act and that too by reading Sections 202 and 209 together. A careful reading of Section 202 would show--

(a) that but for the two illustrations contained thereunder, it applies primarily to cases of voluntary acts of termination;

(b) that in any case, the prescription contained in Section 202 that an agency coupled with interest cannot be terminated, can be kept out by parties by including express provisions in the contract; and

(c) that what is prohibited by Section 202 is only a termination to the prejudice of the interest that the agent himself has in the property which forms the subject matter of the agency.

46. Section 202 does not stipulate that the termination of agency by the death of the principal is not permissible at all. Section 202 does not even protect the agent. It actually protects the agent's interest in the property which forms the subject matter of the agency.

47. There is no direct reference in section 202 , to the termination of an agency by the death of the principal, except in the illustrations contained thereunder. The only provision that directly speaks about the termination of agency due to the death of the principal is Section 209 (apart from Section 201). Section 209 obliges an agent to protect and preserve the interest of the principal entrusted to him. It does not speak about the agent's own interest. Therefore, the second contention of the respondent does not hold good, in the light of the provisions of Sections 202 to 209 of the Indian Contract Act.

Contention No. 3:

48. The third contention revolves around the decision of the learned single Judge in CREDAI. But, as we have already indicated, the decision in CREDAI is no longer valid in the eye of law, in view of the order passed by the Supreme Court in N. Murugesan vs. The Inspector General of Registration, dated 03.08.2015.

Contention No. 4:

49. The fourth contention is that when a statute prescribes a thing to be done in a particular manner, it shall be done only in that manner and not otherwise. This contention is based upon the prescription contained in Section 69(2) of the Registration Act to the effect that any Rule framed by the Inspector General of Registration should be submitted to the State Government for approval and should also be published in the Official Gazette, after approval.

50. As a matter of fact, the respondent has cited the following decisions in support of his contention that once the law mandates the publication of rules in the official gazette as a precondition, the same cannot be made as a dead letter.

(1) The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others, ;

(2) I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, ;

(3) Rajendra Agricultural University Vs. Ashok Kumar Prasad and Others, ;

(4) Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje and Others, ; and

(5) Planters" Association of Tamil Nadu Vs. The Secretary to Government, Labour and Employment Department, Government of Tamil Nadu .

51. But, unfortunately, the contention based upon Section 69(2) of the Act and all the decisions relied upon by the respondent in that connection are based upon the presumption that the Circular, dated 02.02.2013, was issued in exercise of the rule making power conferred under the second part of sub-section (1) of Section 69 . If the Inspector General of Registration had issued a Rule in exercise of the Rule making power conferred by the second part of Section 69(1) , what the respondent contends may be correct. In cases of that nature, approval of the Rules by the State Government and the publication in the Gazette are mandatory requirements. Therefore, Section 23 of the General Clauses Act and the decisions cited above would apply with all force to such cases and the respondent could easily demand a success.

52. But, in the case on hand, as we have pointed out above, the Inspector General of Registration has been conferred with two types of powers under Section 69(1) . The Circular dated 02.02.2013, falls under the first category, for the exercise of which sub-section (2) has no application. But, unfortunately, the respondent has entertained a misconception in this regard, probably induced by the claim made in the counter affidavit of the Inspector General of Registration, placing reliance upon Section 69 . But, the reliance placed upon Section 69(1) has to be understood with reference to the first part of sub-section (1) of Section 69 . Therefore, the 4th contention is also liable to be rejected.

Contention No. 5:

53. The fifth contention is that even if the Inspector General of Registration has any power of superintendence over his subordinates, he cannot dictate terms to third parties who execute documents.

54. This contention has to be stated only to be rejected. The Inspector General of Registration did not compel anybody, by the Circular dated 02.02.2013 to do anything that they are not lawfully obliged to do. If parties want a document to be registered on the strength of a deed of power of attorney, the law requires them to do certain things. The Inspector General of Registration has issued a Circular asking the Registering Authorities under his control to demand a particular certificate from the parties who present certain documents for registration. It does not amount to the exercise of a power over third parties.

Contention No. 6:

55. The sixth contention of the respondent is that the specific provisions incorporated in Sections 23 , 35(1)(c) and 35(3)(c) of the Registration Act, 1908 were not even taken into account in the Circular, dated 02.02.2013.

56. At the outset, the Circular, dated 02.02.2013, is not under challenge before us. The sheet anchor of the case of the respondent is that the Circular has already been set aside by a learned Judge of this Court in CREDAI. But, as we have indicated earlier, the Supreme Court has not merely upheld the Circular with a clarification, but even went beyond and issued a positive mandate that the

clarification issued by the Supreme Court would supersede all the circulars.

57. In any case, the contention revolving around the above provisions does not hold water. It is true that Section 23 gives a time of four months for a party to a document (other than a Will) to present the same for registration. If the executant of the document dies within four months, even then the document can be registered if the representative or assign of the executant appears before the Registering Officer and admits its execution. This is by virtue of Section 35(1)(c), which reads as follows:

"(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive."

58. What happens if the representative or assign of a deceased executant denies the execution, is also provided in clause (c) of sub-section (3) of Section 35, which reads as follows:

"(c) If any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the persons so denying, appearing or dead;"

59. The expression "representative" is defined in Section 2(10) of the Registration Act, 1908, to include the guardian of a minor and the committee or other legal curator of a lunatic or idiot. Thus, it is only an inclusive definition and not an exhaustive definition. The expression "assign" appearing in Sections 35(1)(c) and 35(3)(c) are not even defined.

60. Therefore, a question arises as to whether the holder of a power of attorney, is a representative or assign of the executant of the document or not.

61. But, before we go into the said question, we must keep in mind two alternative scenarios. In one scenario, the very document sought to be registered, such as sale deed, mortgage deed, lease deed, exchange deed or settlement deed, is executed by the principal and a deed of power is given in favour of an agent only for the purpose of presenting the executed document for registration. In the second scenario, the original document itself might have been executed by the power agent on the strength of the recitals contained in the deed of power.

62. In cases falling under the second category, it is the power agent who becomes the executant of the document. We are not dealing with a situation where the power agent has died. We are dealing with a situation where the principal dies and what happens if the power agent wants to execute a document in exercise of the power conferred upon him. Therefore, neither Section 35(1)(c) nor Section 35(3)(c) would apply to a case where the document sought to be registered was itself executed by the power agent and not by the principal.

63. Insofar as the first scenario is concerned, the original owner or the principal would have executed the document and given a limited power to some one to present the document for registration. In such cases, it is true that a power agent can appear before the Registering Officer in terms of Section 35(1)(c) or Section 35(3)(c) as the representative of the executant and admit execution of the document and demand registration. This facility conferred by Section 35(1)(c) or Section 35(3)(c) is not taken away by the Circular, dated 02.02.2013.

64. A careful perusal of Clause (1) of the Circular, dated 02.02.2013, would show that it requires the production of a life certificate only in cases where a document such as sale deed, lease deed, mortgage deed, gift deed etc., is executed by the agent on the strength of a deed of power of attorney and such a document is presented for registration. Clause (1) of the Circular, dated 02.02.2013, does not cover cases where the principal himself has executed the document but died subsequently, leaving the document as well as the power of attorney to present the document for registration. Therefore, the contention that the Circular is contrary to both the provisions of Section 35(1)(c) and Section 35(3)(c) is not correct. As a matter of fact, the Circular occupies a field left unoccupied by Section 35(1)(c) and Section 35(3)(c). Therefore, the sixth contention also does not hold good.

Contention No. 7:

65. The seventh contention is to the effect that when Circulars of the type involved in this case affect third party's rights, they cannot be given effect to without prior publication and that therefore the Circular has to be understood in the light of Section 23 of the General Clauses Act.

66. We do not think that it lies in the mouth of the respondent to raise this contention. The respondent is an Advocate. He actually issued a notice to the appellants claiming that the Circular dated 02.02.2013 has already been quashed by a learned Judge of this Court in CREDAI. Therefore, he cannot feign ignorance. In any case, Section 23 of the General Clauses Act has application only to such subordinate legislation which require prior publication as a condition precedent for such legislation to come into effect. Section 69(2) which requires publication in the gazette covers only one type of power conferred by Section 69(1). Therefore, Section 23 of the General Clauses Act has no application. In any case, the requirement of the production of a life certificate, prescribed in the Circular dated 02.02.2013, is merely procedural. The Supreme Court has also clarified the effect of such Circular. Therefore, the condition imposed by the Circular can be fulfilled even after the presentation of the document. In such circumstances, no prejudice is caused by the non-publication of the Circular. Hence, the seventh contention is also to be rejected.

Conclusion:

67. Coming back to the appeals on hand, the respondent presented one sale deed and one gift deed for registration. Both documents had been executed by

the power agent of the original owners of the property in question. The Registering Authority, namely, the second appellant, demanded life certificates as per the Circular, dated 02.02.2013. The respondent refused to furnish life certificates on the ground that the Circular, dated 02.02.2013, is no longer valid. The learned Judge accepted the contention of the respondent and allowed his writ petitions, directing the Registering Authority to register the documents, without insisting on production of life certificates. Hence the present appeals.

68. We have already found that the judgment in CREDAI, setting aside the Circular, dated 02.02.2013, does not have the force of law in view of the directives issued by the Supreme Court on 03.08.2015 in N. Murugesan v. Inspector General of Registration, Tamil Nadu. Today, the direction issued by the Supreme Court in N. Murugesan has the force of law, in view of Article 141 of the Constitution. It is binding on all courts and it is actually the law of the land.

69. It is true that the learned Single Judge who allowed the writ petitions of the respondent did not have the benefit of the judgment of Supreme Court, as the judgment of the Supreme Court came subsequently. But, nevertheless, the direction of the Supreme Court cannot today be ignored as it arose directly out of a challenge to the very same Circular. Hence the order of the learned Single Judge is liable to be set aside.

70. Accordingly, the writ appeals are allowed and the order of the learned Judge is set aside. There will be no order as to costs. Connected miscellaneous petitioners are closed.