

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 259 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting		Yes	No

PURSHOTAM RANCHHODBHAI PANKHANIA & ORS.**Versus****HARIHAR AMBALAL PATEL & ORS.****Appearance:****MR SP MAJMUDAR(3456) for the Appellant(s) No. 1,2,2.1,2.2,2.3****MR RONAK B RAVAL(5665) for the Defendant(s) No. 1****MR. S. L. PATEL(8520) for the Defendant(s) No. 1****RULE SERVED for the Defendant(s) No. 2,3****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 15/07/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. By way of this appeal, the appellants – original plaintiffs challenge the judgment and decree dated 11/09/2019 passed by the learned 16th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.60 of 2016 whereby the suit filed by the appellants – original plaintiffs seeking cancellation of the registered Gift Deed dated 05/01/2011 came to be dismissed.

2. For the sake of brevity and convenience, the parties reiterate to the proceedings would be referred to as per their original status (as plaintiffs-appellants and defendants-respondents) before the learned Civil Court.

3. The brief facts emerging from the pleadings are as under:

3.1. The plaintiff No.1 was the non resident Indian. It is the case of the plaintiff that the property bearing registered Plot No.GH-240, City Survey No.1255/95 ad measuring fts., property sq. 3200 in Sayajigunj at Parishram Co-operative Housing Society (herein after referred to as the “suit property”) was purchased by him and his wife deceased Ramaben Purshottambhai Pankhania, from Smt. Maniben Chimanbhai Desai through Power of Attorney Holder Shri Kiritbhai Chimanbhai Desai (Defendant No.1), on 16/09/1999 by registered Sale Deed No.5011 and payment has been made through Cheque and since then the said property has been in the occupation and possession of the plaintiff.

3.2. It is further the case of plaintiff that the defendant No.1 Harihar Ambalal Patel being in developed relationship with the plaintiff and shown interest to conduct business in partnership and asked for the Power of Attorney of the plaintiff and annexed for that formalities would be completed whenever the plaintiff resides outside the India. That, on 15.07.1998 the powers given to the defendant No.1-Harihar Ambalal Patel and since then the Power of Attorney was given to Harihar Ambalal Patel and it remained with defendant No.1.

3.3. It is further the case of the plaintiff that, on 21.07.2010 the wife of present plaintiff Ramaben Purshottambhai Pankhania died at London and therefore, due to shock of the death of his wife, the plaintiff could not ask for the power of attorney and it remained with the defendant No.1; however the power vested through Power of Attorney came to be stand still and no such power of attorney can be utilized for any further

purpose.

3.4. It is further the case of the plaintiff that, defendant No.1 without having any right over suit property by using said power of attorney and in collusion with other defendant/s executed registered Gift Deed dated 05/01/2011 in favour of defendant No.2 and 3 (son and daughter-in-law) without having any right or power. It is further the case of the plaintiff that the defendant No.2 and 3 are not in any way in relationship with the present plaintiff; neither there was any blood relationship and therefore the execution of the Gift Deed dated 05/01/2011 in favour of defendant No.2 and 3 cannot in any manner said to be legal and genuine and as a result thereof, the plaintiff instituted present suit to get declaration for cancellation said registered Gift Deed dated 05/01/2011 and for permanent injunction with allied relief.

3.5. Upon issuance of Notice/summons, the defendants have appeared and represented their case and filed the written statement contending that the facts stated in the plaint are not true and correct, as also denied all the facts in toto. In all, it is contended that since the plaintiff was required to start the business and in need of money, he requested the defendant No.2 to provide for financial help while assuring of return thereof, defendant No.2 gave 78,000 Pound which later on were not returned by the plaintiff. It is further stated by the defendant that plaintiff has also transferred certain amount from the company account to his personal account and legal notice was issued by defendant no.2 to the plaintiff wherein the plaintiff suggested that in lieu of loan amount, transferred and the suit property and therefore defendant no.1 gifted the said suit property in the

name of defendant no.2 and 3 as per the instructions of the plaintiff and no such illegality has been committed by the defendants and it is submitted that the suit may be dismissed.

4. The learned Civil Court, after framing of the issues and considering oral as well as documentary evidence adduced before the Court and after hearing the both the parties has dismissed the suit. Hence, this appeal.

5. Heard learned Advocate Mr.S P Majmudar for the appellants and learned and learned Advocate Mr.Ronak B Raval for the respondents.

6. Learned Advocate Mr.Majmudar for the appellants has submitted that the judgment and decree passed by the learned Civil Court is contrary to the law and evidence on record and against the settled proposition of law. He would submit that learned Civil Court has erred in considering the fact that none of the power of attorney empowers the defendant no.1 to gift the subject property as the same is illegal and contrary to the settled proposition of law. He would further submit that no specific power to gift the suit property is assigned to the attorney holder and therefore, in absence of such power, such transaction in the form of gift deed cannot be said to be legal one.

6.1. Learned Advocate Mr.Majmudar for the appellants while inviting the attention of this Court to the fact that though the plaintiff No.2 died in the year 2010 and therefore, the power of attorney executed by her in favour of defendant No.1 ceases to exist; however the defendant no.1 executed a Gift deed in the year 2011 which is an illegal transaction; but

despite knowing the same learned Civil Court has ignored this important fact. He would further submit that as per the settled proposition of law the power of attorney executed by the donor in favour of the donee is operative and effective only during the life time of the donor and upon death of the donor, the said power of attorney ceases to be effective / operative and any act post the death of the donor can be said to be without any authority in law.

6.2. Learned Advocate Mr.Majmudar for the appellants has submitted that the learned Civil Court has erred in holding that such gift deed is executed in lieu of loan amount albeit there being not any cogent and valid documentary evidence. He would submit that the learned Civil Court has grossly erred in holding that execution of the Gift deed for transfer of the suit property in favour of defendants no.2 and 3 was the adjustment of the amount borrowed by the plaintiff from the defendant; however no such documentary evidence to show such transaction, which otherwise has no nexus qua the issue, is produced on record and therefore such finding is *de hors* the evidence on record.

6.3. Learned Advocate Mr.Majmudar for the appellant has submitted that the whole case of the plaintiff rests on the deeds of general power of attorney executed by the plaintiff No.1 and his wife (since deceased) in favour of defendant no.1 on different dates and occasion. It is further submitted that the said power of attorneys do not contain any such authority to assign the property by way of any gift deed and despite the aforesaid fact situation, the defendant No.1 in detrimental to the rights of the plaintiff, executed a gift deed in favour of defendant nos.2 and 3 in

collusion with his son and daughter-in-law of defendant no.1.

6.4. Learned Advocate Mr.Majmudar for the appellants has submitted that the learned Civil Court has erred in relying upon the provisions of Section 208 of the Indian Contract Act, 1872 since under the said provision of law, the agent differs from the agency and therefore the Gift Deed executed by the defendant No.1 in absence of any power in favour of defendants No.2 and 3 cannot be said to be legal. He would therefore submit that the learned Civil Court has erred in interpreting the provisions of Section 208 of the Contract Act.

6.5. To substantiate his submissions, learned Advocate Mr.Majmudar for the appellant has placed reliance upon the following decisions:

- (1) M.S Anantgamurthy vs. Manjula Etc, [2025 (10) SCC 596].
- (2) Late Bhagwatbhai Naranbhai Patel Through POA Samveg Arvinbhai Lalbhai vs. State of Gujarat, [2023 (0) GUJHC 59322].
- (3) Dhirajlal Bechardas Dhamelia and Anr vs. Pramodchandra Ratilal Gajjar, [2016 SCC OnLine Guj 10028].
- (4) Smt.V.R. Shanta vs. K.N. Narasimhaiah, [2015 SCC Online Kar 3181].
- (5) Wajid Pasha vs. The Chairman, Bangalore Development Authority, [2013 SCC Online Kar 10135].
- (6) Suchitra Devi V/s Nagineni Sujathamma and Ors., [2022 SCC Online MAD 576].
- (7) Prahlad & Ors. V/s Lad Devi & Ors., [2007 SCC OnLine Raj 19].
- (8) Srimati Snehalata Das And Anr V/s Prafulla Kumar Patnaik, [1966

32 CLT 69].

- (9) Sekar Mudaliar vs Shajathi Bi, [AIR 1987 Mad 239].
- (10) United India Insurance Co. Ltd. V/s P Kondarjulu and Ors., (Andhra Pradesh High Court - CMA NO. 232 of 2016).
- (11) PV Sankara Kurup V/s Leelavathy Nambiar, [(1994) 6 SCC 68].
- (12) Pratima Chowdhury V/s Kalpana Mukherjee, [(2014) 4 SCC 196].
- (13) FHR European Ventures LLP and Anr. V/s Cedar Capitals Partners LLC, [(2014) UKSC 45].

6.6. By making the above submissions, learned Advocate for the appellant would submit to allow the appeal and to quash and set aside the impugned order.

7. On the other hand, learned Advocate Mr. Ronak B Raval appearing for the defendants would submit that the learned Civil Court has passed the just and proper order dismissing the suit after considering the evidence so produced on record. He would submit that since the defendants have lent some amount to the plaintiff as the plaintiff was in need of money to start his business and when the plaintiff had given assurance to return the said amount; however the plaintiff was unable to return the said amount, at that time, partner of the plaintiff informed to the defendant no.2 that plaintiff had also transferred some amount from the account of the company to his personal account and thereafter the notice was issued upon the plaintiff by the defendant no.2 for return of amount wherein ultimately it was decided between them and as per the instructions of the plaintiff, the suit property was to be transferred by defendant No.1 in favour of defendant no.2 and 3 on the basis of the Gift

Deed and thus nothing wrong was committed by the defendants.

7.1. Learned Advocate Mr.Ronak B Raval for the defendants would further submit that there was a fiduciary relationship and the plaintiff started his business on account of the assistance given by the father of the defendant No.1 in the African Country and all possible financial assistance was given to the plaintiff and when the plaintiff settled, there was like family relationship between the parties and therefore, on the basis of the same, the suit property came to be purchased at the instance of the plaintiff by defendant No.1 in his capacity as power of attorney holder. It is further submitted that due to the differences arose between the parties on account of financial crunch, so also at the request of the plaintiff, the suit property solely on the basis of the general power of attorney was gifted by way of registered gift deed by defendant no.1 in favour of defendants no.2 and 3 and for such transaction huge financial transaction have been entered by defendant no.1 in favour of plaintiff. It is therefore submitted that the suit property has been disposed of on the basis of the power of attorney and the huge consideration towards the same has been transferred in the account of the family members of the plaintiff as well as in the account of the plaintiff.

7.2. Learned Advocate Mr.Ronak B Raval for the defendants would submit that for execution of the Gift Deed, the plaintiff had given the passport size photograph, PAN Card, Identity Card and copy of sale-deed to defendant no.1 however at that point of time also the plaintiff did not disclose the fact of his wife having expired and thereafter later on, when he returned to India, at that time, he revealed the demise of his wife and

further substantiate that whenever the plaintiff visits to India, he used to live with the defendant No.1 and therefore he could have known such fact of executing the Gift Deed.

7.3. Learned Advocate Mr.Ronak B Raval for the defendants would submit that the learned Civil Court after considering the evidence on record adduced before the Court and after considering the submissions had rightly dismissed the suit and no such interference is required and therefore the present appeal may be dismissed.

7.4. While taking this Court to the provisions of Section 3 of the Powers-of-Attorney Act, 1882, the learned advocate for the respondent submitted that as per the aforesaid provision, any person making or doing any payment or act in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or the act, the donor of the power had died, provided such fact was not known to the person making or doing the same at the time of the payment or act. Thus, an effort has been made by the learned Advocate for the Respondent to establish that, as per the powers assigned in favour of the Respondent, the Respondent was authorized to deal with, and rather enter into, all acts including making payments, settling claims, and other incidental matters.

7.5. In context to the submissions advanced qua knowledge of execution of deed is concerned, the respondent contended that the factum of the execution of the gift deed was duly communicated to the plaintiff at the relevant time.

7.6. In support of his submissions, learned Advocate Mr. Ronak B Raval for the defendants would rely upon the following decisions:

- (1) Smt. Ram Asri alias Nikko Vs. Rakeshchand and ors. , [AIR 2008 P&H 194].
- (2) Kulsekarapatnam Hand match Workers' Co-Operative Cottage Industrial Society Limited, Madras State Vs. Radhelal Laloolal and Ors. , [AIR 1971 MP 191].
- (3) Kathoom Bivi Ammal and Anr. Vs. Arulappa Nadar and Anr., [AIR 1970 Mad 76].
- (4) Nagammal Vs. K. Thangavel and Ors., 2010 LawSuit(Mad) 3202 : 2010 LawSuit (Mad) 3202.
- (5) Timbolo Iramos Ltd., Margo v. Jorge Anibal Matos Sequeria & Anr. 1976 LawSuit(SC) 501 : (1977) 3 SCC 474
- (6) Syed Abdul Khadet v. Rami Reddy & Ors. 1978 LawSuit(SC) 363 : (1979) 2 SCC 601
- (7) State of Gujarat v. Kothari and Associates, 2015 LawSuit(SC) 1062 : (2016) 14 SCC 761
- (8) Mohd. Akram Ansari v. Chief Election Officer & Ors., 2007 LawSuit (SC) 1290 : (2008) 2 SCC 95
- (9) Daman Singh & Ors. v. State of Punjab & Ors., 1985 LawSuit(SC) 110 : (1985) 2 SCC 670
- (10) A. Sreenivasa Pai & Anr. v. Saraswathi Ammal, 1985 LawSuit(SC) 217 : (1985) 4 SCC 85
- (11) Seth Look Karan Sethiya v. Ivan E John, 1968 LawSuit(SC) 124 : 1969 AIR (SC) 73

- (12) Rajni Todan v. Dulal Ranjan Ghosh Dastidar & Anr., 2009 LawSuit(SC) 1187 : (2009) 14 SCC 782
- (13) Jugraj Singh and Anr. v. Jawant Singh and Ors. 1970 LawSuit(SC) 141 : (1970) 2 SCC 386

7.7. Reliance was placed on various judgments pertaining to the termination of an agency vis-a-vis the knowledge of the death of the donor or grantor of the power of attorney. The learned advocate for the respondent also placed reliance on judgments pertaining to the construction of a power of attorney and the intention of the parties vis-a-vis the surrounding circumstances, which are relevant for the interpretation of the deed, relying upon judgments pertaining to the issue of limitation, submitted that the issue of limitation can be raised at any stage, even if not raised during the course of the trial, and it is incumbent on the part of the Court concerned to consider the said aspect on its own, which has not been dealt with. Conversely, reliance was also placed on judgments to contend that points not raised before the lower court cannot be raised at the appellate stage.

7.8. Lastly, the respondent placed on record an order passed in a Criminal Miscellaneous Application, whereby the FIR filed against the respondent was quashed and set aside, seeking to rely on the reasoning assigned therein to support their case.

7.9. By making the above submissions, learned Advocate Mr. Ronak B Raval would submit to dismiss the present appeal.

8. Having heard the learned Advocates appearing for the respective parties and examining the facts of the case on hand; the moot question which requires consideration for this Court is,

As to whether on the basis of the general power of attorney and the authority so assigned to the power of attorney holder for doing such an act, if such an act which has not been assigned is done, the consequential effect of such an act and the binding nature thereof particularly after the demise of one of the principal of power of attorney can be said to be legal or not?

9. The power of attorney and agency exposition of law as enshrined and the relevant provisions pertaining to the same falls under the provisions of the Power of Attorney Act, 1882 (herein after referred as the **Power of Attorney Act**). Thus, the power of attorney derives its basic principles from the provisions flowing from the aforesaid Act, which defines that the power of attorney rests on the aspect of the fiduciary relationship between the two persons where one person explicitly or implicitly agrees that the other will act on their behalf so as to influence their legal relationship with the third parties. Thus, the relationship between the executant / donor / grantor of the general power of attorney and holder / donee / grantee is one of the principal agent relationship where the power of attorney in the nature of contract of agency authorizes the holder to do the acts specified by the executant or to represent executant in dealing with the third persons. The sum and substance of the aforesaid is that the power of attorney is creation of an agency by which the grantor / donor / executant authorized the grantee / donee / holder of the attorney to do acts specified on his behalf which will be binding on

executant as if the acts were done by him.

10. Keeping in mind the aforesaid aspects, so also considering the facts of the case on hand, it is not in dispute that the power of attorney is not coupled with the interest which solely authorized the respondent to do the particular acts as mentioned in the power of attorney. In context to the execution of the Gift Deed executed by defendant No.1 in favour of defendant Nos.2 and 3 who are son and daughter-in-law after the demise of plaintiff No.2 – Ramaben, and in access so also the binding nature is discussed here under:

11. To meet with the aforesaid issue, the relevant provisions of the Indian Contract Act such as provisions of Section 201, 202, 203 and 208 which has been referred and relied upon by both side to find following respectively:

“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 of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

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.*

203. When principal may revoke agent's authority.—

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

208. When termination of agent's authority takes effect as to agent, and as to third persons.— *The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them."*

EFFECT ON DEMISE OF POWER OF ATTORNEY DOER / GRANTER / EXECUTANT AND CONSEQUENCES FLOWING FROM POWER OF ATTORNEY:

12. As emerging from the record, it is not in dispute that the general power of attorney having been issued by the plaintiff No.2 (since deceased) in favour of defendant No.1 on 21/07/2010. Whereas the registered Gift deed is alleged to have been executed on 05/11/2011 by defendant No.1 in his capacity as the power of attorney holder of the plaintiff No.2 (since deceased) as well as the power of attorney of plaintiff No.1 wherein apparently the plaintiff No.2 was expired. Thus, when such transactions in capacity as the power of attorney was entered into by the power of attorney holder, the principal of the power of attorney holder has already been expired. Therefore, the fact that remains is once the maker of the power of attorney / principal – dies, the agency comes to an end in view of Section 201 of the Indian Contract Act. Since the power of attorney executed in favour of the defendant No.1 having no element of any commercial transactions rather the said power of attorney

appears to be the general power of attorney whereas by virtue of the said power of attorney, the defendant No.1 claimed to have entered into the transaction in the nature of gift deed which is not authorized anywhere in the general power of attorney. Thus, once the principal / donor dies, the said power of attorney shall automatically come to an end by an act of law and the defendant No.1 is not expected rather authorized to act on behalf of the dead person in his capacity as the power of attorney holder.

13. It also requires to be noted at this stage that agency or authority would stand terminated on the demise of principal executant / donor / grantor of general power of attorney in view of the provisions of Section 201 of the Indian Contract Act. In the instant case, at the cost of repetition, it is to be noted that on demise of plaintiff No.2 – Ramaben who was executant of the power of attorney dated 21/07/2010, the said power of attorney can be said to have been terminated. Thus, the moot question rather incidental question requires for consideration is as to whether an agent or power of attorney holder could act on behalf of the principal even after the death of principal, till such time that he has notice of the death. However, in the case on hand, the defendant No.1 claimed to have ignorance as to the demise plaintiff No.2 – Ramaben in contrast while claiming to have a family like relationship rather fiduciary relationship with the family of the appellant estopped from pleading ignorance of the death of Plaintiff No.2.

14. It would be apt to note that the agency can be terminated under the following circumstances.

- a. revocation of the agent's authority by the principal;

- b. agent renouncing the agency;
- c. completion of the business agency;
- d. ***death of the principal agent;***

In view of the settled legal proposition of law as relied upon by the appellants, it transpires that the death of the principal or the agent terminates the agency at once, whether the other has notice to that effect or not (**Campanari v Woodburn (1854) 15 CB 400; Pool V Pool (1889) 58 LJP 67**).

15. In view of the aforesaid provisions of the Indian Contract Act as reproduced herein above, the authority of agents stood terminated by any of the aforesaid circumstances and it becomes incumbent rather duty on the part of the agent for the protection and preservation of the interests of the principal entrusted to him and therefore, the submissions advanced by the learned advocate for the respondent that in view of Section 208 of the Contract Act, the termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him or, as regards the third person, is subject to the above exception, in the event of the death of the principal, do not find much force, as on account of the death of the principal, the power of attorney holder had no authority to act on behalf of the principal. In nutshell, the contract of agency gets automatically terminated by death of either of the parties. As soon as the person who executed the power of attorney dies, the right given to the agent comes to exist. 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. As a consequential effect, on the demise of principal, the power automatically stands terminated.

16. At this juncture, it would be apt to refer to provisions of Section 3 of the Power of Attorney Act, 1882:

“3. Payment by attorney under power, without notice of death, etc., good.— Any person making or doing any payment or act in good faith, in pursuance of a power -of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become 5** of unsound mind, 6* or insolvent, or had revoked the power, if the fact of death, 7* unsoundness of mind, 8** insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him. This section applies only to payments and acts made or done after this Act comes into force.”

17. By the aforesaid provision of Section 3 of the Power of Attorney Act, any act done by the power of attorney are expected to be done in good faith, particularly when presenting the deed of having been registered by the power of attorney holder after the death of the principal which espouses the fraudulent intention on the part of the power of attorney holder which automatically considered the act as misdeed which

operate to convey title to the immovable property and while presenting any such deed which is being authorized by the power of attorney to the holder of the power of attorney, for registration and that too after the death of the principal which is being registered subsequently is nothing but invalid and would not create any right in favour of the transferee and therefore the question which arose as to the termination of the agency on account of the death of the principal and when the act of presentation of the documents for conveyance for registration by the power of attorney agent, after termination of the agency upon death of the principal cannot be said to be legal and convey any title in favour of the transferee – respondent herein as the death of principal leads to termination of agency by the operation of law and not by the acts of the parties and therefore vociferous contentions raised by the respondent while pleading ignorance as to the demise of plaintiff No.2 – Ramaben (since deceased) before executing a gift deed, more particularly, while presenting the same for registration under the guise of settlement of accounts who otherwise is expected to inquire about rather bring in to the knowledge of such act to the principal, which in fact in the case on hand seems to be sheer lacking and therefore, also the said act amounts not *bona fide* but fraudulent one which vitiates to every solemn transaction.

18. In context to the termination of the agency as fall under Section 208 of the Contract Act, the core question which arose for consideration is when will the termination of the agency take effect? As discussed in the foregoing paragraphs, even while presenting the deed of conveyance for registration by power of attorney holder, even after the death of principal, particularly when the factum as to the termination which

revoke to the agency, by death of principal claim to have communicated to the respondent No.1 – agent cannot even confer validity of presentation of the deed / gift deed for registration after the death of the principal as the power to present the documents for registration after the demise of the principal stood void, ab initio defective and therefore, provisions of Section 208 of the Contract Act is applicable only with reference to the act ordinarily be done by its agent in course of its valid and not after the termination of the agency on account of the death of the principal.

19. When the provisions under Section 32(c) of the Registration Act amply makes it clear that even at the time of presentation of the document a person – agent must fulfill a particular characters as an agent and if he does not fulfill that character then the very presentation for registration is defective and cannot be cured by pleading ignorance particularly when there are two different power of attorney in the case on hand; one is alive and another is died did not authorize the defendant No.1 to present the documents for presentation for registration of gift deed and therefore Section 208 of the Contract Act would not come to the rescue of the defendant No.1.

20. Thus, the very purpose of Section 208 of the Indian Contract Act is to protect the interest of the so-called transferee where the termination of the agency is by revocation. However, in case of the death of the principal, the power ceases to exist and an act of an agent – defendant No.1 herein of the principal – Ramaben cannot be approved as the agent has no power to represent a dead person. In other words, dead person cannot be a party to the contract and this aspect has been reiterated in

plethora of decisions as relied upon by the learned Advocate for the appellants and therefore, the submissions advanced by the learned advocate for the respondents relying upon the provisions of Sections 203 and 208 of the Contract Act has no substance.

ACT OF POWER OF ATTORNEY HOLDER BEYOND THE POWERS ASSIGNED FOR VIS-A-VIS CONSTRUCTION OF POWER OF ATTORNEY AUTHORITY:

21. In continuation of the aforesaid discussion with regard to the execution of the power of attorney, so also the assignment of the powers and the act of the agent beyond the powers being vested on the basis of the power of attorney and the consequential act and effect of such an act can be said to be a binding to the principal.

22. The power of attorney must be construed strictly and therefore, the general words used in the clauses, recitals and inserted therein must be read with the special powers given in earlier clauses and cannot be construed to enlarge the restricted powers. Here in the case on hand, the defendant No.1 – power of attorney holder is alleged to have executed a Gift Deed in favour of defendant Nos.2 and 3 in their absence (for example in capacity of the power of attorney of defendant No.2 and 3) and when no such clause containing or assignment of powers and authority to the power of attorney holder – defendant No.1 to execute the gift deed is found, the question would come as to whether the same vests any legal and valid right in favour of the respondent no.2 and 3 claimed to acquire property on the basis of the gift deed as the power to execute the gift deed was not assigned by the power of attorney.

23. To meet with the aforesaid contentions that defendant No.1 has no authority to make any gift deed of the questioned property consequently and the defendant no.2 and 3 acquired no title on the basis of such gift deed, and to appreciate this contention, it would be apt to extract the material terms of the power of attorney executed by plaintiff No.1 and 2 in favour of defendant No.2.

Power of Attorney executed by Plaintiff No.1

“GENERAL POWER OF ATTORNEY

Know all men by these presents

I Purshottam Ranchhod Pankhania son of Ranchhod Nathubhai Pankhania aged 60 Yr. Occupation Business Residing at 62, Kennelworth Road, asford Middlesex 7W153LU U.K. Residence 5 Parishram Society, Fatehgunj Baroda, hereby nominate, constitute and appoint HARIAR AMBALAL PATEL, 5 Parishram Society Baroda - 2, Gujarat State, India.

To be my true and lawful attorney for me and in my name and on my behalf to do all or any of the following acts and things namely:

(1) To ask, demand, recover, enforce, sue for, recover and receive and give good and sufficient receipts, discharges and releases and indemnities for and in respect of all moneys, properties, securities and rights of any nature whatsoever belonging to me or to which i am or maybe entitled to and to settle any account, effect a Compromise or release any claim in respect thereof and to pay, discharge, satisfy or compromise any of my debts or liabilities or claims of any nature against me.

(2) To apply and subscribe for whether absolutely or conditionally), pay calls on, buy accept or otherwise acquire, and to sell, assign exchange, renounce or otherwise dispose of, stocks, funds, shares, debentures, debenture stock, securities and investments of every description, however constituted and wherever issued, and whether now existing or hereafter to be created, and any options or rights in respect thereof; to enter into underwriting and sub-underwriting agreements; and generally to manage and very investments.

(3) To buy, sell, exchange and surrender, supervise and manage and lands, buildings and premises of any tenure and description, including furnished premises, at any price and subject to or with the benefit of any easements, reservations, covenants and conditions and to exercise all right vested in or exercisable by me as vendor or purchaser.

(4) To take and let on lease and to accept or grant, or terminate tenancies over any lands, buildings and premises of any nature and description at any rent and subject to any conditions and to receive rents and other moneys and grant receipts for the same and in default to take such action for its recovery including recovery of possession as he may deem meet and exercise all rights vested in or exercisable by me as landlord or tenant.

(5) To borrow money with or without securities or to give guarantee or stand surety on my behalf, mortgage my property, real or personal, now owned or hereafter to be acquired and wherever situated and to lend money with or without securities; upon such terms and conditions to my said attorney may deem expedient.

(6) To open and operate on any banking account and to draw, sign, accept, endorse, and negotiate cheques, bills of exchange, dividend and interest warrants, and negotiable instruments, including power to accept bills of exchange and power to give promissory notes.

(7) To buy and sell goods of all kinds for cash or on credit, and to carry out and contract for repairs and improvements of movable and immovable property.

(8) To give, vary and revoke instructions as to the manner in which any moneys payable to or by me (whether periodically or otherwise) shall be paid or dealt with and as to the custody and disposal of any personal property, including securities and documents of title and to Withdraw sum of sums of mature and premature fixed deposits.

(9) In connection with any stocks, funds, shares, debentures, debenture stock, securities or investments, to attend and vote or appoint any person to attend and vote as my proxy at meetings of holders thereof, and effect, sanction or oppose any exercise or modification of rights.

(10) To apply for and obtain grant from any court to the estate of deceased person and to administer the estate of such deceased person.

(11) Before any court, tribunal or other authority, institute, carry on, defend, compromise, abandon or submit to judgement in any legal proceedings, to join in and submit to arbitration, to give security or indemnities for costs, to pay money into court and obtain payment of money lodged in any court tribunal or other authority.

(12) To present, support or oppose any petition for winding up or bankruptcy, to join in, sanction or oppose any composition or arrangement; to attend and vote or appoint any person to attend and vote as my proxy at any meeting of creditors; to make and file proofs of claim, and generally to represent me in

any liquidation, bankruptcy or insolvency.

(13) To carry on, manage, conduct and supervise and business for me and in my name and to accept orders and enter into contracts in relation thereto.

(14) To engage, remunerate, dismiss and fix and vary the duties and terms of service of employees, agents and contractors.

(15) To concur in doing any act or thing hereby authorised.

(16) To substitute or appoint one or more attorney or attorneys under him and at pleasure to displace or remove and appoint another or others.

AND GENERALLY, for me and in my name to manage and transact all my affairs and to do anything and everything anywhere in the world and for me and on my behalf to execute such deeds or instruments as may be necessary and to use all lawful ways and means thereof, as fully and effectually to all intents and purposes as I might or could do it personally present and acting herein.

I HEREBY agree and covenant for me and for my heirs, executors and administrators to allow, ratify and confirm whatsoever my said attorney or his substitute or substitutes shall do or cause to be done by virtue of these presents including in such confirmation whatsoever shall be done between the time of my decease or of the revocation of these presents and the time of such decease or revocation being known to anyone act on this power of attorney.

IN WITNESS whereof I have hereunto set my hand and seal this 15th day of July, one thousand nine hundred and eighty-eight."

Power of Attorney executed by Plaintiff No.2 (since deceased)

"GENERAL POWER OF ATTORNEY

Know all men by these presents

That I RAMABEN PURSHOTAM PANKHANIA wife of PURSHOTAM RANCHHOD PANKANIA age 54 years. Occupation Business. Residing at 62, Kennilworth Road, ashford, Middlesex, United Kingdom. Local Residence 5 Parishram Society, Fatehgunj Baroda, hereby nominate, constitute and appoint HARIHAR AMBALAL PATEL, 5 Parishram Society Baroda - 2, Gujarat State, India.

To be my true and lawful attorney for me and in my name and on my behalf to do all or any of the following acts and things in respect of 6, Parishram Society Baroda-2, Gujarat State India- namely:

(1) To ask, demand, recover, enforce, sue for, recover and receive and give good and sufficient receipts, discharges and releases and indemnities for and

in respect of all moneys, properties, securities and rights of any nature whatsoever belonging to me or to which i am or maybe entitled to and to settle any account, effect a Compromise or release any claim in respect thereof and to pay, discharge, satisfy or compromise any of my debts or liabilities or claims of any nature against me.

(2) To apply and subscribe for whether absolutely or conditionally), pay calls on, buy accept or otherwise acquire, and to sell, assign exchange, renounce or otherwise dispose of, stocks, funds, shares, debentures, debenture stock, securities and investments of every description, however constituted and wherever issued, and whether now existing or hereafter to be created, and any options or rights in respect thereof; to enter into underwriting and sub-underwriting agreements; and generally to manage and vary investments.

(3) To buy, sell, exchange and surrender, supervise and manage and lands, buildings and premises of any tenure and description, including furnished premises, at any price and subject to or with the benefit and to exercise all rights vested in or exercisable by me as vendor or purchaser.

(4) To take and let on lease and to accept or grant, or terminate tenancies over any lands, buildings and premises of any nature and description at any rent and subject to any conditions and to receive rents and other moneys and grant receipts for the same and in default to take such action for its recovery including recovery of possession as he may deem meet and exercise all rights vested in or exercisable by me as landlord or tenant.

(5) To borrow money with or without securities or to give guarantee or stand surety on my behalf, mortgage my property, real or personal, now owned or hereafter to be acquired and wherever situated and to lend money with or without securities; upon such terms and conditions to my said attorney may deem expedient.

(6) To open and operate on any banking account and to draw, sign, accept, endorse, and negotiate cheques, bills of exchange, dividend and interest warrants, and negotiable instruments, including power to accept bills of exchange and power to give promissory notes.

(7) To buy and sell goods of all kinds for cash or on credit, and to carry out and contract for repairs and improvements of movable and immovable property.

(8) To give, vary and revoke instructions as to the manner in which any moneys payable to or by me (whether periodically or otherwise) shall be paid or dealt with and as to the custody and disposal or any personal property, including securities and documents of title and to Withdraw sum of sums of mature and premature fixed deposits.

(9) In connection with any stocks, funds, shares, debentures, debenture stock, securities or investments, to attend and vote or appoint any person to attend and vote as my proxy at meetings of holders thereof, and effect, sanction or oppose any exercise or modification of rights.

(10) To apply for and obtain grant from any court to the estate of deceased person and to administer the estate of such deceased person.

(11) Before any court, tribunal or other authority, institute, carry on, defend, compromise, abandon or submit to judgement in any legal proceedings, to join in and submit to arbitration, to give security or indemnities for costs, to pay money into court and obtain payment of money lodged in any court tribunal or other authority.

(12) To present, support or oppose any petition for winding up or bankruptcy, to join in, sanction or oppose any composition or arrangement; to attend and vote or appoint any person to attend and vote as my proxy at any meeting of creditors; to make and file proofs of claim, and generally to represent me in any liquidation, bankruptcy or insolvency.

(13) To carry on, manage, conduct and supervise and business for me and in my name and to accept orders and enter into contracts in relation thereto.

(14) To engage, remunerate, dismiss and fix and vary the duties and terms of service of employees, agents and contractors.

(15) To concur in doing any act or thing hereby authorised.

(16) To substitute or appoint one or more attorney or attorneys under him and at pleasure to displace or remove and appoint another or others.

AND GENERALLY, for me and in my name to manage and transact all my affairs in India for me and on my behalf to execute such deeds or instruments as maybe necessary and to use all lawful ways and means thereof, as fully and effectually to all intents and purposes as I might or could do it personally present and acting herein.

AND I HEREBY agree and covenant for me and for my heirs, executors and administrators to allow, ratify and confirm whatsoever my said attorney or his substitute or substitutes shall do or cause to be done by virtue of these presents including in such confirmation whatsoever shall be done between the time of my decease or of the revocation of these presents and the time of such decease or revocation being known to anyone act on this power of attorney.

IN WITNESS whereof I have hereunto set my hand and seal this 16th day of April, One Thousand Nine Hundred and Ninety-Nine.”

24. From the aforesaid extract of deeds of power of attorneys, it would appear that while examining the role regarding the construction of power of attorney and the authority so vests in the defendant No.1 where the act purported to have been done under the power of attorney which is a challenge in the case on hand is being in excess of the authority conferred and therefore, it is necessary to state that on a fair construction of the whole instrument the authority in question is to be found within four corners of the instrument, either in express terms or by necessary implication and therefore, general words used in the subsequent clauses of a power of attorney must be read with the special powers given in the earlier clauses and cannot be construed so as to enlarge the restricted powers mentioned therein.

25. In nutshell, while appreciating both the power of attorney, it is undisputedly and manifestly established that these deeds do not authorize making of a gift as underlined expression emerges from the deed of power of attorney indicates unequivocally that the transfer must be for consideration.

26. Thus, while perusing the entire documents, so also the intention of the principal, the object of the power when the document is read as a whole, eschews out any contention that the authority extended even to the making of a gift in favour of defendant no.2 and 3 for whom the appellant contends that he cannot be said to have any such love and affections which may enlarge to get transfer of immovable property of the substantial value without consideration and therefore, the defendants

appears to have exceeded the authority rather entered into the unauthorized act by executing the gift deed so as to deprive the appellant by their legitimate rights.

27. The Learned Advocate for the respondent has placed reliance on the judgments pertaining to termination of agency vis-a-vis knowledge of death of the donor or grantor of the power of attorney. With reference to the same, ***Smt. Ram Asri alias Nikko Vs. Rakeshchand and ors.***, [AIR 2008 P&H 194], ***Seth Loon Karan Sethiya Vs. Ivan E. John and Ors.***, [AIR 1969 SC 73], ***Kulsekharapatnam Hand match Workers' Co-Operative Cottage Industrial Society Limited, Madras State Vs. Radhelal Laloolal and Ors.***, [AIR 1971 MP 191], ***Kathoom Bivi Ammal and Anr. Vs. Arulappa Nadar and Anr.***, [AIR 1970 Mad 76], ***Nagammal Vs. K. Thangavel and Ors.***, [SA 1052/2009], ***Shri Harbans Singh Vs. Smt. Shanti Devi.***, [ILR (1977) 2 Del 649] and ***Seth Look Karan Sethiya v. Ivan E John***, 1968 LawSuit(SC) 124 : 1969 AIR (SC) 73 have been pressed into service. To deal with the aforesaid issues, it is pertinent to note that the provision of Section 3 of the Powers-of-Attorney Act does not come to the rescue of the respondent. As discussed in the preceding paragraphs, and to state again at the cost of repetition, the factum of assigning powers to the respondent to execute a gift deed has not been established. Therefore, the powers can be said to have been exceeded; rather, the act was done without there being any legal assignment of such authority.

28. Regarding the contention that the execution of the gift deed was communicated to the plaintiff at the relevant time, no such material has

been placed on record to substantiate the same. Mere contentions, without there being any substantive proof, cannot replace the evidence which is otherwise required to be appreciated by due process of law.

29. So far as the judgments pertaining to construction of Power of Attorney, intention of the parties, principles of construction of deed as well as applicability of Section 32(c) of the Registration Act and presumption of validity of the act of Sub-Registrar are concerned, the learned advocate for the respondent has placed reliance upon the decisions in the following cases. With reference to the same, ***Timbolo Iramos Ltd., Margo v. Jorge Anibal Matos Sequeria & Anr.*** 1976 ***LawSuit(SC)*** 501 : (1977) 3 SCC 474, ***Syed Abdul Khadet v. Rami Reddy & Ors.*** 1978 ***LawSuit(SC)*** 363 : (1979) 2 SCC 601, (10) ***A. Sreenivasa Pai & Anr. v. Saraswathi Ammal***, 1985 ***LawSuit(SC)*** 217 : (1985) 4 SCC 85, ***Rajni Todan v. Dulal Ranjan Ghosh Dastidar & Anr.***, 2009 ***LawSuit(SC)*** 1187 : (2009) 14 SCC 782 and ***Jugraj Singh and Anr. v. Jawant Singh and Ors.*** 1970 ***LawSuit(SC)*** 141 : (1970) 2 SCC 386 have been cited. The judgments relied upon by the respondent regarding the interpretation of deeds and the intention of parties do not come to the rescue of the respondent, nor do they appear to be applicable to the facts of the present case. When there is no ambiguity whatsoever while reading the contents of the document in question, the question pertaining to the principles of interpretation does not arise. Admittedly, the respondent is not in a position to point out that the power having been vested to execute a deed of gift was ever conferred. The Power of Attorney in question clearly indicates that only absolutely necessary and incidental powers were assigned for the execution of certain specific

objects of the general powers given to the respondent.

30. On the aspect that the issue of limitation can be raised at any stage so also it is the duty of the Court to consider the said aspect even on its own initiative, the learned advocate for the respondent has placed reliance on the judgment of the ***Hon'ble Supreme Court in (7) State of Gujarat v. Kothari and Associates, 2015 LawSuit(SC) 1062 : (2016) 14 SCC 761.*** With reference to the same, in context to the reliance placed on the decided cases pertaining to the issue of limitation—that the said issue can be raised at any stage and the Court must consider it on its own—the aforesaid legal proposition cannot be denied. However, its applicability varies from case to case. Considering the facts of the case on hand, admittedly, the issue of limitation was not framed, nor did the defendant raise any objection regarding the non-framing of the issue at the relevant time. Not even an iota of evidence appears to have been led on this point; rather, the objection seems to have been waived, and therefore, there was no question for the Civil Court to deal with it.

31. Apart from the aforesaid, considering the facts on hand, as soon as the plaintiff came to know of the disposal of the property by the respondent on the basis of the gift deed executed in favour of the respondent's children, the appellant called upon the respondent to answer by way of a notice dated 12.02.2016. In the absence of a response, the appellant rushed to the Court. The aforesaid facts emerge from the material placed for consideration, which appears not to be in dispute, and therefore, the contention regarding limitation must fail.

32. With regard to the legal position that a point not raised before the lower court cannot be raised at the appellate stage, the learned advocate for the respondent has placed reliance on ***Mohd. Akram Ansari v. Chief Election Officer & Ors., 2007 LawSuit (SC) 1290 : (2008) 2 SCC 95 and Daman Singh & Ors. v. State of Punjab & Ors., 1985 LawSuit(SC) 110 : (1985) 2 SCC 670.*** With reference to the same, further, addressing the judgments relied upon by the respondent to the effect that points not raised before the lower court cannot be raised at the appellate stage, it would be apt to refer to the aforesaid proposition in consonance with the facts of the case on hand. There is a presumption in law that a Judge deals with all points which have been pressed before him. It often happens that several points are taken in a memorandum of petition or appeal, but at the time of arguments, only some of those points are pressed. Therefore, a Judge will naturally deal only with the points pressed before him during arguments, and it will be presumed that the appellant gave up the other points; otherwise, the Judge would have dealt with them. Although this is a rebuttable presumption, in the case on hand, the submission was advanced that the issue of limitation, though not raised, can be raised at the appellate stage. However, no effort seems to have been made to place any material on record to establish that any such motion was initiated by the respondent before the learned Civil Court Judge with a request that the said point, though pressed for, was not dealt with. Therefore, the said contentions do not find force.

33. Lastly, on the point of the order passed in the Criminal Miscellaneous Application quashing the FIR, the learned advocate for the respondent has placed reliance on ***Shashikant Ambalal Patel & Anr. v.***

State of Gujarat & Anr. Criminal Misc. Application (For Quashing & Set Aside FIR/Order) No.22386 of 2017 dated 04.12.2024. With reference to the same, lastly, regarding the order passed in the Criminal Miscellaneous Application quashing the FIR, though efforts have been made to rely upon the reasoning assigned thereto, the said order does not come to the rescue of the respondent herein as the present case stands on entirely different footings, and the civil rights of the parties are required to be dealt with by a preponderance of probabilities and by adducing cogent material, without taking reference to any such other criminal proceedings.

34. In view of the foregoing discussions, the undisputed facts of the case on hand would reveal that the plaintiffs executed a general power of attorney in favour of the defendant no.1 and on demise of the plaintiff No.2, the power of attorney executed by her in favour of defendant No.1 ceases to an end and no such transaction can be entered into on the basis thereof post the death of the principal of the power of attorney even while pleading ignorance of death of the principal and therefore, in absence of any clause / recital or any specific power to execute a Gift Deed, the act done by the defendant No.1 in the capacity of the power of attorney holder of defendant No.2 (since deceased) can be said to be an illegal act and does not have any leg to stand in the eye of law. Thus, in view of the aforesaid, the learned Civil Court, seems to have been traveled beyond the entire gamut of the case, rather rested its findings / conclusions, solely on the assumptions and presumptions, while equating the financial presumptions with the authority assigned to set off all the sum against the considerations, etc. The case of the plaintiff solely rests challenge as to

the on the execution of the gift deed, without there being assumptions of power into power of attorney and therefore, the question of financial transactions or the payment, etc. does not arise, as viewed hereinabove.

35. In the result, the appeal deserves to be allowed and accordingly it is allowed.

36. The judgment and order dated 11/09/2019 passed by the learned 16th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.60 of 2016 is quashed and set aside.

37. Consequently, the registered Gift Deed dated 05/01/2011 executed by the defendant No.1 in favour of the defendants No.2 and 3 is held as *void, ab initio* and in nutshell, the relief as prayed for in the relief clause of the plaint *stands allowed*.

38. Decree to be drawn accordingly.

39. In view of the above, the connected Civil Application(s), if any, stands disposed of accordingly.

40. Record and proceedings, if any, be remitted to the concerned Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP