

Powers-of-Attorney Act, 1882

[7 OF 1882]¹

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney; it is hereby enacted as follows:—

Short title.

1. This Act may be called the Powers-of-Attorney Act, 1882².

Local extent.

It applies to the whole of India ³[***];

Commencement.

And it shall come into force on the first day of May, 1882.

⁴[**Definition.**

1A. In this Act, “Power-of-Attorney” includes any instruments empowering a specified person to act for and in the name of the person executing it.]

Execution under power-of-attorney.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any ⁵[***] instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every ⁵[***] instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

1. Dated 24-2-1882.

2. Extended to Dadra and Nagar Haveli by the Dadra and Nagar Haveli (Laws) Regulation, 1963, and to Pondicherry by the Pondicherry (Extension of Laws) Act, 1968.

3. Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganisation Act, 2019, w.e.f. 31-10-2019.

4. Inserted by the Powers-of-Attorney (Amendment) Act, 1982, w.e.f. 22-10-1982.

5. Words “assurance” omitted by the Powers-of-Attorney (Amendment) Act, 1982, w.e.f. 22-10-1982.

COMMENTS

SECTION NOTES

- ◆ This section empowers the donee of a power-of-attorney (POA-holder) to execute any instrument or do any thing in and with his own name and signature by the authority of the donor of the power.
- ◆ The execution of the instrument or doing of the thing should be under the seal of the donee of the power where sealing is required and
- ◆ Every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.
- ◆ The above provisions apply to power-of-attorney created by instruments executed either before or after this Act comes into force.

CASE LAWS

- ◆ **Invalidity of GPA Sales - Legal Transfer of Immovable Property** - The Supreme Court ruled that immovable property can only be legally transferred through a registered deed of conveyance. General Power of Attorney (GPA) sales, agreements of sale coupled with GPA and wills (SA/GPA/WILL transactions), do not convey title and are not valid modes of transfer under Indian law. A power of attorney merely authorizes an agent to act on behalf of the principal but does not transfer ownership. Such transactions may be used for managing the property but cannot substitute for a registered sale deed. The decision aimed to curb practices leading to tax evasion and fraudulent transfers, reaffirming that title can only pass through a registered instrument.— *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana* AIR 2012 SC 206.
- ◆ **Execution of Personal Bond - Requirement of Personal Signature** - The issue concerned whether a personal bond required by the Court for granting Letters of Administration could be executed by an attorney under a power of attorney. The Calcutta High Court held that under section 2 of the Powers of Attorney Act, an agent's execution of documents is legally as effective as that of the principal. However, when the Court explicitly orders a "personal bond," it mandates the administrator's own signature, reflecting the individual's responsibility. The term "personal" implies direct action by the principal, not through an attorney, regardless of the authority granted. Thus, the bond must be executed personally by the applicant.— *In the Goods of Kumar Brojendra Narayan Singh Deo Deceased*, AIR 1953 Calcutta 606.
- ◆ **Scope of Authority - Power to Negotiate vs. Power to Sell** - The appeal questioned the validity of a sale agreement executed by an agent under a power of attorney that authorized him only "to negotiate for the sale" of the property. The Bombay High Court held that under section 2 of the Powers of Attorney Act, the authority granted must be construed strictly. The power "to negotiate" does not extend to the power to execute an agreement for sale or dispose of the property. Negotiation involves arranging terms and finding potential buyers, but the final decision and execution of the sale must be made by the principal. Since the agent exceeded his authority, the sale agreement was declared invalid, and the appeal was allowed.— *Devkubai N. Mankar v. Rajesh Builders* AIR 1997 Bombay 142.
- ◆ **Signature by Agent - Statutory Requirement of Personal Signature** - The case concerned the validity of a renewal application for registration of a partnership firm under the Income Tax Act, signed by an agent on behalf of a partner. The Supreme Court held that Section 2 of the Powers of Attorney Act, which allows an agent to act with the same effect as the principal, does not override specific statutory requirements. The Income Tax Act and its Rules, being exhaustive, intended that the application must be

signed personally by the partner, excluding the use of agents. The statutory mandate of personal signature cannot be substituted by an agent's act, and the Rules were upheld as *intra vires*.— *Rayulu Subba Rao v. Commissioner of Income-tax, Madras* AIR 1956 SC 604.

- ◆ **General Power of Attorney - Authority to Withdraw Suit** - The issue in this case was whether a general power of attorney holder had the authority to unconditionally withdraw a suit filed by the plaintiffs. The Rajasthan High Court held that under section 2 of the Powers of Attorney Act, a general power of attorney holder, unless expressly restricted, has broad powers to act on behalf of the principal, including managing the case and dealing with the property involved. Since the power of attorney was general and had not been revoked, the application for withdrawal of the suit was within the authority of the agent. The trial court's rejection of the application based on unwarranted conjectures was overturned. The revision petition was allowed, and the suit was dismissed as withdrawn.— *Smt. Amina Begum v. Mohd. Ramzan* AIR 2005 Rajasthan 96.
- ◆ **Exceeding Authority - Validity of Compromise by Power of Attorney Holder** - The case involved a compromise entered into by the holder of a special power of attorney, who agreed to transfer 65% of the plaintiffs' share to a third party, despite the power of attorney being limited to filing and contesting a suit based on an earlier agreement. The Supreme Court held that an agent cannot exceed the specific authority granted by the power of attorney. The act of transferring shares to a third party was beyond the scope of the power conferred and was done without the plaintiff's instructions. The High Court erred by not examining whether the agent had the authority to enter into such a compromise. The matter was remanded for reconsideration.— *Sukhpal Singh v. Jaswinder Kaur* AIR 2017 SC 1358.
- ◆ **Scope of Authority - Relationship of Landlord and Tenant Created by Agent** - The case involved an eviction suit where the tenant argued that the lease agreement was executed by a power of attorney holder, not the actual landlord. The Supreme Court held that under section 2 of the Powers of Attorney Act, any act done by an agent on behalf of the principal is as effective as if done by the principal himself. The power of attorney holder acts solely in the name of the principal, and any agreement executed does not transfer any personal rights or interests to the agent. The tenancy was thus deemed to have been created by the original landlord, and the relationship of landlord and tenant continued with the legal heirs after his death. The eviction suit was maintained.— *TTMT. Kasthuri Radhakrishnan v. M. Chinnian* AIR 2016 SC 609.
- ◆ **Unauthorized Sale by Agent - Strict Construction of Power of Attorney** - The appellant contested a sale executed by her sister under a general power of attorney, arguing it did not contain express authorization to sell the property. The Supreme Court held that a power of attorney must be strictly construed, and authority to sell must be explicitly stated. In this case, the power of attorney only included powers to lease and secure borrowals, not to sell the property. As the agent lacked the power to sell, any transaction executed by her was void. The Court reaffirmed that a deed cannot confer a better title than what the agent legally possesses, invalidating subsequent transfers. The appeal was allowed, and the High Court's judgment was set aside.— *Mrs. Umadevi Nambiar v. Thamarasseril Roman Catholic Diocese* AIR 2022 SC 1640.
- ◆ **Authority of Power of Attorney - Scope of Rights Transferred** - The issue in this case was whether a power of attorney holder had acquired all rights in a mining lease, leading to a dismissal of the petitioners' application by the Revisional Authority. The Bombay High Court held that a power of attorney only grants authority to act on behalf of the principal in specified matters and does not transfer ownership or all rights related to the subject matter unless explicitly stated. The Revisional Authority's conclusion that all rights had been transferred was incorrect and premature. The Court quashed the order, directing a fresh consideration on merits.— *Antonio Shunit Joao v. Revisional Authority, Ministry of Mines* AIR 2012 Bombay 170.