

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2026:PHHC:063656



RSA No. 306 of 2006 (O&M)

Reserved on : 20.02.2026

Pronounced on : 24.04.2026

Surender Kumar Dogra

.....Appellant

versus

Baljeet Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI

Present: Ms. Parul Saini, Advocate and
Mr. Pritam Singh Saini, Advocate, for the appellant.

Mr. Krishan Singh, Advocate, for the respondents.

RAMESH KUMARI, J.

1. The appellant-plaintiff had filed a suit for specific portion by way of partition of the disputed plot. The said suit was dismissed by the learned trial Court as well as by the First Appellate Court. Aggrieved with the findings of the learned trial Court vide judgment dated 04.10.2025 and by the First Appellate Court vide judgment dated 09.12.2025, the appeal in hand has been filed by the appellant-plaintiff.
2. The facts as pleaded by the plaintiff (appellant herein) before the learned trial Court are that he and defendant/respondent No.3 Smt. Lalita Devi Sharma purchased the disputed plot on 27.10.1980 vide registered sale-deed Ex.P4/Ex.D3 in equal shares from one Somawati. After purchase, the plaintiff and defendant No.3 jointly filled up the foundations and constructed a

boundary wall upto the height of one feet. When the plaintiff-appellant intended to raise construction over the portion of his share in the month of January-1999, defendants/respondents No.1 and 2 came at the spot and objected to the same. They also produced a registered sale deed Ex.D1 dated 27.11.1981 executed in their favour by defendant/respondent No.3. Then the plaintiff-appellant came to know that defendant/respondent No.3 had sold his share in the property to defendants/respondents No.1 and 2 on her behalf and on behalf of plaintiff-appellant as attorney. Defendant/respondent No.3 forged the power of attorney dated 30.10.1981 (Ex.P6/Ex.D2) in her favour and then executed the sale deed dated 27.11.1981 (Ex.D1). The said sale deed dated 27.11.1981 executed by defendant No.3 in favour of defendants No.1 and 2 is null and void and not binding on the plaintiff-appellant as the plaintiff-appellant never executed the power of attorney dated 30.10.1981 (Ex.P6/Ex.D2) and the same is a forged document. By the dint of sale deed dated 27.11.1981 Ex.D1, defendants/respondents No.1 and 2 became owners only to the extent of half share in the disputed property i.e. share of defendant/respondent No.3 and rest of the property to the extent of half share still owned by the plaintiff/appellant. In the month of January-February-1999, defendants/respondents No.1 and 2 erected boundary wall over the plot in dispute despite the protest raised by the plaintiff/appellant. Defendants/respondents No.1 and 2 also wanted to fix a gate in the boundary wall and raise more construction in the same, for which they have no right.

3. Upon notice, defendant/respondent No.1 filed written statement and contested the suit by raising preliminary objections regarding maintainability of the suit because defendant No.2-Tarawati had died in the year 1982, she had been impleaded as unnecessary party. Defendant No.1 further pleaded that

1985 after purchase of the plot and not in February-1999 as pleaded by the plaintiff. The height of the boundary wall is about six feet and defendant No.1 has also laid foundation of rooms etc. and installed a handpump. Defendant No.1 is growing vegetables and sugarcane crop over the plot as a kitchen garden. Defendant No.1 is in exclusive possession of the disputed property after the death of defendant No.2-Tarawati as the plot was jointly purchased by defendants No.1 and 2 vide registered sale deed dated 27.11.1981 and since then defendant No.1 is in exclusive and physical possession of the plot in question.

4. On merits, defendant No.1 admitted that Somawati was the original owner of the disputed plot who sold the same in equal share to plaintiff and defendant No.3. Defendant No.3 on the basis of power of attorney executed in his favour by plaintiff, sold the said plot vide registered sale deed dated 27.11.1981 Ex.D1. The plaintiff cannot retract or resile from the registered special power of attorney Ex.D2 executed in favour of defendant No.3 and defendants No.1 and 2 are the bonafide purchasers for valuable consideration of Rs. 5000/- and even otherwise sale deed executed in favour of defendant No.1 is protected under Section 41 of the Transfer of Property Act and the suit filed by the plaintiff-appellant is time barred. Defendant No.1 is in exclusive possession of the plot in dispute. The civil suit has been filed against a dead person who died in the year 1982 and after her death defendant No.1 is exclusive owner in possession of the said property.
5. Defendant No.3 failed to appear before the learned trial Court to contest the civil suit and hence he was proceeded against ex parte.
6. Learned trial Court framed the following issues and additional issue for determination which are as follows:-

1. Whether sale deed dated 27.11.1981 executed by defendant No.3 in favour of defendants No.1 and 2 is null, void and not binding upon the right of the plaintiff? OPP.
- 2) Whether plaintiff never executed attorney deed dated 30.10.1981 and same is a forged document? OPP.
- 3) Whether plaintiff is entitled to ½ share in the suit property as alleged ? OPP
- 4) Whether the defendants have violated the injunction order dated 18.03.1997? OPP
- 5) Whether suit of the plaintiff is not maintainable? OPD.
- 6) Whether suit of the plaintiff is not properly valued for the purpose of Court fee and jurisdiction? OPD.

Additional Issues:-

- 1-A) Whether sale in favour of defendant No.1 and his wife Smt. Tarawati is protected under Section 41 of the Transfer of Property Act?OPD.
 - 2-B) Whether suit is barred by law of limitation? OPD.
7. In order to prove his case, the plaintiff himself stepped into the witness box as PW2 and also examined Naveen Kaushal as PW1, HC Karnail Singh as PW3, Ram Dhan Babber, Finger Print and Hand Writing Expert as PW4. The plaintiff also placed on record documents i.e. report of Local Commissioner as Ex.P1, presence sheet as Ex.P2, site plan as Ex.P3, report of Hand writing and Finger Print Expert Ex.PW4/A, photographic enlargements Ex.PW4/B and Ex.PW4/C and negatives Ex.PW4/D.
 8. On the other hand, defendant No.1 Baljeet Kumar himself stepped into the witness box as DW3 and also examined Hari Chand, Advocate as DW1, Ishwar Singh, Registry Clerk as DW2, Subhash as DW4 and Mukh Ram as DW5 and also placed on record certified copy of sale deed Ex.D1, certified

copy of Special Power of Attorney as Ex.D2, sale deed Ex.D3 and site plan Ex.D4.

9. After perusal of oral and documentary evidence brought on record by the respective parties, the learned trial Court dismissed the suit inter-alia on the ground that the power of attorney Ex.D2 is a registered document and duly proved from the statement of scribe DW1 Hari Chand, Advocate and attesting witness DW5 Mukh Ram. The special power of attorney Ex.D2 is a duly registered document and it takes effect from its registration. The report of Handwriting & Finger Print Expert cannot be believed because he did not get the specific signatures of the plaintiff duly attested from the Court and also that defendant No.1 and his wife defendant No.2 (since deceased) are the bonafide purchasers for lawful consideration and protected under Section 41 of the Transfer of Property Act.
10. Learned First Appellate Court dismissed the appeal on the ground that comparison of signatures of plaintiff had been made from the certified copy of power of attorney and no comparison with photocopy can be effectively done. The plaintiff has not summoned the original power of attorney from defendant No.3 or from the office of concerned Sub Registrar. No adverse inference can be taken against the defendants No.1 and 2 for non-production of one of the attesting witness Man Singh of power of Attorney Ex.D2. Number of years had elapsed since the execution of power of attorney and the alleged standard signatures, it was not possible to hold whether the signatures on the power of attorney belong to the appellant or not and the onus was upon the plaintiff to prove that his signatures were not on the power of attorney but he failed to prove the same. There is a registered sale deed in favour of defendants No.1 and 2 and they are the bonafide purchasers. The suit for possession by way of partition is not maintainable after 12 years.

11. I have heard learned counsel for the rival parties and have gone through the oral as well as documentary evidence brought on record.
12. Learned counsel for the appellant submitted that the learned trial Court as well as the learned First Appellate Court erroneously dismissed the suit. The plaintiff being the owner of the suit property to the extent of half share on the basis of registered sale deed dated 27.10.1980 Ex.P4/Ex.D3 is not disputed. The plaintiff never executed any power of attorney in favour of defendant No.3. After purchase of the suit property by the plaintiff, the plaintiff and defendant No.3 filled up the foundation and raised a boundary wall upto the height of one feet, when the plaintiff intended to raise construction over the portion of his share in the month of January-1991, defendants No.1 and 2 came at the spot and objected and produced sale deed dated 27.11.1981 Ex.D1 and further alleged that they purchased the disputed plot from defendant No.3 on the basis of special power of attorney dated 30.10.1981 Ex.P6/Ex.D2 whereas the plaintiff never executed any power of attorney in favour of defendant No.3. The plaintiff never put his signatures in Devnagri script and he always put his signatures in English/Roman script and the learned trial Court failed to appreciate this fact. The defendants No.1 and 2 have examined only one witness of special power of attorney and have not examined two witnesses and on this score also the power of attorney allegedly executed by the plaintiff cannot be read into evidence.
13. Learned counsel for the contesting defendant/respondent submitted that the power of attorney is duly proved by defendant No.1 by examining its scribe i.e. DW1 Hari Chand, Advocate, Deed Writer and DW5 Mukh Ram as well as also examined attesting witness, namely, Subhash as DW4 of the sale deed dated 27.11.1981 Ex.D1. Certified copies of sale deed and original special power of attorney were produced in Court at the time of recording of the

statement of DW2 Ishwar Singh, Registry Clerk and sale deed dated 27.11.1981 Ex.D1 by defendant No.3 in favour of defendants No.1 and 2 and special power of attorney Ex.D2/Ex.P6 by plaintiff in favour of defendant No.3 were also proved on record by DW2. Both the documents are registered documents. In the original sale deed dated 27.10.1980 Ex.P4/Ex.D3 the sale consideration was of Rs.4000/- whereas vide registered sale deed dated 27.11.1981 (Ex.D1) registered on the basis of power of attorney dated 30.10.1981 Ex.P6/Ex.D2 on behalf of the plaintiff as well as by defendant No.3, the sale consideration of Rs.5000/- was paid by defendants No.1 and 2 and for this reason both the defendants No.1 and 2 are the bonafide purchasers for lawful consideration. Defendant No.2 who was the wife of defendant No.1 had since died in the year 1982 and defendant No.1 is the sole legal heir of defendant No.2 and thereby became sole owner of the suit property. Learned counsel for the contesting defendants submitted that the learned trial Court and the learned First Appellate Court rightly dismissed the suit and prayed for dismissal of the present appeal.

14. Plaintiff-appellant has examined PW1 Naveen Kaushal, Advocate as PW1, who was appointed as Local Commissioner by the trial Court and he had visited the spot as identified by the plaintiff and prepared the site plan Ex.P3 and attendance sheet as Ex.P2. He had also observed in his report Ex.P1 that the foundation of five rooms marked as EFGH was laid. He marked the disputed property as ABCD and on four sides there was a boundary wall up to 4½ feet and main gate is installed with bricks. When subjected to cross examination he admitted as correct that the Court had ordered to notify the defendant-respondent party too before examining the spot and he had not served any notice to the defendant and the reason for the same is explained that at that time the defendant-respondent had not appeared in the case. He has

also stated that he had not mentioned the reason for not serving any notice upon defendant No.1 in his report Ex.P1. He also deposed that the site plan was prepared but the length and width of the plot was not written and neither the plot was measured. Since this report was prepared in the absence of defendant No.1 inspite of direction by the Court to inspect the spot after serving due notice to defendant No.1, this report was rightly ignored to consider the actual and factual condition of the suit property.

15. Plaintiff No.1 Surrender Kumar while appearing as PW2 tendered his affidavit as Ex.PW2/A in support of his examination-in-chief. This affidavit is in Devnagri script and this affidavit when translated into English makes the following reading:-

“1. That my abovesaid name and address is correct.

2. That I and Lalita Devi jointly purchased the plot on 27.10.1980 from Somawati wife of Roshan Lal and after purchase of plot I raised boundary wall upto 1 feet height.

3. That in January-1999 I wanted to raise construction over this plot. I visited the plot for this purpose and then Baljeet Kumar and his wife spotted me and told that they have purchased the plot. Then I enquired from the Registration Office and came to know that Lalita Devi had forged one power of Attorney and had sold his share in the property whereas I never executed any power of Attorney regarding this.

4. That Baljeet Kumar has no right to raise construction because I am owner of this plot to the extent of half share. Now there is a dispute regarding this plot and I want to get my share separated. The spot be partitioned. When I filed the suit at that time also Baljeet Kumar intended to raise construction but I stopped him and then matter was reported to the police and I got the police complaint lodged.”

16. PW3 HC Karnail Singh proved the entry made in the DDR dated 21.08.2000 vide Ex.PW3/A and Rapat No.13 dated 19.06.2001 vide mark-A. PW4 Ram Dhan Babbar, Finger Print & Hand Writing Expert proved on record his report as Ex.PW4/A alongwith relevant documents i.e. photographic enlargement Ex.PW4/C and eight negatives as Ex.PW4/D1 to Ex.PW4/D8.
17. As observed earlier, defendant No.1 examined five witnesses including his own testimony. DW1 Hari Chand, Advocate, is the Deed Writer. He scribed the original sale deed (Ex.D1) dated 27.11.1981 at the request of the parties and made entry in his register. He is specific that he scribed the sale deed dated 27.11.1981 after seeing the original sale deed dated 28.10.1980 Ex.D3 and power of attorney dated 30.10.1981 is mentioned in the sale deed dated 27.11.1981 (Ex.D1). He also proved the certified copy of the power of attorney Ex.D2 executed by Joginder Dogra plaintiff in favour of Lalita Devi defendant No.3. This power of attorney was also scribed by him and entered in his register at Sr. No. 1844 dated 30.10.1981. The map was also attached with the sale deed. He is very specific that he read out the contents of the power of attorney dated 30.10.1981 and got recorded the evidence of witnesses.
18. When subjected to cross examination DW1 Hari Chand, Advocate stated that he did not know Surinder Kumar personally. Execution of special power of attorney by Surinder Kumar in favour of Lalita Devi is also proved on record by DW5 Mukh Ram who is one of the attesting witness of the original power of attorney Ex.D2. The original power of attorney Ex.D2 was produced in the Court at the time of recording of his statement. DW5 Mukh Ram is the numberdar of village Kail, Tehsil Jagadhari and he specifically stated in his affidavit Ex.PW5/A that on 30.10.1981 he had come to the Court Complex, Jagadhari for some personal work. On that day, Surinder Kumar executed the power of attorney regarding the disputed plot in favour of Lalita Devi Sharma.

It was got scribed from the deed writer and the Deed Writer read over the power of attorney and Surinder Kumar after admitting the power of attorney as correct in his presence and in the presence of second witness Man Singh, Numberdar of village Mundamajra. He also attested the same. Both of them attested the same at the instance of Surinder Kumar. DW5 Mukh Ram when subjected to lengthy cross examination, he specifically stated that he was acquainted with Baljeet Kumar for the last five to seven months and he has no relations with him. He is also acquainted with Maan Singh, Numberdar, who is the second attesting witness of power of attorney Ex.D2. He used to visit Hari Chand, Deed Writer, to draft the power of attorney. He further stated that he had visited the deed writer for some work and he first met Surinder Kumar and Surinder Kumar asked him to give testimony (attestation). He further stated that he does not know how many siblings Surinder and others have and he does not know the name of the father of Surinder Kumar.

19. No suggestion is put to DW5 Mukh Ram by learned counsel for the plaintiff that signatures of Surinder Kumar on power of attorney Ex.D2 are not of plaintiff Surinder Kumar or that DW5 Mukh Ram had not acquainted with Surinder Kumar plaintiff or Surinder Kumar never visited the office of DW1 Hari Chand, Deed Writer. In the absence of any specific suggestion to DW5 Mukh Ram regarding denial of execution of power of attorney Ex.D2 by the plaintiff, the testimonies of DW5 Mukh Ram and DW1 Hari Chand, Advocate, cannot be discarded regarding factum of execution of special power of attorney Ex.D2/Ex.P6 by the plaintiff. The plaintiff in his affidavit did not state anything that he used to sign only in English and never signed in Hindi. Therefore, the learned trial Court and the first Appellate Court had rightly concluded that defendant No.1 proved that plaintiff executed special power of

attorney Ex.D2/Ex.P6 in favour of defendant No.3 and the plaintiff failed to rebut this fact.

20. The plaintiff has examined PW4 Ram Dhan Babbar, Finger Print & Hand Writing Expert and his report Ex.PW4/A was rightly discarded by the learned trial Court and the First Appellate Court because admittedly as stated by PW4 Ram Dhan Babbar, science of signatures is not accurate and photographs of disputed and specific signatures were taken by him in the Court by camera but these were not attested from the office of Court. He admitted as correct that whenever the (Handwriting & Finger Print Expert) takes photographs of specimen signatures in the Court, those signatures are attested by the Court but in this case these are not attested by the Court. There is another reason to discard report Ex.PW4/A because PW4 during cross examination admitted as correct that Surinder Kumar knows Hindi as well as English. He signs somewhere in Hindi and somewhere in English and therefore, the contention of learned counsel for the plaintiff was rightly rejected by the learned trial Court as well as by the First Appellate Court that plaintiff signs only in English and not in Hindi.
21. Original sale deed 27.10.1980 Ex.P4/Ex.D3 reveals that sale consideration of Rs. 4000/- was paid by plaintiff and defendant No.3 Lalita Devi Sharma to the vendee Somawati whereas the sale deed dated 27.11.1981 (Ex.D1) was executed by Lalita Devi Sharma as special power of attorney of the plaintiff and on her behalf in favour of defendants No.1 and 2 for a total sale consideration of Rs. 5000/-. Since the original special power of attorney Ex.D2, which was scribed from DW1 Hari Chand, was produced at the time of scribing the sale deed dated 27.11.1981 Ex.D1, it proves that defendants No.1 and 2 before putting their signatures on the sale deed dated 27.11.1981 satisfied themselves that defendant No.3 vendee had legal and registered

document i.e. special power of attorney Ex. D2, authorizing him to execute the sale deed in their favour and they parted with sale consideration of Rs.5000/-. Learned Courts rightly held that vendees of sale deed dated 27.11.1981 are protected under Section 41 of the Transfer and Property Act being the bonafide purchasers for lawful consideration. They have the reason to believe the legality of special power of attorney in favour of defendant No.3, their vendor because the special power of attorney Ex.D2 is a registered document and duly signed by its executant/co-sharer Surinder Kumar.

22. In view of the above foregoing discussion, the learned trial Court as well as the learned First Appellate Court rightly appreciated the law and evidence on record in impugned judgments. Accordingly, this Court finds no merit in the appeal and the same stands dismissed.

Pending applications, if any, also stand disposed of.

(RAMESH KUMARI)
JUDGE

24.04.2026
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No