

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 7323 of 2013 (O&M)
Date of decision: 14.12.2015**

Palwinder Singh

... Petitioner

versus

Varinder Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Rakesh Kumar, Advocate for respondent No.1.

K.Kannan, J.

The suit was filed for declaration that the 2nd defendant was not an authorised power of attorney to act on behalf of one Mohidner Singh to execute a sale in favour of the 1st defendant Diwan Singh. It is significant that the plaintiff does not claim under Mohinder Singh. His contention is that he has possessory right over the property and has sought to challenge the sale made in favour of the 1st defendant to protect his own possession. In the course of the proceedings, the plaintiff has sought for production of Mohinder Singh who is living in a foreign country. The Court has directed Mohinder Singh to be present.

I find the order to be incompetent and requirement of presence of the particular individual in Court to be irrelevant. If the plaintiff has a case to contend that he had a right to hold his possession over the property against the 1st defendant or Mohinder Singh or the 2nd defendant, the issue of whether Mohinder Singh constituted a power of attorney in favour of the 2nd defendant or not can have no value. The trial Court will decide if such a suit itself is competent. In a suit where the relief sought itself is legally suspect, there could be no compulsion for the Court to require Mohinder Singh to be brought in court. It

cannot advance the adjudication on any issue. The more fundamental point could be whether the plaintiff has any *locus standi* to question the power of attorney alleged to have been executed by Mohinder Singh. It must be noticed that Mohinder Singh himself has not been made as a party and if there is nothing for Mohinder Singh to join issues in Court, there could not be any compulsion that he should be made to appear before the Court.

The order passed by the Court is an irregular exercise of power that could cause needless prejudice to person living abroad. The application filed before the Court below was not tenable in law and the order passed was equally so. The impugned order is set aside and the revision petition is allowed.

(K.KANNAN)
JUDGE

14.12.2015
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