

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(1) RSA No.1930 of 1988 (O&M).  
Decided on:-May 12<sup>th</sup>, 2015.

Rajesh Kumar and others .....Appellants.

Versus

Kewal Krishan. ....Respondent.

(2) RSA No.1931 of 1988 (O&M).

Smt. Ram Piari and another .....Appellants.

Versus

Kewal Krishan. ....Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

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Argued by:- Mr. R.L. Sharma, Advocate  
for the appellants.

Mr. Pritam Saini, Advocate  
for the respondent.

**Dr. Bharat Bhushan Parsoon, J.**

Both these Regular Second Appeals are being decided by this common judgment as the facts of both the appeals dove-tail into each other and substantial questions of law needing determination also are common.

2. For convenience and clarity, facts have been taken from Regular Second Appeal No.1930 of 1988.

3. Plaintiff Kewal Krishan, respondent herein, had brought a suit seeking a decree for permanent injunction restraining defendants No.1 and 2 Rajesh Kumar and Rajinder Kumar sons of defendant No.3 Sudarshan Kumar, appellants herein, from dispossessing the respondent-plaintiff from the suit land as also against alienation of the same. Sale deed dated 10.4.1981 executed by defendant No.3 in favour of defendants No.1 and 2 was also challenged as illegal, null and void besides power of attorney allegedly executed by the plaintiff in favour of defendant No.3.

4. As some part of the land where tubewell had been installed was acquired and compensation had been paid, share of compensation for acquisition of the land was also claimed.

5. The total land is 23 Kanals 15 Marlas. Half share therein was claimed to be in possession of the plaintiff as owner. Defendant No.3 Sudarshan Kumar, appellant herein, is brother of respondent-plaintiff Kewal Krishan. Defendants No.1 and 2 Rajesh Kumar and Rajinder Kumar are sons of defendant No.3. Power of attorney dated 28.3.1980 executed by the respondent-plaintiff in favour of appellant-defendant No.3 was claimed to be forged and fabricated document.

6. It is claimed that his signatures had been obtained for preparing a document regarding management of land of the respondent-plaintiff, by his elder brother i.e. defendant No.3 Sudarshan Kumar, appellant herein. Claiming that scribe of the document is related to defendants No.1 and 2, the said document was converted into a power of attorney instead of a document of authority to manage the land of the respondent-plaintiff. In short, power

of attorney was claimed to be illegal, without jurisdiction, null and void and thus, was claimed to be not binding on the respondent-plaintiff.

7. Pursuant to that power of attorney, defendant No.3 had executed sale deed dated 10.4.1981 in favour of defendants No.1 and 2. Both the documents i.e. the power of attorney dated 28.3.1980 and sale deed dated 10.4.1981 are under challenge. It is averred that land valuing more than Rs.30,000/- could not have been sold for Rs.5,500/- and even this payment was never made.

8. The suit was contested by all the defendants, appellants herein. Though separate written statements were furnished by them, pleas taken therein were the same. Relationship of the parties among themselves was not disputed. The defendants took up a stand that family of the plaintiff was being supported by defendant No.3 as in the year 1973, he had got a lucrative employment in Muscat where he was saving his entire salary of Rs.2,000/- per month as his boarding, lodging and diet etc. were free and he hardly had any other expenses. It is canvassed that defendant No.3 was supporting the plaintiff as he was sending remittances from overseas. In short, it is pleaded that entire claim of the plaintiff was wrong and manipulated out of greed. Referring to cancellation of power of attorney dated 28.3.1980, it is averred that the cancellation document itself proved the validity and legality of the power of attorney of the plaintiff in favour of defendant No.3. Asserting correctness of power of attorney as also the sale deed, prayer for dismissal of the suit was made.

9. In replication, earlier assertions in the plaint were reiterated. On the pleadings of the parties, following issues were framed by the lower court as are given on the next page:

1. Whether the plaintiff is the owner in possession of the suit land and is entitled to the injunction prayed for? OPP
2. Whether the power of attorney dated 28.3.1980 in the plaint in favour of defendant No.3 is illegal, fraudulent, forged and fabricated? OPP
3. Whether the plaintiff is estopped by his act and conduct and admission from filing this suit as mentioned in the written statement? OPD
4. Whether the suit is within limitation? OPP
5. Whether defendants No.1 and 2 are bonafide purchasers for value as per sale deed dated 10.4.1981? OPD
- 5-A. Whether plaintiff is entitled to recover Rs.2,475/- as 1/4<sup>th</sup> share of the compensation received by the defendant regarding the tubewell in the land in dispute? OPP
- 5-B. Whether the suit is not maintainable as alleged in the written statement? OPD
6. Whether defendant No.3 executed valid sale deed dated 10.4.1981 in favour of defendants No.1 and 2? OPD
7. Relief.

10. After receiving oral as well as documentary evidence and providing a hearing to the counsel for the parties, deciding all the issues, except issue No.3, against the plaintiff and in favour of the defendants, suit of the plaintiff was dismissed with costs on 22.5.1986. The decree had followed.

11. This decree was taken in appeal before the first appellate court i.e. Additional District Judge, Ropar. Partly accepting the appeal and

reversing the findings on issues No.1, 2 and 5 of the lower court, the judgment and decree of the lower court were set aside and the suit of the plaintiff was decreed. Verdict of the lower court with regard to dismissal of the suit of the plaintiff regarding recovery of amount of compensation was affirmed.

12. For decision of this appeal, following substantial questions of law arise for determination by this Court:

1. Whether in a civil suit appearance of attorney on behalf of plaintiff/Principal is sufficient to prove the contents of the plaint, as the attorney can only depose as a witness in his own capacity and not on behalf of principal?
2. Whether the plaintiff who does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined, presumption would arise that the case set up by him in the plaint is not correct and the contents in the plaint have not been duly proved?
3. Whether the findings arrived at by the lower appellate court is against law inasmuch as by misreading documents Ex.D3, letter written by plaintiff and document Ex.D2 deed cancelling the General Power of Attorney dated 19.3.1982 as well as evidence of Hukam Chand DW2 proving that sale deed in favour of plaintiff was actually the Benami transaction by Sudarshan Kumar-defendant?
4. Whether the lower appellate court has failed to consider the evidence of DW3 Ram Piari defendant proving that the sale in favour of Kewal Krishan was in fact a Benami one?
5. Whether the lower appellate court has not considered that sale in favour of defendant-appellant on the basis of G.P.A. executed by plaintiff which was voluntary and with express knowledge and the findings of the lower appellate court is thus, against law by holding that in fact, it is not a sale?

6. Whether the fact that the plaintiff had got cancelled the G.P.A. Ex.D1 by subsequent document Ex.D2 is conclusively proving the due execution of the said G.P.A. in favour of Sudarshan Kumar his elder brother?

13. It is claimed by the appellants-defendants that the lower appellate court neither appreciated the facts nor the evidence particularly brought on record by the defendants, resulting in reversal of the findings on issues No.1, 2 and 5 without any sound foundations. It is claimed that originally, defendant Sudarshan Kumar had purchased a property in the joint names of his brother Kewal Krishan and him whereas the entire sale consideration had been paid by him and name of Kewal Krishan had been introduced only Benami though entire payment was made by Sudarshan Kumar. It is claimed that the documents as also the circumstances in which the same were executed had not been appreciated by the first appellate court resulting in miscarriage of justice and filing of this appeal.

14. So far as RSA No.1931 of 1988 is concerned, in this case, the suit had been preferred by the respondent-plaintiff against defendants Smt. Ram Piari and her husband Sudarshan Kumar as defendant Sudarshan Kumar had sold another half share of the suit land in favour of his wife Smt. Ram Piari vide sale deed dated 10.4.1981.

15. Hearing has been provided to the counsel for the parties while going through the paper books.

16. Before adjudicating rival claims of the parties, it would be appropriate to take stock of the admitted facts. Appellant-defendant Sudarshan Kumar is the elder brother of respondent-plaintiff Kewal Krishan. Sudarshan Kumar was in employment at Muscat and from his earning used to send money to his younger brother Kewal Krishan. Appellants-defendants Rajesh Kumar and Rajinder Kumar are sons of Sudarshan Kumar whereas

Smt. Ram Piari is his wife. The land purchased from Jagat Ram and Hukam Chand is recorded in the ownership of two brothers in equal shares. Without going into the question of holding of half share in both the sale deeds dated 12.3.1976 and 19.10.1976, whether was Benami in the name of Kewal Krishan though actual owner was Sudarshan Kumar, his brother it is to be mentioned that there is neither any evidence of sending of money from overseas by Sudarshan Kumar to plaintiff Kewal Krishan particularly for purchase of property nor the defendant has entered the witness box to substantiate his claim that actually, he was the owner and half share of the property was held benami for him by his brother Kewal Krishan.

17. A party having knowledge of facts and circumstances is expected to himself enter the witness box. His attorney cannot be a substitute for such a party because matters of personal knowledge are to be disclosed only by such party in person and not by his power of attorney. In this regard, reference may be made to authorities ***Vidhyadhar Versus Mankikrao and another 1999 AIR (SC) 1441***, wherein it was held that if a party to a suit does not enter the witness box, an adverse inference is to be drawn against him. To the same effect is authority reported as ***Narinder Nath Kapoor Versus Prem Nath Khanna and others 2009(4) RCR (Civil) 515 (P&H)***. In ***Janki Vashdeo Bhojwani Versus Indusind Bank Ltd. 2005 AIR (SC) 439***, it was held that a power of attorney cannot be allowed to appear and depose as a witness on behalf of the principal in matters of his personal knowledge. To demonstrate, it was also explained that whether a person was a co-sharer in the property purchased and had the source of income to contribute to its purchase price, are the matters of personal knowledge of such person and his power of attorney cannot depose in that regard. It was further held that if the party does not depose personally and does not appear for the cross-examination, he would be deemed to have failed to prove his case. In ***Rajiv Dinesh Gadkari Versus Smt. Nilangi Rajiv***

***Gadkari 2009(4) RCR (Civil) 835 (Bombay)***, it was held by a Division Bench of Bombay High Court that where a power of attorney appointed by the principal empowers him to “act” on behalf of the principal, the word “act” confines only in respect of “acts” done by the power of attorney holder in exercise of the power granted by the instrument. It has specifically been held that the term “acts” would not include deposing in place as a substitute and instead of the principal in respect of the matter of which only the principal can have a personal knowledge regarding which the principal alone is entitled to be cross-examined. Reference may also be made to ***S. Kesari Hanuman Goud Versus Anjum Jehan and others 2014(2) RCR(Civil) 52 (Supreme Court)*** wherein it was held that the word “acts” is confined only to the extent of power of attorney in exercise of the powers granted to him. To the same effect is ***Manmohan Singh Versus Smt. Narinder Kaur 2008(4) RCR (Civil) 81 (P&H)***.

18. By now, it is clear that attorney holder cannot be allowed to appear and depose as a witness on behalf of the principal in the matter of his personal knowledge and he can only appear as a witness in his own individual capacity to depose with regard to the acts done by him on behalf of the principal. Defendant Sudarshan Kumar having not entered the witness box and the matter of sending of money claimed to have been so sent for purchase of the property in the name of plaintiff Kewal Krishan, is a plea, which has not even gone beyond the stage of pleadings to the stage of proof. Onus was very heavy on appellant-defendant Sudarshan Kumar to prove this fact. Sequently, in absence of legal evidence to support and sustain plea of defendant Sudarshan Kumar, now appellant, that he was the actual owner of the entire property and the same was purchased by his brother Kewal Krishan in his name as benami of Sudarshan Kumar vide sale deeds dated 12.3.1976 and 19.10.1976, remain unsubstantiated.

19. Power of attorney dated 28.3.1980 constitutes the centrifugal force of this litigation. Its validity and legality is seriously in question. Entire case of the respondent-plaintiff is founded on the allegations of fraud and misrepresentation claiming the power of attorney dated 28.3.1980 also to be illegal, void ab-initio and thus being not binding on the respondent-plaintiff.

20. If pleadings are taken to be any index, the respondent-plaintiff has specifically averred that fraud was played upon him and he was duped to sign the said documents by his brother Sudarshan Kumar for authorisation for managing the land of the share of the plaintiff. To suffer repetition, the plaintiff is a co-sharer with his brother defendant Sudarshan Kumar of the land purchased vide sale deeds dated 12.3.1976 and 19.10.1976.

21. All these averments contained in pleadings of the plaintiff are matters of personal knowledge of the plaintiff. In view of the authorities cited in earlier paragraph of this judgment, it is abundantly clear that to prove matters of personal knowledge, a party has to enter the witness box and this function of proving matters of exclusive personal and private knowledge cannot be delegated to an attorney of the party. It remains a fact that plaintiff Kewal Krishan instead of entering the witness box, himself had produced his attorney Ram Kumar as PW1 who was legally not competent to depose about the matters of close personal association and knowledge of the plaintiff. Sequently, statement of attorney Ram Kumar (PW1) going by any legal parameter cannot be accepted as a substitute for knowledge of personal matters flowing from head and heart of the party.

22. Viewed from another angle, no amount of oral evidence can be led to prove terms and conditions of a written covenant. It is a proposition of no dispute that power of attorney dated 28.3.1980 executed by respondent-plaintiff Kewal Krishan is in favour of his elder brother i.e. appellant-defendant Sudarshan Kumar. As a natural consequence, it is to be taken that

the power of attorney is to be taken on its face value, having been so executed by Kewal Krishan in favour of Sudarshan Kumar. Going by this conclusion, power of attorney dated 28.3.1980 from Kewal Krishan is a document of utmost confidence of the principal in favour of his agent. It thus flows from the power of attorney that Sudarshan Kumar is beneficiary of this power of attorney and was validly and legally appointed as agent for doing various acts.

23. When neither any restriction had been incorporated in power of attorney on the agent nor any aberration was noticed, power of attorney dated 28.3.1980 is taken to be at his face value. It is a registered document. There is no reason to dilute or annihilate the written text of power of attorney dated 28.3.1980.

24. Merely because the agent appointed by Kewal Krishan is his elder brother Sudarshan Kumar, ipso facto is no ground to question validity and legality on the facts of commission and omission. Going by application of plain construction to the text of power of attorney dated 28.3.1980, defendant Sudarshan Kumar, inter alia, sold half share of the plaintiffs to their sons Rajesh Kumar and Rajinder Kumar and remaining half share to his wife Smt. Ram Piari vide two sale deeds dated 10.4.1981.

25. Counsel for the respondent-plaintiff has vehemently argued that the sale deeds by power of attorney in favour of his sons and wife are invalid as the power of attorney was misused by Sudarshan Kumar.

26. It must be noticed that plaintiff Kewal Krishan had cancelled the power of attorney in favour of Sudarshan Kumar vide cancellation deed dated 19.3.1982. When power of attorney dated 28.3.1980 and cancellation deed dated 19.3.1982 are read in the interface of each other, it becomes evident that in the cancellation deed, there is admission of respondent-

plaintiff Kewal Krishan that power of attorney dated 28.3.1980 had validly been executed. Thus, act of cancellation of power of attorney dated 28.3.1980 affirms execution of the same by plaintiff Kewal Krishan in favour of his elder brother defendant Sudarshan Kumar.

27. Vide impugned judgment and decree dated 21.5.1988, the first appellate court had overflowed from the main text of issue No.2 and instead had fallen prey to the question of legality and validity of sale deeds dated 12.3.1976 and 19.10.976 and on the point of limitation had claimed the limitation to be 12 years. This approach of the first appellate court is entirely misfounded. Power of attorney is the main document which by itself or acting as an instrument for transfer of the land vide two sale deeds, is in question.

28. The first appellate court could not have substituted question of validity and legality of sale deeds 12.3.1976 and 19.10.1976 to power of attorney dated 28.3.1980. The first appellate court though has conceded that the limitation period for challenging, interalia, power of attorney of 28.3.1980 was within 3 years and the suit having been filed on 10.5.1983, thus, is barred by limitation but wrongly taking up question of validity and legality of the sale deeds, it is claimed that limitation is 12 years. It is, rather, found that the findings of the lower court discussing entire oral as well as documentary evidence on this aspect is wholesome, detailed and elaborate. Sequelly, issues No.2 and 4 decided by the first appellate court, have clearly been wrongly adjudicated. Findings of the lower court on issues No.2 and 4 being correct are affirmed.

29. Intertwined with issue No.1 is issue No.5 which is pertaining to bonafide purchase. Sale is of 10.4.1981. Appellant-defendant Sudarshan Kumar acted on the power of attorney dated 28.3.1980. Merely because the two sale deeds dated 10.4.1981 have been made by Sudarshan Kumar, one in

favour of his sons and another in favour of his wife, is not a circumstance to question bonafides of the purchasers or of the vendor. Even otherwise, the sale consideration for sale deed dated 10.4.1981 in favour of appellants-defendants Rajesh Kumar and Rajinder Kumar is Rs.5,500/- and for sale deed dated 10.4.1981 in favour of Smt. Ram Piari is Rs.6,875/-. It is not an exorbitant amount that it was beyond the reach of the vendees to purchase the land. Vendee Smt. Ram Piari had appeared as DW3 for herself and on behalf of her minor sons and has claimed that the land was purchased for its value and for consideration. Her claim has not been successfully repudiated by the plaintiff. Issues No.5 and 6 accordingly are held against the plaintiff and in favour of the defendants. To this extent, findings of the lower court on these issues are affirmed.

30. The lower court had also rightly decided suit to be barred under Order II Rule 2 CPC because the plaintiff was to bring one suit and he could not have split the relief into two suits. Issue No.5-B has, thus, rightly been adjudicated by the lower court in favour of the defendants and against the plaintiff.

31. So far as findings on issue No.5-A regarding share of compensation of the plaintiff regarding acquisition of land under tubewell is concerned, both the courts have given concurrent findings against the plaintiff which has also not been successfully challenged in this aspect and the said findings are affirmed. Sequelly, all the substantial questions of law except at Nos.3 and 4 are answered against the plaintiff. Substantial questions at Serial Nos.3 and 4, however, are answered against the defendants.

32. Since it has been held above that the plaintiff was not a Benamidar but was owner in his own right in equal share alongwith his brother Sudarshan Kumar, the sale price of his share sold vide sale deeds

dated 10.4.1981 by his power of attorney Sudarshan Kumar is to be accounted for by the attorney to the plaintiff. As such, appellant-defendant Sudarshan Kumar is held liable to transfer the sale consideration of two sale deeds dated 10.4.1981 to respondent-plaintiff Kewal Krishan alongwith interest @ 12% per annum from the date of execution of the sale deeds till the date of payment.

33. Keeping in view the facts and circumstances, as mentioned earlier, both the Regular Second Appeals are partly accepted in the above terms. Consequently, the judgment and decree of the first appellate court are set aside while judgment and decree of the trial court are modified to the extent as indicated above. Decree sheets be prepared.

**May 12<sup>th</sup>, 2015**  
'Yag Dutt'

**(Dr. Bharat Bhushan Parsoon)**  
**Judge**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes