

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

RSA No.4082 of 2012 (O&M)

Date of decision: 28th January, 2015

Paramjit Kaur

... Appellant

Versus

Kuldip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. Vikas Bahl, Senior Advocate with
Ms. Balpreet Kaur Sidhu, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

This Regular Second Appeal has come to be filed after the trial Court of learned Civil Judge (Senior Division), Rupnagar through judgment and decree dated 09.03.2011 dismissed the suit of the plaintiff Kuldip Singh and on appeal by the plaintiff the first appellate Court of learned Additional District Judge, Ropar through judgment and decree dated 05.06.2012 allowed the appeal whereby setting aside the findings of the trial Court and that is how the defendant-

appellant has come up in this RSA against these expressions of two divergent opinions by the courts below.

Heard at length Mr. Sandeep Kumar Sharma, Advocate for the appellant, Mr. Vikas Bahl, Senior Advocate assisted by Ms. Balpreet Kaur Sidhu, representing respondent No.1 and on perusal of the records.

The dispute is inter-se between the family and it is admitted fact and is also established on the records that plaintiff Kuldip Singh; Kanwar Kultar Singh, in whose place defendant-appellant Paramjit Kaur has come after his death; and Jagjit Singh were three sons of late Mohan Singh. The claim of the plaintiff is to the effect that he was owner of land measuring 10 Biswas being 10/36 share of land measuring 1 Bigha 16 Biswas detailed in the suit situated in village Morinda, Tehsil Ropar. The plaintiff has alleged that his brother deceased Kanwar Kultar Singh with a view to grab his property forged and fabricated Power of Attorney dated 11.08.1993 Ex.P1 in favour of Jagjit Singh his brother and in connivance with the attesting witnesses sold off his property through sale deed dated 04.07.2001 Ex.P2 purported to have been executed by Jagjit Singh in favour of Kanwar Kultar Singh and alleged that both these documents, the alleged Power of Attorney as well as the sale deed, were fraudulent and even claimed that from 25.06.2001 to 10.07.2001 Jagjit Singh (since deceased) remained admitted in a hospital and was suffering from acute heart ailment and was unable to move about. On the strength of these allegations, the appellant has sought setting aside of the alleged

Power of Attorney purported to have been executed by plaintiff Kuldip Singh in favour of Jagjit Singh and consequential effects of the sale deed dated 04.07.2001 so executed by the Attorney in favour of Kanwar Kultar Singh and for possession of the suit property.

The heirs of Kanwar Kultar Singh in their stand took the plea that the suit was not maintainable and though admitted the inter-se relationship, claimed that the plaintiff had duly authorized his brother Jagjit Singh who on the basis of the Power of Attorney had executed sale deed which was a genuine transaction having been duly registered and so the sale deed as a consequence of the same, and terming the case of the plaintiff to be false and incorrect and the documents to be legal and legitimate sought dismissal of the suit.

Learned trial Court framed the following issues:

1. Whether the plaintiff is owner of the land measuring 1 Bigha 16 Biswas as mentioned in the head note of the plaint? OPP
2. Whether the plaintiff is entitled for the possession of the suit land as prayed for? OPP
3. Whether the power of attorney dated 11.08.1993 is forged and fabricated document? OPP
4. Whether the plaintiff is entitled for the permanent injunction as prayed for? OPP
5. Whether the sale deed dated 4.7.2001 is forged, fabricated, wrong, illegal, null and void and has no effect on the rights of the plaintiff? OPP

6. Whether the suit is not maintainable? OPD
7. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD
8. Relief.

The plaintiff examined himself as PW-1 and in support has examined Dr.Mandeep Singh Sethi PW-2 whereas on behalf of the defendants, appellant/defendant No.1 testified as DW-1 and sought support from DW-2 Khushdev, DW-3 Mangal Sen, Deed Writer, DW-4 Sanjeev Kumar Deed Writer and DW-5 Bhajan Singh. It is consequent thereupon the findings were recorded by various courts.

This Court framed the following substantial questions of law:

1. Whether General Power of Attorney dated 11.08.1993 was ever executed by Kuldeep Singh plaintiff in favour of Jagjit Singh, if so to what effect; and if Jagjit Singh was competent to affect transfer of the property by virtue of sale deed dated 04.07.2001 Ex.P2 in favour of Kanwar Kultar Singh, if so to what effect?
2. Whether suit of the plaintiff is barred by the principle of delay and laches?

Appreciating the arguments and the rival contentions, since it is the plaintiff who has knocked at the doors of the Court and therefore, onus lay heavily upon the plaintiff to have established its case by preponderance of probabilities. It is well enshrined principle of

law that the plaintiff must stand on his own legs and can by no means take advantage of the weaknesses of the case of other side. Reliance in this regard is placed on '**Rangammal v. Kuppuswami and another**' reported in **AIR 2011 SC 2344**. Moreover, as per Section 101 of the Indian Evidence Act, 1872 a duty is cast upon the person who desires any Court to give judgment as to any legal right or liability or to prove the existence of that very fact so as to romp home with the case. Thus, burden of proof is initially upon the plaintiff to establish it so. It is the pleaded case that General Power of Attorney Ex.P1 was given by the plaintiff in favour of Jagjit Singh and it was on the basis of this agency the agent has acted on behalf of the principal in bringing about a sale by virtue of sale deed Ex.P2. The alleged General Power of Attorney is a registered document dated 11.08.1993 and being a registered document as per the settled law is in itself a notice to the people at large. The sale deed has been executed on 04.07.2001 i.e. after the period of almost eight years of giving of the Power of Attorney whereas suit has been filed on 30.09.2005 i.e. after four years of execution of the sale deed.

Though the plaintiff has sought to plead in his plaint that cause of action arose to him to file the suit on 26.09.2005 when the defendants finally refused to treat the General Power of Attorney and the sale deed as null and void and put him in possession of the property, obviously the same is aimed to obviate the rigour of limitation and under the Limitation Act, 1963 a suit for declaration ought to be filed by virtue of the same within three years when the right to sue first

accrues. From the evidence it stands amply demonstrated and cogently established that the initial cause of action arose on 11.08.1993 when the General Power of Attorney was executed and registered, and thereafter on 04.07.2001 when the sale deed was executed by Jagjit Singh and the present suit has been filed on 30.09.2005 and there is nothing suggestive as to when first the plaintiff came to know of this and the cause of action had arisen. Even in his cross-examination the plaintiff as PW-1 admits that mutation in pursuance of the sale deed was within his knowledge and he never challenged it and admits that till his brothers Jagjit Singh and Kanwar Kultar Singh were alive they did not have any dispute amongst themselves; shows that it was after their death the plaintiff has sought to frustrate this transaction. The most significant aspect as has been pointed out in the arguments that this witness admits that he never initiated any complaint regarding this act of forgery, impersonation are matters which have a bearing on the case of the plaintiff. Even his own document relied by way of Ex.P3 which is revenue record reflects that it was way back in 2003-04 the mutation was duly entered regarding this sale and therefore, further strengthens the arguments of the defendant-appellants' counsel that the plaintiff had the requisite knowledge of having been aware of this transaction. Thus, by that analogy the suit certainly is time barred.

The next point pertains to the factum of execution and registration of the General Power of Attorney Ex.P1. Though the learned first appellate Court has sought to hold that the defendants

have not proved on the record original Power of Attorney and therefore, has taken this as adverse to the case of the defendants when the very issue framed by the trial Court by way of issue No.3 the onus was placed upon the plaintiff and so is in terms of Section 101 of the Indian Evidence Act, 1872. The plaintiff in his deposition as PW-1 by way of his examination in chief Ex.PW1/A has simply stated that he never executed the alleged General Power of Attorney on 11.08.1993. As has been argued on behalf of the respondents that even in his cross-examination the plaintiff has denied the factum of his signatures on General Power of Attorney Ex.P1 and which is a registered document duly attested by the Sub Registrar and whereby the plaintiff has bestowed his agent Jagjit Singh the authority to deal with his property, which apparently earlier is a joint property of the family and thus the brothers which is the subject matter of the present dispute, and it is thereupon by virtue of sale deed Ex.P2 this property was sold by Jagjit Singh. Though the plaintiff in his cross-examination has refused to identify signatures of his brother Jagjit Singh and this Court on plain comparison of the signatures of Jagjit Singh on the two documents Ex.P1 and Ex.P2 can certainly draw the conclusions that the signatures on these two documents are apparently of one and the same person. Since the General Power of Attorney is a registered document and certificate of registration is in itself proof of its correctness and as has been spelled out in the statement of defendant-appellant Paramjit Kaur as DW-1 by way of DW1/A and who has proved this General Power of Attorney as Ex.D2 and rather

claims that she was the witness to this document being executed by the plaintiff and the one produced on the record as per the observations of the trial Court is a certified copy of the original and which probably has weighed heavily in the mind of the Court that the original has been kept away from it. The Court on its own had allowed as per its observations the exhibiting of this document as Ex.D2. It has to be kept in mind that such documents which are registered have two originals, one is kept in the office of the Sub Registrar and the other is handed over to the concerned party and therefore, it was within the powers of the Court for judicious adjudication, if so required, to have called for the records of the Sub Registrar which it did not do so. More so, initial onus which lay upon the plaintiff to rebut this document has neither bothered to get his signatures on the said document examined from an expert by summoning the original from the records of the Sub Registrar nor there is any worthwhile evidence in this regard. Rather the Scribe Mangal Sen as DW-3 in his deposition as DW3/A has proved the fact of scribing the documents and its due execution.

Since the stand of the plaintiff that the Power of Attorney is an outcome of fraud and forgery and there is no element of fraud or forgery proved on the record and for which reliance has been placed upon **‘Sulakhan Singh v. Smt. Pal Kaur’ 2011 (2) PLR 259** and **‘Har Narain and another v. Revti Parkash and others’ 2012(2) PLR 409** by the learned counsel for the appellant which harbors on the fact that there should be a clear evidence regarding fraud or forgery and that the registered document along with certificate of registration in itself

prima-facie establishes to be an outcome of genuineness. Even to the very query of the Court, learned counsel for the respondent could not substantiate if there has been in any manner undue influence over the plaintiff in procuring the General Power of Attorney Ex.P1 and there is no element of even undue influence in terms of Section 16 of the Indian Contract Act, 1872 established on the record.

In the light of ratio relied by learned counsel for the appellant as laid down in '**Bellachi (Dead) by L.R. v. Pakeeran**' **2009(12) SCC 95**, learned counsel for the respondent cannot take any advantage out of the ratio laid down in '**Smt. Padmawati and others v. Smt. Indrawati (since deceased) and others**' **2014(3) Law Herald 2430** in view of the fact that the initial onus lay upon the plaintiff to have established the fakeness of the General Power of Attorney and he failed to do so and mere denial of signatures unless and until cogently and substantially established does not help the case of the plaintiff in terms of '**Shiv Charan v. Siri Ram and another**' **2008(3) RCR (Civil) 454** so argued by the learned counsel for the respondent.

The law laid down in '**Narbada Devi Gupta v. Birendra Kumar Jaiswal and another**' **2003(4) RCR (Civil) 683** does not come to the aid of the plaintiff in view of the fact that it is own document challenged by the plaintiff who has relied upon this document and therefore it was well within his powers to have got his signatures compared with the Power of Attorney Ex.P1 to establish his case and therefore, even his inaction regarding this fact goes to his

detrimental. No benefit can be derived out of the ratio laid down in the judgment of '**Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others**' 1968 AIR (SC) 1413 and '**Nathu Ram v. Tilak Raj and others**' 2010(4) PLR 552 by learned counsel for the respondent as the very initial document on which entire case revolves has not been proved and established to be an outcome of forgery or any other illegality and since the plaintiff has failed to prove forgery as enlivened in '**Smt. Lali Devi & others v. Jai Singh & others**' 2012(2) PLR 627 and '**Smt. Bhana v. Krishan Kumar and others**' 2012(3) PLR 717 he certainly has failed in his endeavour to establish that the General Power of Attorney Ex.P1 was an outcome of fraud and deception and so forgery. Thus, findings of the learned trial Court qua this document are correct appreciation of the evidence and that of the first appellate Court needs to be set aside.

Since the General Power of Attorney has not been proved to be a forged and fabricated document and therefore, in terms of Section 54 of the Transfer of Property Act, such a transaction by way of transfer of the ownership is illegitimately assailed and cannot be termed in any manner to be without consideration. Thus, in the light of the fact that Jagjit Singh is proved to be the agent of the plaintiff Kuldip Singh his brother whose signatures on sale deed as well as General Power of Attorney stands compared by the learned trial Court referred to in its findings and thus, Jagjit Singh having exercised his powers by virtue of his agency legitimately and has thus executed a legal and

valid sale in favour of Kanwar Kultar Singh, findings of the first appellate Court thus, needs to be set aside.

In view of the foregoing discussions, the substantial questions of law are answered accordingly. The findings of the first appellate Court are set aside and the appeal of the defendant/appellant stands allowed in those terms.

No costs.

**(FATEH DEEP SINGH)
JUDGE**

January 28, 2015
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