

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

**RSA No.4570 of 2013 (O&M)
Date of decision: 19.01.2015**

Chamkaur Singh and others

... Appellants

Vs.

Kashmir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vipin Mahajan, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

This regular second appeal is directed at the instance of plaintiff-appellants against the judgments and decrees of the Courts below whereby the suit of the plaintiff-appellants for declaration to the effect that plaintiff is owner in possession over the land measuring 8 kanals 6 marlas bearing khasra No.48R/9(8-0), 48R/13 (0-6 Min) situated at village Dabanwala and alleged sale deed dated 26.02.2011 alleged to be executed by defendant No.1 in favour of defendant No.2 on the basis of alleged power of attorney dated 16.2.2001 and the alleged power of attorney dated 16.2.2001 are illegal, invalid, inoperative, forged, fictitious document and not binding force on the rights of the plaintiff with the consequential relief for permanent injunction restraining the defendants from interfering

with the or dispossessing the plaintiff from the suit land or in the alternative suit for possession of the land in dispute was dismissed by both the Courts below.

Learned counsel appearing on behalf of the plaintiff-appellants contends that the trial Court did not frame issues in correct perspective and it was upon the defendants to prove, that alleged power of attorney was actually executed by the plaintiff and in the absence of the evidence led by the defendants, bald statement of the plaintiff that she had not executed the Power of Attorney, would be sufficient to prove the factum of having not been executed the same. In support of his case, he relied upon the judgment of this Court in **Gursharan Kaur vs. Kuldip Kaur and another PLR VOL.CLXII-(2011-2)**.

The aforesaid judgment is not applicable to the facts and circumstance of the present case as in the present case, the plaintiff has not stepped herself into witness box and established, by leading direct and cogent evidence that plaintiff had no intention to execute the power of attorney.

The submission of the learned counsel for the appellants is devoid of merits as admittedly, Lajo did not step herself in the witness box. It is settled proposition of law as laid down by Hon'ble Supreme Court in **Man Kaur (dead) by LRs vs. Hartar Singh Sangha 2011(1) ICC 251** to contend that a person who has been authorized, must have personal knowledge with regard to the acts

done by the person. Since the case pertained to the declaration of the power of attorney being illegal, null and void, it was incumbent upon Lajo to appear in the witness box and state with regard to alleged forgery or fraud having been played upon by defendant No.2.

Both the Courts below have rendered finding of fact and law based on the evidence brought on record. Moreover, the plaintiff failed to lead any evidence whether the thumb impressions or signatures on the power of attorney were of plaintiff or someone else and thus did not discharge the onus to prove the power of attorney. In the absence, the onus cannot be shifted upon the defendants to discharge the burden.

There is no illegality much less perversity in the findings of the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 19, 2015
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