

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

RSA No.1713 of 2015 (O&M)
Date of decision 01.05. 2015.

Satnam Singh and another

..... Appellants.

versus

Jagtar Singh

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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

Present : Mr. R.S.Bains, Advocate for the appellant.

K.C.PURI, J.

Defendant-appellant-Satnam Singh and Navjit Kaur have directed the present appeal against the judgment and decree dated 21.01.2015 passed by Mrs. Jatender Walia, learned Additional District Judge, Fazilka vide which the appeal against the judgment and decree dated 20.03.2014 passed by Shri Kulbhushan Kumar, learned Civil Judge (Senior Division), Fazilka, was accepted and suit of the plaintiff was decreed.

2. Briefly stated the case of the plaintiff is that the plaintiff is an indigent person who is not possessed sufficient means to pay a court fee livable on the above plaint and as such is filing the present suit as an

indigent person. It is alleged that plaintiff is the owner in possession of the land measuring 14 kanals one marla as detailed in the plaint. Sons of the plaintiff are illiterate and are earning their bread and butter by working in the fields of the other land owners as agricultural labourer. Defendant No.1 developed good relations with the plaintiff by continuously providing him intoxicants for a couple of year at low cost and on credit so the plaintiff started reposing confidence in defendant No.1 and his wife Smt. Navjeet Kaur i.e. defendant No.2. Defendant No.1 took undue advantage of the above situation and allured the plaintiff to obtain loan against the security of the suit land at low rate for meeting the expenditure of intoxicants. The plaintiff believed the version of the defendant No.1 and signed wherever the defendant No.1 required for the purpose of getting sanctioned a loan of Rs.25,000/-. The plaintiff did all this in good faith without doubting the intentions of the defendant No.1 who was the son of his real brother and a well rather only qualified person in the family. A couple of months ago when the defendant No.1 stopped supplying intoxicants to the plaintiff his attitude towards the plaintiff changed, the plaintiff asked him to give him the balance amount of loan but the defendant No.1 did not tell that the same stood spent and as such it is not possible for him to supply the intoxicants to the plaintiff any more but refused to give the details of the expenses incurred by him from loan amount. Plaintiff got suspicious and contacted the circle revenue patwari and was struck with a surprise to know that land belonging to the plaintiff has been fictitiously sold by defendant No.1 in the name of defendant No.2 on 09.11.2005 and upon an inquiry came to know that the defendant No.1 on account of the illiteracy of the plaintiff and the

confidence reposed by the plaintiff in defendant No.1 managed to get prepared a document purporting to be a power of attorney in the name of the plaintiff empowering himself to sell his property i.e. the suit land. The suit land is the only property and source of the income of the plaintiff. The plaintiff had no reason or necessity to sell the suit land nor ever asked the defendant No.1 for the same. The authority to sell the land in dispute was got incorporated by the defendant No.1, in the alleged general power of attorney without the knowledge of the plaintiff in connivance with the scribe and witnesses. The sale is the result of fraud played upon defendant No.1 by the plaintiff and being without any consideration is illegal, null and void abinitio. There was no reason for the plaintiff to have appointed defendant No.2 as his attorney for the sale of the land in question because the plaintiff very much walk and travel himself for said purpose. The sale deed in question was nominally got executed/registered by defendant No.1 in favour of his wife i.e. defendant No.2 at the value which is much lower than its market value without the payment of any price to the plaintiff. Moreover, the possession of the land was and continues with the plaintiff till date, who is peacefully cultivating the same at the spot even now. The sale deed in question is, therefore, liable to be set aside/cancelled for all intents and purposes. The defendants were repeatedly requested to admit the invalidity of the sale deed in question, get it cancelled but they refused to do so. Hence, the present suit.

3. Upon notice, defendants appeared and opposed the claims of the plaintiff by filing their separate written statements. In his written statement, defendant No.1 took certain preliminary objections, inter alia,

that the suit of the plaintiff is not at all maintainable; that the suit of the plaintiff is nothing else but an abuse of process of law and has been filed merely to harm and harass the defendants; that the plaintiff has got no cause of action or locus standi to file the present suit and that the plaintiff has concealed the material and patent facts and has not approached the Court with clean hands. The true facts are that the plaintiff has been taking the amount periodically from the defendants as the price of the land orally sold by him to the defendants for consideration of Rs.3,50,000/- which price of the land was available at that time in the year 1999. Since the relations between the parties were cordial, the defendants never demanded any receipt from the plaintiff. When the entire sale consideration was received by the plaintiff from the defendants, the plaintiff appointed defendant No.1 as his attorney holder and got the same also registered and authorized him to alienate/ transfer the land in favour of any body. On the basis of said general power of attorney, defendant No.1 got executed the sale deed in favour of defendant No.2 and in this way, the plaintiff has left no right or interest in the suit land having sold by him to the defendants for valuable consideration. Since then as the land has been sold by the plaintiff to the defendants, they have been coming into possession as owners and have every right to deal with the same in any manner according to their will. Defendant No.1 is a doctor and defendant No.2 is a lecturer and both are financially sound and have paid the whole of the sale consideration amount from their income and salary from their respective business. The plaintiff is estopped to file the present suit by his own act and conduct, the plaintiff has sufficient financial accommodation to pay the court fee prescribed under

law; the suit of the plaintiff is based on false frivolous and vexatious averments, deserves dismissal with special compensatory costs. Almost on similar lines Defendant No.2 has filed written statement.

4. Separate replications were filed, controverting the allegations of the written statements. From the pleadings of the parties, following issues were framed by the trial Court :-

1. Whether plaintiff is entitled to the permanent injunction as prayed for ? OPP
2. Whether the plaintiff is entitled to the rendition of accounts as prayed for ? OPP
3. Whether the defendant no.2 is bona fide purchaser for valuable consideration ? OPD-2
4. Whether suit of the plaintiff is not maintainable in the present form ? OPD
5. Whether the plaintiff has not approached the court with clean hands and concealed the material and patent facts ? OPD
6. Whether plaintiff has no cause of action or locus standi to file the present suit ? OPD
7. Relief.

5. On the aforesaid issues, the parties have led their respective evidence. The trial Court after appraisal of the evidence, dismissed the suit of the plaintiff vide judgment and decree dated 20.03.2014.

6. Feeling dissatisfied with the judgment and decree dated 20.03.2013, plaintiff preferred First appeal before Additional District Judge, Fazilka. The learned Additional District Judge, Fazilka after re-appraisal of the evidence, allowed the appeal of the plaintiff vide judgment and decree dated 21.01.2015.

7. Defendants-appellants feeling aggrieved against the judgment

and decree dated 21.01.2015 has preferred the present regular second appeal, before this Court.

8. The appellant in paragraph No.10 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether the plaintiff can plead fraud when he admits Registered Power of Attorney executed by him in favour of defendant on the basis of which after six-years a Registered Sale deed was executed ?
- (ii) Whether merely by pleading fraud amounts to proof of fraud ?
- (iii) Whether the appellate court is entitled in law to set aside the well reasoned judgment of the trial court, even when it finds no error in the reasoning and appreciation of evidence by the trial Court ?

9. I have heard learned counsel for the appellant and have gone through the paper book of the case.

10. Learned counsel for the appellant has submitted that once the power of attorney is admitted, in that case, non-passing of consideration is inconsequential. It is submitted that the trial court has dismissed the suit of the plaintiff holding that plaintiff has executed power of attorney and the sale deed on the basis of said power of attorney is a valid document. To support this contention, learned counsel for the appellant has relied upon authority **Dalip Kaur vs. Taro and others reported in 1993(3) PLR page 735.** It is further submitted that onus to prove the fraud is upon the plaintiff and the plaintiff has failed to prove the fraud and as such the sale deed is a valid document. The judgment of Appellate Court is liable to be set aside.

11. I have carefully considered the submission made by counsel for the appellant but do not find any force in the same.

12. It is settled law that second appeal lies only if any substantial question of law is involved. No question of law much-less substantial question of law has arisen in the present case. The dispute is between the plaintiff, being uncle and his nephew Satnam Singh being defendant.

13. Learned Appellate Court has rightly held that Satnam Singh has misused his friendly relationship over Jagtar Singh. Further Appellate Court has rightly held that no amount was paid to the plaintiff while Satnam Singh executed the sale deed in favour of his own wife Navjot Kaur. The plaintiff is stated to be aged 88 years of age as admitted by appellants themselves. No consideration has been passed through the sale deed executed by Satnam Singh on the strength of power of attorney. So, far as the authority **Dalip Kaur's case (supra)** is concerned in that case, the rights of the 3rd party were involved and under those circumstances non-proof of passing of consideration does not make the sale deed invalid. In the present case, it is writ large as Satnam Singh on the basis of power of attorney of his uncle has executed the sale deed, in favour of none-else but his own wife. Such sale deed is required to be set aside at the thresholds. Satnam Singh has misused his relations with plaintiff. So, I have no hesitation in holding that no question of law, much-less the substantial question of law has arisen in the present appeal.

14. Consequently the appeal preferred by the defendant/appellant is without any merit and the same stands dismissed.

15. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

**May 01, 2015
sv**