

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

Regular Second Appeal No.20 of 2015 (O&M)

Date of decision: 10.4.2015

Jaiwantri Devi through her LRs Kulbir Singh and others

... Appellants

Versus

Prem Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This second appeal is directed against the judgment and decree passed by learned Additional Civil Judge (Senior Division), Ambala dated 1st September, 2010 and the appellate court decree dated 23rd September, 2014.

2. The suit of plaintiff Jaiwantri Devi presently through her LRs following her death on 9th December, 2010 is for declaration challenging two sale deeds dated 30th May, 2001 and 8th June, 2001 executed on behalf of the decedent plaintiff through her power of attorney holder being defendant No.5 Yashpal in favour of third parties who are the defendants No.1 to 4 sons of Jai Singh as illegal, null and void and not binding on he

rights of the plaintiff. The mutation sanctioned following the sale deeds are

also similarly questioned as not binding her rights to and measuring 28K-9M situate in village Suhata, Tehsil Barara, District Ambala owned by her. The land was inherited by Jaiwantri Devi mother of Smt.Gaindi Devi. It was pleaded that Jaiwantri Devi appointed Yashpal defendant No.5 as her duly constituted general power of attorney on December 7, 1981. On account of misuse of empowered authority, she cancelled the power of attorney through a cancellation deed dated 19th January, 1983. Therefore, Yashpal could not act on her behalf after cancellation of the GPA. Thus, the sale deeds were without authority, express or implied and could not have been executed on her behalf. She never handed over the possession of the suit corpus to defendants No.1 to 4 and claimed that she was still in cultivating possession of the agricultural land. She alleged that the mutations were sanctioned in connivance with the revenue authorities on the basis of the forged and fabricated sale deeds.

3. On notice, defendants No.1 to 4 contested the suit defending that they are bonafide purchasers of the suit property for valuable consideration without notice of cancellation of registered power of attorney to the holder and which position was not brought to their notice at the relevant time.

4. Yashpal, defendant No.5 filed a separate written statement pleading that the property was sold for valuable consideration for legal necessity and for the benefit of the family of the plaintiff. He had no notice of cancellation and, therefore, acted within his rights in the best interest of the plaintiff.

5. The sole controversy in this case is whether Yashpal had notice of cancellation of power of attorney by Jaiwantri Devi and if he had no notice to alienate the property in favour of third party on behalf of Jaiwantri Devi what would be the position. If he had no notice of cancellation of the power of attorney at Kalayat, a place distant from Barara Tehsil where the power of attorney was executed in 1981, then whether third party vendees can claim the benefit of being bonafide purchasers without notice for valuable consideration based on record of the revenue estate where the suit property fell.

6. Both the Courts below have examined threadbare the oral and documentary evidence adduced by the parties and have come to the conclusion that the plaintiff has failed to plead material facts in the plaint entitling her to a declaration setting aside the two sale deeds. Her deposition is limited to assert that she orally informed defendant No.5 Yashpal of cancellation of the power of attorney in 1983 but made no effort to inform the Sub Registrar at Barara where the corpus was situated nor did she inform the public at large through publication in the local newspapers. She did not plead that a copy of the cancellation deed was forwarded to Tehsil Barara and, therefore, her evidence beyond her pleadings has been rejected. Besides, Yashpal had effected other sale deeds on behalf of the plaintiff earlier but those were not apprised to the Court. She had also stated to have compromised with defendant No.5 by which he entered into a Court compromise in favour of the plaintiff but yet she stated in her cross-examination that her relations became strained with defendant No.5 and she had never seen his face since the cancellation. As to who appeared for her

during the compromise proceedings, is not explained. She did not produce any documentary evidence showing any notice or letter given to defendant No.5 that she had cancelled the GPA. The compromise was in 2003 and the circumstances could not be explained by the plaintiff in her plaint. It is well settled that there must be adequate evidence to establish the factum of notice verbally or in writing to the attorney and also to the subsequent vendees. Termination of authority of an agent does not so far as regards the agent, takes effect before it becomes known to him or so far as regards third person before it becomes known to them.

7. Still further, the courts below have recorded a finding that the registered cancellation deed was merely produced as a document but no witness, private or official, was summoned by the plaintiff to prove the documents. It is well settled that mere production does not obviate mode of proof of document. If the cancellation deed is itself doubtful as to its publicity and due reflection in the revenue record for 18 years, then there would be a tacit understanding between the plaintiff and the 5th defendant that the authority continued. The plaintiff could not dispute that she was related to the 5th defendant; was married and settled in Kalayat, while the property was situated in Barara Tehsil. If she alleged fraud against the 5th defendant, she brought no evidence to prove fraud in effecting the sale deeds. There may be express allegations of coercion or fraud with high degree of precision for the Courts to act upon it is required. The Court found from the file that the compromise effected between Jaiwantri Devi and Yashpal was not signed by her but through her counsel acting through Yashpal. It appears that the compromise was effected in a suit which went in

favour of Jaiwantri Devi but defendants No.1 to 4 filed an application for setting aside the *ex parte* judgment and decree and their plea was allowed by the appellate Court and, therefore, the proceedings that had taken place prior to the setting aside stand washed away and the adjudication of the suit has started afresh. These are separate proceedings.

8. Yashpal appeared in the witness box and deposed that the sale consideration was passed on to the plaintiff. When the defendant asserted possession passing with the sale deed, the plaintiff did not controvert the same by filing replication and, therefore, the Court concluded that she was not in possession of the corpus at the spot. For all these reasons, the first appellate Court has affirmed the findings of the trial Court after appreciating the evidence on record. The plaintiff failed to lead any evidence to show that the Sub-Registrar was informed not to register the sale deed.

9. Mr. Mamli argues on the strength of two judgments cited by him firstly; in **Gurcharan Singh and others v. Surjit Kaur and others;** 2005 (3) RCR (Civil) 628 to urge that mere entries of ownership and possession in the name of vendor is not enough to hold the transferee to be a bonafide purchaser. A person residing in the same village is presumed to have knowledge of entitlement of heirs and co-sharers in the land irrespective of revenue entries in the name of one. A transferor co-sharer is not required only to be ostensible owner but he is also required to be authorised by the other co-sharers to transfer property. The Court held in the matter of inheritance that delay alone will not help. There is no limitation prescribed by Section 65 of the Limitation Act, 1963 for challenging the mutation for establishing a right by an heir. The only way to defeat such a

suit is the proof of perfected title by adverse possession. I do not see how this precedent helps the appellant as it is clearly distinguishable. The other judgment is reported in **Rajiv Mahajan and others v. Ajit Kaur and others**; 2014 (1) PLR 393. This judgment is pressed in order to show that once a registered document is cancelled by registered cancellation deed, then the cancellation operates as constructive public notice. The question in the present case is not one of constructive notice but of actual notice not only to the purchaser but to the general power of attorney holder himself and on these two aspects, evidence of the plaintiff is lacking.

10. I have perused the plaint and the averments made therein in its 11 paragraphs. There is no pleading in para. 2 to 5 which positively asserts that Yashpal defendant No.5 was informed of the cancellation from 9th January, 1983 to 3rd May, 2001 and 8th June, 2001` respectively, i.e., during the period of cancellation and till the execution of the two subject matter sale deeds. In fact, the assertions are in the negative that Yashpal had no subsisting right to act on behalf of the plaintiff subsequent to January 9, 1983. It may be remembered that appellant made Yashpal a party to the suit. I have also read the deposition and especially the cross-examination of the plaintiff and Yashpal and find nothing there to come to a conclusion other than what both the Courts below have found. I have also read the terms of the general power of attorney [Ex.P2] and find clear recitals of right to alienate corpus conferred by the plaintiff on Yashpal, her relative.

11. For the foregoing reasons, I do not find merit in this appeal worth consideration in second appeal jurisdiction and would dismiss it as not presenting a question of law, much less a substantial one arising from

the pleadings and and the evidence adduced by the parties.

12. Resultantly, the suit to stand dismissed in confirmation of the judgments and decrees passed by the lower Courts by dismissal of this appeal.

(RAJIV NARAIN RAINA)
JUDGE

April 10, 2015
Paritosh Kumar