

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. No. 8956-C of 2015 &
RSA No. 3653 of 2015 (O&M)

Date of Decision: 07.12.2015

Rur son of Chhallo through Legal Representatives

.....APPELLANTS

VERSUS

Kulbir Singh and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. Samuel Gill, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Pathankot dated 26.04.2012 whereby the suit for declaration to the effect that the plaintiff is the owner-in-possession of the land measuring 31 Kanals 18 Marlas, the details of which have been mentioned in the head note of the suit situated in Village Ajijpur, Had Bast No. 314, Tehsil Pathankot and defendants No. 1 and 2 have no right, title or interest in the said land and the sale deed dated 26.06.2001 executed by defendant No. 3 Lakha Singh in favour of defendants No. 1 and 2 is illegal, null and void and not binding upon the plaintiff and further that the mortgage deed dated 14.09.1999 qua the land measuring 2 Acres out of the suit land executed by defendant No. 3-Lakha Singh, real son of the

plaintiff, in favour of Nasib Ram is a result of fraud and mis-representation being illegal, null and void and not binding as also the Power of Attorney dated 05.12.1996 being a forged and fabricated document prepared at the instance and on the behest of defendants No. 1 and 2 stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the District Judge, Pathankot on 12.03.2015.

2. It is the contention of the learned counsel for the appellant that the Power of Attorney dated 05.12.1996 Ex. D2 is illegal, null and void and the consequential mortgage deed dated 14.09.1999 and the sale deed dated 26.06.2001 are result of fraud and mis-representation and, therefore, cannot sustain. He asserts so on the basis of the statement of PW4-Mehal Singh, who was one of the attesting witness to the Power of Attorney Ex. D2 and had stated that the said Power of Attorney in favour of defendant No. 3, the real son of the plaintiff, was not obtained for the purpose of sale or for mortgage of the property but was for receiving some loan. He contends that the thumb impressions of the said witness were obtained on a blank paper and that once the attesting witness himself disowns the veracity and the reason, for which the said Power of Attorney was obtained, the validity of the said Power of Attorney cannot be accepted as the same is the result of a fraud and mis-statement and thus, not binding upon the appellant-plaintiff. An assertion has also been made that a complaint was filed in the office of the Superintendent of Police Ex. P9 and a statement was also made by the deceased Rur-plaintiff to the Superintendent of Police, which further shows that the said document was a result of fraud. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments and decree passed by the Courts below but do not find any merit in the same.

4. As regards the first contention with regard to the Power of Attorney dated 05.12.1996 Ex. D2 being a result of fraud and misrepresentation, the same cannot be accepted as the statement, on which reliance has been placed by the counsel for the appellant, i.e. Mehal Singh, PW4, who was one of the attesting witness of the Power of Attorney, cannot be relied upon as his statement is to be discarded especially when he has, in his cross-examination, accepted that the affidavit Ex. PW4/A (examination-in-chief) was prepared by the police and such statement of the witness cannot be said to be voluntary and, therefore, was the result of tutoring and some sort of pressure or coercion was exercised by the police at the instance of legal representative of the appellant-plaintiff. He has further admitted in his cross-examination that he had entered into a pact with Tarsem Devi, legal heir of the plaintiff, in order to reciprocate her for helping him out in a criminal case, which was registered against him. That apart, it has been stated by the said witness that the thumb impressions were obtained on a plain paper and he had put only one thumb impression and that too, on a blank paper without verification whereas the Power of Attorney is not on a plain paper rather it is on a judicial stamp paper. That apart, there are two thumb impressions, one at the time of its writing by the scribe and second at the time of registration before the Sub-Registrar. This clearly establishes that the said witness is not deposing truly rather has deposed at the instance of the plaintiffs with an intention to support them either because of the

benefit, which he wanted from Smt. Tarsem Devi or under the pressure and coercion of the police authorities at the instance of the legal representatives of Rur-plaintiff.

5. As regards the contention of the learned counsel for the appellant that the appellant-plaintiff has submitted a complaint in the office of the Superintendent of Police and has given his statement, Exs. P9 and P10 respectively, suffice it to say that the plaintiff died and, therefore, could not face the cross-examination. In any case, no records have been summoned from the office of the Superintendent of Police to prove the documents by way of leading any evidence which would show or put light upon the assertion of the appellant-plaintiff that the Power of Attorney and the subsequent act was a result of fraud and mis-statement or misrepresentation.

6. A perusal of the impugned judgments would show that the evidence, which has been produced by the respondents-defendants, clearly establishes the execution of the said Power of Attorney as not only has the scribe and the other attesting witness to the Power of Attorney been produced but the respondents-defendants have themselves stepped into witness box. It would not be out of way to mention here that the Power of Attorney holder i.e. defendant No. 3-Lakha Singh is the real son of the plaintiff, who has chosen not to appear in the suit and, therefore, it cannot be said that the absence of the said defendant would not be to the benefit of the plaintiff or at his instance.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties,

there is no illegality in the impugned judgments passed by the Courts below.

Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

December 07, 2015

pj