

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

RSA No.1077 of 2014
Date of decision: 06.02.2015

Khurshidan

...Appellant

Versus

Aatam Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Mohd. Salim, Advocate for the appellant.

1. Whether reporters of local papers 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 05.04.2012. Appeal preferred against the said decree failed and was dismissed on 08.03.2013. This is how, defendant No.2 is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a declaration that he was the owner in possession of the agricultural land and the defendants had no right, title or interest therein. And the sale deed dated 01.09.2005, executed by defendant No.3, in favour of defendants No.1 & 2, on the basis of a forged General Power of Attorney (GPA), dated 24.12.2002, was illegal and void. And thus, the same was

liable to be cancelled. Further, an injunction was also claimed, restraining the defendants from alienating the suit property, in any manner. It was averred that plaintiff happened to be the owner in possession of a land measuring 30 kanals 17 marlas. There was absolutely no relation between the plaintiff and defendant No.3. Defendant No.3 had shown himself as nephew of the plaintiff and had fabricated a General Power of Attorney as regards the suit land, bearing khewat No.29/120, khatauni No.135, khasra No.17/22, measuring approximately 42 bighas, situated in the revenue estate of village Malab, to the extent of 1/5th share. The said deed i.e. dated 24.12.2002, which was purported to have been scribed on 23.12.2002, was not only a forged document, but the same was never in the knowledge of the plaintiff. It was maintained that consolidation proceedings were completed in the year 1961-62 and at that time, old numbers of bigha and biswas were converted in the new numbers as rectangle numbers and killa numbers in kanals and marlas of the land of village Malab. At the time, when the General Power of Attorney dated 24.12.2002, was executed, there was no bigha and biswa in the suit land of village Malab. And thus, the GPA dated 24.12.2002 was wholly illegal and void. Further, plaintiff was neither present nor executed the said document. In fact, defendant No.3 even forged the Power of Attorney qua a residential plot of plaintiff, situated in Vijay Enclave Palam

Road, New Delhi and tried to sell out the same. A civil suit qua the said forged GPA was pending in the civil court at Delhi, that was used by defendant No.3 for transfer of the residential plot at Delhi. Further, defendant No.3, in collusion with the Sub Registrar, Nuh, executed a false and forged sale deed bearing vasika No.2303, dated 01.09.2005, qua the suit land in favour of defendants No.1 & 2, without satisfying himself as to whether the said document was forged and bogus or not. It was maintained that Sub Registrar, Nuh, in collusion with the Sub Registrar, misuses the official power by executing the sale deed dated 01.09.2005, in favour of defendants No.1 & 2, without taking into consideration the contents of the alleged GPA. As defendants No.1 & 2 were contemplating to alienate the suit property, pursuant to the said sale deed dated 01.09.2005, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff was neither the owner nor in possession of the suit property. It was maintained that defendants No.1 & 2 were the owners and in possession of the suit land, pursuant to a sale deed dated 01.09.2005, executed by defendant No.3, who happened to be the General Power of Attorney holder of the plaintiff. It was also maintained that defendants were bona fide purchasers for a valuable consideration without notice and knowledge. The allegation, that defendant No.3 had fabricated a General Power of Attorney qua the suit land, as averred in the plaint, was

vehemently denied. The document was purported to have been duly registered in the office of Sub Registrar, Meerut. And was alleged to have been executed by the plaintiff in favour of defendant No.3. Therefore, defendant No.3 was fully authorized to execute the sale deed, dated 01.09.2005, and the Sub Registrar, Nuh, rightly registered the said document.

In a separate written statement filed by defendant No.3, it was pleaded, inter alia, that plaintiff was neither the owner nor in possession of the suit land, as he was left with no right, title or interest post execution of the sale deed dated 01.09.2005. As regards the recital in the GPA, mentioning defendant No.3 as nephew of the plaintiff, that was alleged to be a formal requirement for registration of a document, as at times such documents i.e. GPA, are not entered unless the parties are related to each other. It was claimed that defendant No.3 had extremely cordial relations with the plaintiff. It was denied that GPA dated 01.09.2005, was a forged and fabricated document.

On a consideration of the matter in issue and evidence on record, the courts below found that there were numerous GPAs that were brought on record. Ex.D1 & Ex.D2 were also the General Power of Attorneys and so were Ex.D4 & Ex.PX. It was also observed that all these documents i.e. GPAs bear the same vasika number i.e. 2213. Further, all these documents i.e. Ex.P4, Ex.PX, Ex.D1 & Ex.D2, were purported

to have been registered at Meerut (UP). An official from the office of Sub Registrar, Meerut (UP), deposed that GPA bearing vasika No.2213 was registered at serial No.261 in the register No.4 (Bahi) and the said document was got registered by Aatam Parkash son of Nirmal Dass. He also testified that Ex.P4 was the correct copy of the GPA executed by Aatam Parkash, but the said document did not bear the photograph of Aatam Parkash i.e. plaintiff. In fact, the said document i.e. Ex.P4 bears the photograph of defendant No.3. Power of Attorney (Ex.P3) was qua a land measuring 42 bighas and not in regard to the suit property. Further, the same witness also testified that the documents (Ex.D1 & Ex.D2), were also the General Power of Attorneys, purported to have been executed by Aatam Parkash, in favour of defendant No.3 i.e. Satish Chand, but these documents did not bear the photographs of defendant No.3. And the said Power of Attorneys did not even match with the record of Sub Registrar, Meerut (UP). Accordingly, it was concluded that Aatam Parkash (plaintiff) never appeared before the office of Sub Registrar, Meerut (UP) for registration of the General Power of Attorney in question. In fact, defendant No.3 appeared himself and impersonated himself as Aatam Parkash and pasted his photographs and got the document registered in his favour. Thus, the fraud committed by defendant No.3 was writ large on the face of the record. So much so, PW1 further testified that the document

(Ex.D1) did not match with the record of Sub Registrar, as first page of the document had been changed. Further, the second page and back page of the document (Ex.D1) were coloured copies and the same did not bear the seal of their office. The document (Ex.D1) did not even match with Ex.P4. As regards defendants No.1 & 2, it was observed that they had purchased the suit property pursuant to sale deed dated 01.09.2005 (Ex.P3), on the basis of General Power of Attorney (Ex.D1), which was found to be a forged and fabricated document. It was observed that defendants No.1 & 2, before purchasing the suit property, did not care to make even bare minimum inquiries as regards the authenticity of Power of Attorney (Ex.D1) from the office of Sub Registrar, Meerut. As regards the claim of the defendants with regard to possession of the suit property, it was concluded that plaintiff was still in possession of the suit land, as reflected in the record of rights. Thus, pursuant to sale deed dated 01.09.2005, the suit property was never mutated in the names of defendants No.1 & 2. That being so, the suit filed by the plaintiff was decreed. However, an appeal preferred against the said decree by defendant No.1 failed and was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the

courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, plaintiff Aatam Parkash happened to be the owner of the suit property. There is no dispute that defendants No.1 & 2 claimed themselves to be the owner of the suit land, pursuant to a sale deed dated 01.09.2005, executed by defendant No.3, purporting to be the Power of Attorney holder of the plaintiff vide a GPA dated 24.12.2002. Thus, the short issue for determination was/is as to whether the GPA dated 24.12.2002, (Ex.D1), was indeed executed by plaintiff Aatam Parkash in favour of defendant No.3. On a due and comprehensive consideration of the material and evidence on record, both the courts concurrently recorded that plaintiff, examined Ashok Mishra (PW1), Record Keeper in the office of Sub Registrar, Meerut. The said witness testified in his statement that as per records only one Power of Attorney was registered at vasika No.2213 and the same was pasted in the register bearing No.267 Bahi No.4. He clarified that the records showed that Aatam Parkash Juneja had got the said deed executed in favour of Satish Chand. And the certified copy of the said document is Ex.P4 and the same was in sync

with the records. However, the first page of Power of Attorney (Ex.D1), produced by defendant No.3, in court did not match with the record of Sub Registrar, Meerut. He clarified that the first page of Ex.D1 was changed and the back of the first page was a xerox copy of the original stamp. And even the contents of the first page of Ex.D1 were different from the recitals of the first page of Ex.P4, that was purported to be correct as per records maintained in the office of Sub Registrar, Meerut. So much so, the photographs pasted at Ex.D1, were also different from the photographs on Ex.P4. The description of the land on page 1 of Ex.P4 and page 1 of Ex.D1 were altogether different. Meaning thereby, Ex.D1 was not the original of Ex.P4. Further, Ex.D2 was also a certified copy of the General Power of Attorney and the description of land set out in the first page of the said document was at variance with the contents of first page of Ex.D1. Further, the second page of Ex.P4 bears two photographs of respondent No.1, whereas second page of Ex.D1 bears one photograph of respondent No.1. So much so, defendant No.3, despite having been afforded numerous opportunities, did not examine even a single witness to prove that General Power of Attorney (Ex.D1) was indeed executed by the plaintiff in his favour. Naresh Kataria, Handwriting & Finger Print Expert (PW4), examined by the plaintiff, proved that the thumb impressions affixed upon the documents in question, did not tally with the

specimen thumb impressions of Aatam Parkash. That being so, the courts below rightly recorded that the Power of Attorney dated 24.12.2002 was a forged and fabricated document and thus, defendant No.3 was not competent to alienate the suit land in favour of defendants No.1 & 2. And they apparently failed to make the requisite enquiry as regards the authenticity of Power of Attorney (Ex.D1) from the office of Sub Registrar, Meerut. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 6, 2015
Rajan

(Arun Palli)
Judge