

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

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Regular Second Appeal No.4410 of 2014 (O&M)

Date of Decision: September 17, 2015

Pritam Kaur

...Appellant

Versus

Amritpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Varinder Kumar Shukla, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

In this appeal, challenge has been posed to the judgment and decree passed by the Civil Judge (Junior Division), Moga, dated 03.04.2012 by which the suit of the appellant-plaintiff for declaration to the effect that she is owner in possession to the extent of various shares in the land, details of which have been mentioned in the head note of the suit, situated in village Fatehgarh Korotona, Tehsil Zira, District Moga, with a further prayer that the power of attorney executed in favour of the respondent-defendant No.2 (husband of the appellant-plaintiff) did not confer any right on him to alienate the property and, therefore, on the basis of the said power of attorney, the sale deed executed in favour of respondent-defendant No.1, cannot be acted upon and the mutations entered as a consequence thereof, deserve to be declared as null and void, stands dismissed, against which the appeal preferred by the appellant-plaintiff also stands dismissed by the Additional District Judge, Moga, on 20.03.2014.

2. It is the contention of learned counsel for the appellant-plaintiff that the original of the alleged power of attorney dated 21.02.1995, which is the basis of the sale deed in favour of respondent-defendant No.1, has not

been produced in the Courts below and moving an application for producing secondary evidence under Section 65 of the Indian Evidence Act, 1872, would not be permissible without first making an effort for production of the original power of attorney and on failing in that endeavour thereafter only permission should have been sought and granted to lead secondary evidence to prove the said document. He on this basis contends that the power of attorney having not been duly proved would render the judgments and decree passed by the Courts below illegal and thus deserve to be set aside.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted as it is the satisfaction of the Court which is of paramount importance and if on the basis of the pleadings and the details mentioned in the application for leading secondary evidence, the Court is satisfied that the original document could not be produced and if the mandate of the statute stands fulfilled, the leading of secondary evidence can be permitted, for which the Courts below have duly and properly exercised their powers with due diligence taking into consideration the statutory requirements. There being concurrent findings recorded by the Courts below on this aspect and on the basis of consideration of the evidence and the pleadings led by the parties and there being no illegality or misreading thereof, interference by this Court is not solicited. The Courts below have properly appreciated the evidence and the same cannot be interfered with as there is no perversity in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.10198-C of 2014, also stands disposed of as infructuous.

September 17, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**