

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

**CR No.1781 of 2013
Decided on: 16.03.2016**

Jagdish Chand and others

....Petitioners

Versus

Kanta Devi and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sudhir Aggarwal, Advocate
for the petitioners.

Ms. Sharmila Sharma, Advocate
for the respondents.

REKHA MITTAL J.

The present petition has been directed against order dated 26.10.2012 (Annexure P-3) passed by the Civil Judge (Junior Division), Gurgaon, dismissing application for rejection of plaint for want of payment of proper court fee on the suit instituted by the respondents/plaintiffs.

Counsel for the petitioners has submitted that the respondents/plaintiffs have filed a suit for declaration, joint possession, injunction and mesne profits by challenging General Power of Attorney No.5129 dated 20.02.2004 and sale deeds No.2948 and 2949 dated 13.02.2012 executed and registered on the basis of the aforesaid general power of attorney. It is argued that as the sale deeds in question have been executed by the attorney on the basis of GPA No.5129 dated 20.02.2004, the plaintiffs are deemed to be executants of the sale deeds

thus, they are liable to pay *ad valorem* court fee on sale consideration mentioned in the impugned sale deeds in view of judgment of Hon'ble the Supreme Court of India "***Suhrid Singh @ Surdool Singh vs Randhir Singh and others***", 2010 AIR (SC) 2807. Further reliance has been placed upon judgments of this Court "***Amar Chand and others vs Raj Gupta and others***", 2012(2) PLR 200 and "***Horam vs Dharam Pal and others***", CR No.3992 of 2013 decided on 17.07.2013.

Counsel for the respondents/plaintiffs, on the contrary, has supported the impugned order with the submissions that in sub para (a) and (b) of para 10 of the plaint, the plaintiffs have given detailed facts on the basis whereof they have alleged that the general power of attorney, basis of the sale deeds in question is the result of fraud and forgery. It is further argued that as the contesting parties are members of the same family, signatures of the plaintiffs obtained on blank papers on the pretext of permission for running a school and opening bank accounts, etc. appears to have been used for the purpose of preparing the power of attorney in question which was got registered at Delhi despite prohibition of registration of GPA from outside National Capital Territory of Delhi vide letter No.F1 (31/Regn./Div.com/2002/165 dated 29.05.2003 issued by the Inspector General of Registration, Delhi and reiterated in the minutes of meeting in the office of Divisional Commissioner, Government of NCT, Delhi circulated vide letter No.F1 (35)/Regn./Div. Commr/2002-278 dated 14.07.2003. It is further argued that the plaintiffs neither went to Delhi to get the said power of attorney registered nor purchased stamp papers of GPA nor signed in the register

of stamp vendor, in the records of Sub Registrar III, New Delhi, Asaf Ali Road and the Deed Writer, sufficient to show that the power of attorney was prepared by using signatures obtained on blank papers on the aforesaid pretext. It is further argued that on the basis of said power of attorney, two sale deeds bearing Vasika Nos.2948 and 2949 dated 13.02.2012 were executed and registered by defendant No.1 namely Jagdish Chand in favour of his wife Smt. Gayatri Devi and a lease deed bearing Vasika No.261 dated 01.05.2012 by defendants No.1 and 2 in favour of defendant No.5 i.e. J.P. Memorial Education Society. It is argued with vehemence that as the general power of attorney and other transactions are based upon fraud and forgery, no such contention of the petitioners can be accepted that the sale deeds executed on the basis of forged general power of attorney would be construed as sale deeds executed by the respondents/plaintiffs to call upon them to pay *ad valorem* court fee on the sale consideration mentioned in the sale deeds challenged by the respondents/plaintiffs. It is further argued that keeping in view peculiar facts and circumstances of the present case, the judgments relied upon by counsel for the petitioners cannot enure to the benefit of the petitioners.

I have heard counsel for the parties and perused the records.

There cannot be any dispute about the position in law laid down by Hon'ble the Supreme Court in *Suhrid @ Sardool Singh's case (supra)* wherein it has been laid down that if the executant of the deed seeks cancellation of the deed, he has to pay *ad valorem* court fee on

the consideration stated in the sale deed.

In *Amar Chand and other's case (supra)*, Mam Raj and Chatra filed a suit for declaration claiming that the general power of attorney dated 20.01.1987 and the sale deed dated 06.07.2005 are wrong, illegal, null and void, sham and bogus document and are not binding upon the plaintiffs. The Court by relying upon the judgments in *“Tarsem Singh and others vs Vinod Kumar and others”*, CR No.4753 of 2005 decided on 15.07.2011 and *“Shalimar Estate vs Davinder Kumar”*, 2001(1) R.C.R. (Civil) 500, of this Court upheld the order passed by the trial Court whereby the application filed by respondent No.1/defendant under Order 7 Rule 11 CPC was allowed and the petitioners were directed to pay *ad valorem* court fee. Similarly, in *Horam's case (supra)*, this Court upheld the order passed by the trial Court allowing application moved by defendant No.2 under Order 7 Rule 11 CPC directing the plaintiff/petitioner to pay *ad valorem* court fee on sale consideration mentioned in the sale deed, challenged in the suit. In the said case, the plaintiff/petitioner has challenged the sale deed dated 12.03.2007 being illegal, null and void, etc. on the plea that Rajesh Kumar and defendant No.4-Hem Raj Khatana, Advocate obtained thumb impressions of the plaintiff on typed papers along with sale deed, which were prepared as general power of attorney dated 19.01.2007 and 02.02.2007 and on the basis thereof, impugned sale deed dated 12.03.2007 was executed by the attorney on behalf of the plaintiff. In both the judgments relied upon by counsel for the petitioners, no detailed facts constituting the allegations of fraud or

forgery in preparing the general power of attorney have been mentioned.

In the case at hand, the plaintiffs have given a detailed account as to why and how the general power of attorney, basis of the sale deeds, is the result of forgery and collusion of defendant No.1 with Sub Registrar and a witness of power of attorney namely S.K. Yadav son of C.S. Yadav. The plaintiffs have alleged that they never went to Delhi to get the general power of attorney registered, did not purchase the stamp papers, did not sign in the register of the stamp vendor, Deed Writer and in the records of Sub Registrar III, New Delhi. In the given facts and circumstances, it is difficult to accept plea of the petitioners at this stage that the sale deeds in question are to be construed having been executed by the plaintiffs and thus, they are liable to pay *ad valorem* court fee on the sale consideration of the sale deeds. Another important aspect that invites consideration is that in the judgments of this Court relied upon by the petitioners, application filed by the respondent/defendant under Order 7 Rule 11 CPC was allowed and the petitioners/plaintiffs were directed to pay *ad valorem* court fee, as a consequence, they filed the revision petitions before this Court. On the contrary, in the instant case, the application under Order 7 Rule 11 CPC has been dismissed by the trial Court and the defendants have approached this Court and assailed the order and issuance of directions for payment of *ad valorem* court fee by the respondents/plaintiffs. A full bench of this Court in “**Arjan Motors vs Girdhara Singh and others**”, **1978 PLJ 36**, has held in the following terms:-

*“The learned counsel for the petitioner states that in view of the latest judgment of their Lordships of the Supreme Court in **Shamsher Singh vs Rajinder Prashad, 1973 PLJ 686**, the question of court-fee cannot be agitated by this clients in this petition under Section 115 of the Civil Procedure Code. The petition is accordingly dismissed without any order as to costs.”*

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed.

Before parting with this order, it is pertinent to mention that in case the plaintiffs/respondents fail to substantiate their contention in regard to the power of attorney dated 20.02.2004 to be the result of fraud and forgery, the necessary consequence may be failure of their suit but at the same time, it would be open for the trial Court to advert to the issue of payment of court fee by the respondents/plaintiffs.

(REKHA MITTAL)
JUDGE

16.03.2016
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