

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

**Regular Second Appeal No.4057 of 2011 (O&M)
Date of Decision: January 18, 2016.**

Mohan alias Meenu and others

.....APPELLANT(s).

VERSUS

Sumer Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Jaswal, Advocate
for the appellant (s).

Mr. Mani Ram Verma, Advocate
for respondents No.1 and 2.

SURINDER GUPTA, J.

This is appeal by Mohan and others, who were defendants No.1 to 5 in civil suit No.76 of 1999 filed by Sumer Singh and Manoj Bai against the concurrent judgments of the Courts below allowing the relief of declaration that the plaintiffs are owners in possession of the suit land and the general power of attorney dated 07.04.1997 in favour of defendants No.1 and sale deed executed by defendant No.1 in favour of defendants No.2 to 5 are illegal, null and void.

2. The suit property is the 1/5th share of land measuring 93 kanals 17 marlas comprised in khewat No.297 khatauni No.668 and 1/10th share of land measuring 67 kanals 9 marlas comprised in khewat No.298 khatauni

No.669 situated in village Kelanga, Tehsil and District Bhiwani as per jamabandi for the year 1990-91.

3. Case of the plaintiffs, in brief, is that they are owners in possession of aforesaid land measuring 25 kanals 11 marlas and never appointed defendant No.1 Omwati as their attorney vide general power of attorney No.14 dated 07.04.1997. She in collusion with defendants No.6 to 10 got general power of attorney scribed by fixing photographs of defendants No.7 and 8 in place of plaintiffs, got general power of attorney attested on the identification of defendant No.9. The general power of attorney is result of fraud, misrepresentation and thus liable to be set aside.

4. Defendant No.1 on the basis of power of attorney dated 07.04.1999 sold the suit land belonging to plaintiffs to her children, defendants No.2 to 5 vide sale deed No.208 dated 21.04.1997. That sale deed was also scribed by defendant No.6, who had scribed power of attorney dated 07.04.1997 and witnessed by defendant No.9. The sale deed and consequent mutation sanctioned on the basis of sale deed are illegal, null and void and not binding on the rights of plaintiffs. A criminal case vide FIR No.247 dated 04.09.1997 was also got registered against the defendants at Police Station Civil Lines, Bhiwani for playing fraud and defendants were requested many times to get the impugned sale deed and mutation cancelled but they did not pay any heed.

5. Defendants No.1 to 4 did not appear to contest the suit and were proceeded ex parte. They were later allowed to join the proceedings without filing any written statement.

6. Only defendant No.5 contested the claim of the plaintiffs by

filing written statement, alleging therein that the general power of attorney by the plaintiffs in favour of defendant No.1 was validly executed. In order to grab the suit land which had already been sold, plaintiffs have maliciously challenged the general power of attorney and subsequent sale on the ground of fraud and misrepresentation. In the criminal case got registered by them, the plaintiffs did not turn up to support their claim and that case has since been dismissed. He alleged that the defendants are bona fide purchaser of the suit land in good faith. Defendant No.1 is admittedly 'Mausi' of plaintiffs and used to look after the land. While purchasing the land, there could not be any doubt in the minds of the defendants that any fraud had been committed. They believed the representation of defendant No.1 that she is general power of attorney of plaintiffs. The land was purchased for a valid consideration of ₹1,80,000/- which was paid to defendant no.1 being attorney of plaintiffs.

7. Learned Additional Civil Judge (Senior Division), Bhiwani relying on the report of the hand-writing and finger prints experts observed that the disputed thumb impression on general power of attorney were not of Sumer Singh and Mano Bai plaintiffs and the disputed signatures were also not identical with the signatures of the plaintiffs. A report was also given by the Forensic Science Laboratory, Haryana, Madhuban in the criminal case which was also relied upon by learned Additional Civil Judge (Senior Division), Bhiwani while reaching the above conclusion. Consequently, the general power of attorney and the sale deed executed on the basis of that general power of attorney were held to be illegal and forged documents, not binding on the rights of the plaintiffs. The first Appellate Court affirmed the findings of learned Additional Civil Judge (Senior Division), Bhiwani.

8. I have heard learned counsel for the parties and have perused the record of the Courts below with their assistance.

9. Learned counsel for the appellants has argued that the Courts below have relied on the report of the Hand-writing Expert and it is a well known fact that the experts always support the party engaging them. The photographs of the plaintiffs on the general power of attorney and sale deeds are not denied which prove that they had got the general power of attorney and sale deed executed at their behest.

10. Learned counsel for respondents No.1 & 2 has argued that both the Courts have relied on cogent and convincing evidence before it while reaching the conclusion that general power of attorney No.14 dated 07.04.1997 was not executed by the plaintiffs. The Court has not based its opinion merely on the report of the hand-writing expert pertaining to the signatures of the plaintiffs, rather it has relied upon the report of Finger Prints Expert. The private finger prints expert examined by the plaintiffs and expert of Forensic Science Laboratory, Haryana, Madhuban have categorically reported that the thumb impression on the general power of attorney were not of plaintiffs and defendants-appellants have not produced any evidence to counter the opinion of the Finger Prints Expert. Both the Courts have committed no error of law and fact while reaching the conclusion that general power of attorney and sale deed are illegal, result of fraud and misrepresentation.

11. On giving a careful thought to the submissions of learned counsel for the parties and on perusal of the record, I find no merits in this

appeal. This argument of learned counsel for the appellants that Hand

Writing and Finger Prints Experts have the tendency to side with the party engaging them, has no merits in the facts and circumstances of this case. The private expert examined by the plaintiffs has given a definite opinion that the disputed thumb impression of plaintiffs on the general power of attorney do not talley with their specimen thumb impressions. No doubt, the comparison of hand writing is not a perfect science but it is not so in the case of comparison of finger prints. The appellants-defendants have not dared to examine their own expert to prove that the general power of attorney was bearing thumb impression of the plaintiff. The report of PW5 Gulshan Rai, Deputy Director, Forensic Science Laboratory, Haryana, Madhuban that the specimen signatures of plaintiffs do not talley with the disputed signatures on the general power of attorney, further corroborates the statement of private expert.

12. On perusal of the records and judgments of the Courts below, I find no legal or factual infirmity therein, calling for any interference.

13. No substantial question of law requiring determination arises in this appeal, which has no merits.

14. Dismissed.

January 18, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE