

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

**R.S.A No.4499 of 2012 (O&M)
Date of decision :05.08.2016**

Vivek Chawla and another

..... Appellants

Versus

Jaswant Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. K.B.Raheja, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 11.04.2012 passed by learned District Judge, Ferozepur, vide which the appeal filed by the appellants-defendants against the judgment and decree dated 09.10.2010 passed by learned Civil Judge (Sr. Division), Ferozepur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent Jaswant Singh filed the suit for declaration that he is co-sharer in possession of the land measuring 9 Kanals out of the total land measuring 18 Kanals 1 Marla situated at village Bhamba Hazi, Tehsil and District Ferozepur and the sale deed dated 23.05.2000 executed by defendant no.1 in favour of defendant no.2

with regard to the suit land on the basis of fake power of attorney dated 23.12.1997 is wrong, null and void, without consideration and is not binding on the rights of the plaintiff. The appellant-plaintiff also sought the consequential relief of injunction restraining defendant no.2 from alienating the land in dispute to some other persons and also from dispossessing the plaintiff from the suit land.

4. As per the averments in the plaint, the plaintiff is owner in possession of the land in dispute which was transferred to him from the Central Government on the basis of his possession. The conveyance deed in respect of the land in question was executed in his favour on 26.04.1999 registered on 30.07.1999. It is further pleaded that defendants came to the spot and declared themselves owner of the land on the basis of the sale deed dated 23.05.2000 having been executed by defendant no.1 in favour of defendant no.2 on the basis of power of attorney dated 23.12.1997. It was further pleaded that he never executed any such power of attorney and the same is forged and fabricated document. He is also an illiterate person and always appended his thumb impression and no document was signed by him. Balwinder Singh, the attesting witness has also not attested the said power of attorney and it does not bear his signatures. Thus, the sale deed dated 23.05.2000 executed on the basis of forged power of attorney is null and void and is not binding on the rights of the plaintiff.

5. The appellants-defendants contested the suit on the grounds *inter alia* that defendant no.1 was duly appointed as his general power of attorney by the plaintiff vide power of attorney dated 23.12.1997.

Thereafter, defendant no.1 executed the sale deed in his capacity as general power of attorney of the plaintiff, which is legal, valid and binding on the plaintiff. Defendant no.2 is a *bona fide* purchaser for valuable consideration. The appellants-defendants denied the averments in the plaint that the said power of attorney is a forged and fabricated document and does not bears the signatures of Balwinder Singh, the attesting witness. It was further pleaded that defendant no.2 is in established possession of the land in dispute and plaintiff is trying to dispossess him in an illegal and forcible manner. With these pleas, the appellants-defendants pleaded for dismissal of the suit.

6. Plaintiff-respondent filed the replication to the written statement of defendants. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff?OPD
4. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction?OPD
5. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment and decree dated 09.10.2010 decreed the suit of the plaintiff-respondent with costs.

8. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal, which was dismissed by the learned First Appellate Court, vide impugned judgment and decree dated

11.04.2012. Hence this Regular Second Appeal by the appellants-defendants.

9. I have heard Mr.K.B.Raheja, Advocate, learned counsel for the appellants and have meticulously gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellants contended that the plaintiff-respondent has duly executed the power of attorney dated 23.12.1997 in favour of the appellant no.1 Vivek Chawla. He contended that the plaintiff has admitted that the said power of attorney bears his photograph. The same is a registered document bearing the endorsement of the Sub-Registrar. He contended that the registered document is presumed to have been registered in accordance with law. The scribe of the power of attorney namely Smt. Chander Prabha, the petition writer has also corroborated the case of the appellants that the power of attorney was drafted by her on the instructions of the plaintiff. Thus, he contended that plaintiff has duly appointed appellant no.1-Vivek Chalwa as his attorney authorizing him to sell the suit land. Appellant-defendant no.2 Vijay Kumar is the *bona fide* purchaser for valuable consideration. Thus, he pleaded that the learned Courts below have not properly appreciated the evidence.

11. I have duly considered the aforesaid contentions, but do not find any substance in the contentions raised by learned counsel for the appellants.

12. As per the case of the plaintiff-respondent, he has never executed the general power of attorney dated 23.12.1997 in favour of the appellant-defendant no.1. Thus, he has pleaded that the sale deed dated

23.05.2000 executed on the basis of said power of attorney by defendant no.1 in favour of defendant no.2 is illegal and is not binding on his rights. The appellants-defendants have taken the plea that the plaintiff-respondent has duly executed the general power of attorney dated 23.12.1997 in favour of defendant no.1, which is a legal and valid document. Thus, the sale deed executed by defendant no.1 in favour of defendant no.2 being the general power of attorney is also legal and valid document and the plaintiff is bound by the said sale deed. It is also alleged that defendant no.2 is a *bona fide* purchaser with valuable consideration.

13. The entire case of the appellants-defendants was based on the fact as to whether the plaintiff has validly executed the power of attorney dated 23.12.1997 in favour of defendant no.1 or not. So, the burden to prove that plaintiff has validly executed the power of attorney dated 23.12.1997 in favour of defendant no.1 was upon the appellants.

14. The plaintiff while appearing in the witness box has categorically denied the execution of any power of attorney in favour of defendant no.1. He has categorically deposed that the said power of attorney is illegal, null and void and is forged and fabricated document. He further deposed that he is an illiterate person and affix the thumb impression on the documents. He also pleaded that the said power of attorney does not bears the signatures of Balwinder Singh, the attesting witness. Plaintiff has also examined Balwinder Singh, the alleged attesting witness of the power of attorney as PW-3. He has also categorically deposed in his affidavit that he never signed the power of

attorney. The same does not bear his signatures and is a forged document. He also deposed that plaintiff is an illiterate person and he only thumb marks the documents. Thus, the plea raised by the plaintiff that he never executed the power of attorney dated 23.12.1997 in favour of defendant no.1 is fully supported from the aforesaid evidence.

15. The power of attorney in dispute no doubt is a registered document, but the appellants were required to lead the cogent and convincing evidence to establish the identity of the person who was the executant of the power of attorney. PW-3 Balwinder Singh and one Ravi Mehta, Municipal Councilor, Ferozepur were the attesting witnesses of the power of attorney. DW-4 Smt. Chander Prabha, the scribe has categorically deposed in the cross-examination that she does not know the plaintiff personally. So, the statement of Smt. Chander Prabha, the petition writer can be of no help to the appellants to establish the identity of the executant of the sale deed. In order to establish the identity of the executant of the power of attorney, the appellants should have examined one of the attesting witness. But, no attesting witness has been examined by the appellants. Rather, the plaintiff has examined Balwinder Singh, who was shown as one of the attesting witness on the power of attorney, but he has also denied his signatures on the power of attorney. Appellants have not examined any expert witness to establish that the power of attorney dated 23.12.1997 in-facts bears the signatures of the plaintiff and Balwinder Singh, the attesting witness. It is very surprising to note that appellant no.1-Vivek Chawla has appeared in the witness box as DW-1. He tendered in evidence his affidavit Ex.DW1/A. Appellant-Vijay

Kumar, the purchaser of the land has also stepped into the witness box as DW-2. He tendered into evidence his affidavit Ex.DW2/A. But, they did not turned up to face the cross-examination. So, their examination in chief cannot be read into evidence. Thus, even the appellant-Vivek Chawla, the alleged power of attorney and appellant-Vijay Kumar, the purchaser of the land did not appeared to face the cross-examination for the reasons best known to them which raises strong adverse inference against the appellants. In these circumstances, the self serving statement of DW-5 Rajiv Arora, the power of attorney of Vivek Chawla will not advance the case of the appellants. He has clearly admitted in the cross-examination that he was not present at the time of registration of the power of attorney. DW-5 Rajiv Arora was neither present at the time of execution of the power of attorney dated 23.12.1997 nor he is attesting witness thereof. So, he cannot be said to have the personal knowledge regarding the execution of the power of attorney by the plaintiff in favour of the appellant-defendant no.1-Vivek Chawla.

16. Mere, this fact that the power of attorney bears the photograph of the plaintiff will not establish the same to be legal and validly executed by the plaintiff. Thus, once the defendants have not been able to establish that the appellant-Vivek Chawla was duly appointed as the power of attorney by the plaintiff and he had executed the power of attorney dated 23.12.1997 in favour of defendant no.1. So, he had no authority to execute the sale deed of the suit land owned by the plaintiff in favour of defendant no.2 alleging to be the attorney of the plaintiff and is liable to be set aside. The said sale deed is null and void being based on

the false and forged power of attorney, which could never be binding on the rights of the plaintiff and is liable to be set aside. Thus, the plaintiff was proved to be the owner and in possession of the land in dispute. Consequently, he was entitled for the declaration and injunction as prayed for.

17. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

18. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

19. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 05, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No