

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

RSA No. 3381 of 2013 (O&M)

Date of Decision.22.08.2016

Vinod Kumar Mahajan and another

.....Appellants

Vs.

Jagdev Kaur and others

.....Respondents

Present: Mr.Vikas Bahl, Senior Advocate with
Mr. Parwinder Singh, Advocate and
Ms. Japneet Kaur, Advocate
for the appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The appellants-defendant Nos.5 and 6 are aggrieved of the concurrent finding of fact whereby the suit for partition and rendition of account relating to SCO No.273, Sector 35-D, Chandigarh and for declaration that the power of attorney alleged to have been registered on 14.08.1996 before the Sub Registrar, U.T., Chandigarh Ex.DW10/B has been decreed by drawing preliminary decree and the agreement to sell, irrevocable General Power of Attorney and the Will alleged to be executed and registered in the office of Sub Registrar of Chandigarh on 14.08.1996 had been held to be result of fraud, forgery and impersonation, much less, no bearing on the rights, title and interest of the plaintiff to the extent of 1/3rd share in the suit property, in essence, the documents to the extent of 1/3rd share of the plaintiff have been set aside and she had been held to be owner to the extent of 1/3rd share in the suit property and held entitled for its

partition and rendition of account.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Parvinder Singh, Advocate and Ms. Japneet Kaur, Advocate appearing for the appellants in support of his arguments submitted that the property situated in Chandigarh i.e. SCO No.273, Sector 35-D, Chandigarh, as per the existing bye laws, cannot be partitioned. He submitted that Jagdev Kaur, respondent No.1-plaintiff filed a suit for partition and rendition of the account of the aforementioned SCO No.273, Sector 35-D, Chandigarh *viz-a-viz* challenging only one power of attorney dated 14.08.1996, Ex.DW10/B on the ground that her husband, Hakam Singh, had been managing the building after its completion and had been letting out the premises and collecting rent. Her husband Hakam Singh and Gurjeet Pal Singh allegedly conspired together with Som Raj Sharma, Advocate, Vinod Kumar Mahajan and Reeta Mahajan by forging the power of attorney dated 14.08.1996 and on the basis of said power of attorney, some agreements have been arrived at, much less, some payments have also been received. Even it is also the pleaded case of the plaintiff that she approached the police on 21.09.1996. He further submitted that as per the averments in para 9 of the plaint, it has been stated that Vinod Kumar Mahajan and Reeta Mahajan have produced the copy of the alleged power of attorney before the police, which was never executed by the plaintiff, much less, she never appeared before the office of Sub Registrar. There was also a pleading in the plaint that her signatures must have been secured by misrepresentation and fraud. It is in this background of the matter, the aforementioned suit was filed.

The applicants-defendants appeared upon notice, filed the detailed written statement and contested the suit by filing numerous preliminary objections *viz-a-viz* the maintainability of the suit on the ground

that the power of attorney in question was validly executed by Jagdev Kaur and the property in question had been validly sold by all the three co-sharers in their favour through agreement to sell dated 14.08.1996, Ex.DW10/A entered into by the plaintiff, Hakam Singh and Gurjeet Pal Singh, defendant Nos.1 and 2 respectively, with appellants-defendant Nos.5 and 6 and the aforementioned agreement to sell had never been challenged. Even other documents i.e. irrevocable general power of attorney, Ex.DW10/C executed by her, Hakam Singh, defendant No.1 and Gurjeet Pal Singh, defendant No.2 in favour of T.R. Mahajan i.e. father of appellant No.1 and also in favour of Santosh Kumar Gupta, Wills Ex.DW10/E to Ex.DW10/G executed by the aforementioned persons in favour of defendant Nos.5 and 6, power of attorney dated 23.07.1986, Ex.DW4/A, executed by Jagdev Kaur, Charan Singh @ Charanjit Singh son of Hakam Singh and Gurjeet Pal Singh son of Hakam Singh in favour of Hakam Singh, have not been challenged, much less, the aforementioned power of attorney i.e. Ex.DW4/A had not been cancelled so far. Even the agreement to sell dated 24.06.1996, Ex.DW9/3 entered into by Hakam Singh on his behalf and as well as attorney of Jagdev Kaur dated 23.07.1986 Ex.DW4/A and Gurjeet Pal Singh, defendant No.2 with the appellants-defendant Nos.5 and 6 had also not been challenged. It was a complete sale of the property as was purchased through the aforementioned documents against a valuable sale consideration. He further submitted that there was a gross misreading and misconstruing by both the Courts in not referring to testimony of DW10, H.S. Nagra, the Sub Registrar before whom the aforementioned all the documents dated 14.08.1996 had been registered. Even the respondent No.1-plaintiff had admitted her photograph on the aforementioned

documents. Though candid enough to deny signatures, she had been audacious enough to deny his signatures even on the plaint.

The suit was also not maintainable as neither T.R. Mahajan nor Santosh Kumar Gupta have been impleaded as parties. Even there is no challenge to the registered Wills executed by her. In fact, it was a complete sale which was permissible in law and the judgment rendered by the Hon'ble Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another 2012(1) SCC 656** would not apply. The irrevocable General Power of Attorney, Ex.DW10/C, as already stated above, has also not been challenged. PW-5, Davinder Parshad, handwriting expert, examined on behalf of the plaintiff, in cross-examination stated that he compared the signatures over the plaint as well as the signatures obtained in the Court on 15.09.1999, in essence, all the signatures were given after raising of the aforementioned dispute. He candidly admitted that he had not taken any sample of standard signatures. It is a common practice by a person that after a long time, he/she does not sign in the same manner as has been done earlier. The ingredients of fraud, much less, misrepresentation as per the provisions of Section 65 of the Indian Evidence Act have not been complied with. In support of his contention, he relied upon judgment of this Court in **Prabhat Singh and another Vs. Kamla Devi and others** passed in RSA No.5029 of 2011 decided on 01.09.2015 and **Tejbir Singh Vs. Darshan Kumar (dead) and others 2009(2) PLR 399** that registration of the document is a notice to entire world. He also relied upon judgment of this court in **Manjit Singh Vs. Ramesh Kumar and another 2012(6) RCR (Civil) 2983** to contend that signatures considered by the expert as standard signatures were appended after the execution of the alleged agreement to

sell, therefore, the person would always bear a different signature in order to have the favourable opinion. He further relied on the ratio decidendi culled out in the judgment of this Court in *Sohan Lal Vs. State of Haryana 2001 (4) RCR (Civil) 483*, to contend that once there is specific pleading in the written statement and there is no replication, the same is deemed to be admitted.

On the contrary, DW4, Jassy Anand, handwriting expert had submitted her report Ex.DW4/1 and compared the signatures by taking from the originals but taken into consideration the standard/admitted signatures. She mentioned in the report that the documents bore the signature of respondent-plaintiff. Even Dr. Ravinder Sharma, PW6 had also deposed that he had not prepared any photographic chart for the purpose of comparison. All these factors have gone unnoticed, much less, even not referred to. It is also brought on record that the plaintiff had admitted in cross-examination that she had cordial relationship with Gurjeet Pal Singh. In this context, he has drawn the attention of this Court to the testimony of plaintiff as well as DW10, H.S. Nagra. The aforementioned witness to a specific question in the examination-in-chief admitted that the document Ex.DW10/B i.e. the subject matter of *lis* in the suit was attested by him and he compared the same with the office copy maintained in the office of Sub Registrar. He also stated that Jagdev Kaur, plaintiff, had executed various other documents as mentioned above and the documents under challenge i.e. DW10/B was entered at Sr. No.3006, Book No.4, Volume 192 page 164 on 14.08.1996. He further submits that the aforementioned documents are registered and they carry a presumption of truth unless and until they are rebutted. On the contrary, the respondent-plaintiff has not led any evidence

to dispel the presumption. He also drawn attention of this Court to the statement of PW-4, respondent-plaintiff where she admitted the photographs on all the registered documents, much less, cordial relationship with her sons Gurjeet Pal Singh and Charanjit Singh. In view of such cordial relationship, he submitted that there was no fraud or misrepresentation. She had further gone to the extent of even denying her signatures on the affidavit tendered in examination-in-chief, PW4/A. She feigned ignorance with regard to the production of revoked power of attorney and volunteered that she had not retained it. To a question asked about denial or admission of her signatures appended on Ex.PW4/7, she admitted that PW4/7 bore her signatures. He further submitted that the Courts below have unnecessarily influenced by the fact that photographs affixed of the plaintiffs were black and white and only carries the signatures on photographs and therefore, it is a suspicious circumstance but the fact remains that all the documents were executed in the presence of the Sub Registrar. In order to lend support to his arguments, he submitted with eloquence and vehemence that the Courts below, though have given a finding that agreement to sell dated 24.06.1996, Ex.DW9/3 stands proved but declined to take its cognizance on the premise that it was neither registered nor stamped. In fact, it did not appreciate that it was merely agreement to sell and as per the settled law, the agreement to sell does not require registration. The Courts below have wrongly and erroneously held that the appellants have not been able to show the payment of sale consideration. In fact, the said finding is totally belied on the fact of it as the payment of Rs.11 lac was made through three different pay orders of Rs.3,66,667/- of each and one of them was in favour of Jagdev Kaur, thus, earnest money of Rs.21.60 lacs had been handed over to defendant

No.1 Hakam Singh as power of attorney holder of Jagdev Kaur. If it was not sharing of the money amongst the plaintiff and defendant Nos.1 and 2, it was amongst the co-sharers and it would not be a ground to challenge the power of attorney and as well as seek partition. In fact, it is an act of aggrandizement. In support of his contention he relies upon judgment of this Court in **Romesh Mohan and another Vs. Raj Krishan and others 1984 PLR 211** that where the vendor has received the sale consideration and executed a document like irrevocable general power of attorney, it would be a sale as per the provisions of Section 202 of the Contract Act.

The Courts below have further erred in law as well as facts to hold that Jagdev Kaur had strained relationship with her husband, which have completely overlooked the categorical admission made by the plaintiff that she had a good relationship with her sons and the address of Hakam Singh and Gurjeet Pal Singh is same and in fact, they were living together and both the defendants i.e. Hakam Singh and Gurjeet Pal Singh, defendant Nos.1 and 2 supported the case of the plaintiff by admitting that they along with Jagdev Kaur had executed the irrevocable General Power of Attorney, Ex.DW10/B in favour of appellants i.e. defendant Nos.5 and 6 and thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the following substantial questions of law as drawn in the memorandum of appeal:-

- (i) Whether the findings returned by both the Courts below are based upon non-appreciation and overlooking of the evidence on record and thus, resulting into perverse findings?
- (ii) Whether in view of the facts and circumstances of the case in hand the learned Courts below were justified in discarding

the documents in question although the same have been duly proved on record by the Sub Registrar himself who appeared in the witness box as DW10?

(iii) Whether the presumption under Section 60 of the Registration Act read with Section 114 of the Indian Evidence Act are to be taken in favour of the appellants, as the documents are registered and proved by the registering authority himself?

Per contra, Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, Advocate appearing for the respondents-plaintiffs submits that concurrent finding of fact cannot be interfered as the Courts below have on the preponderance of the evidence rightly decreed the suit. The appellants-defendant Nos.5 and 6 have failed to prove on record factum of payment of Rs.32.60 lacs to the owners, out of which Rs.11 lacs have allegedly been paid. In fact, other payments had not been made. The relationship of the plaintiff became strained with Hakam Singh in the year 1992-93 whereas the document under challenge is of the year 1996. He has taken me to the finding rendered by the lower Appellate Court to contend that photographs bearing signatures of the plaintiff on all the documents dated 14.08.1996 are such which are inscribed on the photograph itself. The signatures had not extended to the paper, thus, the photograph already bore the signatures of Jagdev Kaur, that had been affixed on the document later on. Therefore, it has been proved on record that Jagdev Kaur was not present at the time of registration of the aforementioned documents, in essence, the signatures had not cross the photograph. The factum of relationship having been strained is evident from the copy of the bail order

dated 04.01.2003. The appellants-defendants have not been able to establish that the pay orders which have been prepared in the name of Jagdev Kaur were ever encashed by her or not. The best available evidence to the defendants was that of Som Raj Sharma, Advocate, who scribed the disputed documents but he was not examined, thus, the defendants cannot be said to be bona fide purchasers by taking up the aid of provisions of Section 41 of the Transfer of Property Act.

He further submitted that PW6, Dr. Ravinder Sharma, Assistant Govt. Examiner has also supported the opinion given by PW-5, Davidner Parshad and that the document was received in the laboratory through SSP, U.T., Chandigarh. The said witness deposed that standard writing of Jagdev Kaur taken from the police file in criminal case titled State Vs. Manpreet Singh and others” was compared with the disputed signatures on the Will and general power of attorney dated 14.08.1996 and on the basis of that, opinion was given, thus, urges this Court for dismissal of the appeal with exemplary costs.

In support of his contentions, he relies upon judgment of Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another 2012(1) SCC 656; Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others 2013(1) PLR 195* that the agreement containing clause of part performance of the contract by delivery of possession, requires registration.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Vikas Bahl, Senior Advocate for the following reasons:-

- (i) The lower Appellate Court being last court of fact and law is

enjoined by the obligation to refer each and every document, much less, oral testimony. There is a reference to the testimony of DW-10, H.S. Nagra, Sub Registrar in paragraph 8 at page 146 of the paper book but while rendering the finding, the lower Appellate Court has completely remained oblivious of the same whereas on examination of his testimony, he has categorically deposed that he had personally verified the facts from the parties and matched their identity with the photographs affixed, the contents of the documents were verified from the parties who executed the same, to be correct and were asked to sign on the endorsement. Even the witnesses also signed thereafter on the endorsement and after that the documents were registered. He deposed with regard to the execution of the agreement to sell dated 14.08.1996 Ex.DW10/A, irrevocable General Power of Attorney Ex.DW10/C, Wills Ex.DW10/E to DW10/G. All the aforementioned documents have not been challenged by the plaintiff except Ex.DW10/B i.e. irrevocable General Power of Attorney executed by the plaintiff along with defendant Nos.1 and 2, Hakam Singh and Gurjeet Pal Singh in favour of the appellants-defendant Nos.5 and 6 whereas the irrevocable General Power of Attorney, Ex.DW10/C and Wills, Ex.DW10/E to DW10/G and Agreement to Sell dated 14.08.1996, Ex.DW1-/A and Agreement to Sell dated 24.06.1996, Ex.DW9/3 and power of attorney dated 23.07.1986, Ex.DW5/A executed by her and her both sons Charan Singh @ Charanjit Singh and Gurjeet Pal Singh in favour of Hakam Singh have not

been challenged so far. Even no attempt had been made to seek amendment of the plaint. For the sake of brevity, testimony of DW-10 reads as under:-

“.....Thereafter, I personally verified the facts from the parties and match their identity with the photographs affixed. Thereafter, the contents of the documents were verified from the parties and then accept the same to be correct only thereafter they were asked to sign on the endorsement and witnesses also signed thereafter at the endorsement and only thereafter I registered the documents. One copy of those documents is kept on the record of the Sub Registrar and one copy is given to the party.....The photographs of both the parties. i.e. five in numbers of Hakam Singh, Jagdev Kaur, Gurjit Pal Singh, Vinod Kumar Mahajan and Rita Mahajan were duly affixed. I personally verified from all the five persons about their identity through the witnesses No.1 Sh. Som Raj Sharma. The presentor signed in my presence and executants also signed in my presence and thereafter agreement to sell was registered. Even the witnesses signed in my presence. All the five were personally present before me at the time of registration of agreement to sell Ex.DW10/A. I have seen signatures on endorsement and the document is duly registered. Same is Ex.DW7/A, on the back side of first page of DW10/A. All the five parties admitted the contents of the same. This document Ex.DW10/A has been regd. at serial No.1174, book No.1, Volume 106 page No.83 of 14.8.1996. Similarly, another document irrevocable General Power of Attorney was presented before me for registration by Hakam Singh, Jagdev Kaur, Gurjit Pal Singh wherein they appointed Vinod Kumar Mahajan s/o T.R. Mahajan as attorney, the photographs of Hakam Singh, Jagdev Kaur and Gurjit Pal Singh were duly affixed. This document i.e. attested copy Ex.DW10/B, I have compared the same with the office copy maintained in Sub Registrar office. All the three were personally present when this document was presented before me for registration and I verified from all the three personally

about the contents of the same and thereafter this document was registered by me at serial No.3006 book No.4 Volume 192 page 164 on 14.08.1996.....”

(ii) The plaintiff had audacious enough to deny her signatures on the affidavit tendered in examination-in-chief as PW4/A whereas on the contrary, she admitted her signatures on the photographs. For the sake of brevity, relevant portion of her cross-examination reads thus:-

“I was married to Hakam Singh in the year 1955. I with my husband resided together upto 1995. Again said I cannot tell about it definitely. It is correct that i executed a power of attorney in favour of my husband. Vol. it was in respect of land situated in Faridkot itself. It is wrong to suggest that the power of attorney is still subsisting. I cannot tell as to when that power of attorney was withdrawn by me. It is wrong to suggest that I executed a general power of attorney in favour of defendant No.1 on 23.07.1986. I have seen the document having been registered at No.1780 dt. 14.8.1996 it is having photograph of mine. I have seen signatures at page No.3 of the general power of attorney bearing the date 21.7.1986. The signatures seems to be mine to the same extent i.e. some of the alphabets are mine and some are not. Again said the signatures are not mine as a whole. I have seen the page 6 of the plaint dated 03.10.1990 at both the places the signatures are not that of mine. I have seen page No.2 of application u/o 39 rules 1 & 2 dt. 3.10.1996 on its page 2 signatures appears to be that of mine. I have seen the document irrevocable power of attorney it is not having my signatures at any page. This document is dt. 14.8.1996. Same is my reply with regard to other irrevocable general POA dt. 14.8.1996 and it is also not signed by me. It is correct that all the documents are having photo of mine.....It is correct that my sons Gurjit Pal Singh and Charanjit Singh are having normal family relation with me and each one of us are respecting each one.....

I cannot produce the revoked power of attorney vol. I

have not retained that. At this stage the witness has been asked to admit or deny her signatures on Ex.PW/7 on which she has taken out another spect from her purse. It is correct that Ex.PW4/7 bears my signatures. It is incorrect to suggest that I myself appeared on 14.08.1996 before Sub Registrar, U.T., Chandigarh with respect to execution of all the documents in question and all the documents were executed after verifying the fact from me by Sub Registrar. However, I do not remember as to how many times I gave photographs to Hakam Singh. All those photographs were not signed by me. Vol. The black white photo on the documents in dispute had been signed by me. It is incorrect to suggest that I have turned out to be dishonest.”

(iii) As per bare reading of the plaint, there is only challenge to the irrevocable General Power of Attorney dated 14.08.1996 Ex.DW10/B but the Courts below have exceeded the jurisdiction in setting aside other documents as well. In my view, the Courts below have abdicated in their duty.

(iv) The factum of payment of entire sale consideration has also been proved through the testimony of Krishan Gopal, DW-8, who had appeared from the office of Commissioner of Income Tax. The certificates showing disclosure of payment as earnest money has been proved on record as EX.DW8/A and DW8/B and it is after execution of agreement to sell dated 24.06.1996, Ex.DW9/3, the appellants wanted to be doubly sure and they got executed fresh agreement to sell dated 14.08.1996 and other various documents. In my view, the finding of the Courts below regarding the non-payment of the total sale consideration is totally fallacious and erroneous.

(v) The plaintiff had also admitted about normal and cordial

relationship with her sons, Gurjeet Pal Singh and Charanjit Singh and the address of Hakam Singh and Gurjeet Pal Singh is same, thus, for all purposes, in my view the respondent-plaintiff has not been able to prove the ingredients of Order 6 Rule 4 CPC, owing to the fact that she had a cordial relationship. The element of fraud and misrepresentation is conspicuously wanting. It has been proved on record that pay orders of Rs.3,66,667/- of each one of them in favour of Jagdev Kaur had been proved on record and earnest money of Rs.21.60 lacs had been handed over to defendant No.1, Hakam Singh, who did not come forth and gave a different version rather supported the case of the appellants. I am astounded that these facts have gone unnoticed by both the Courts below.

(vi) The Courts below have abdicated in appraising the preliminary partition, as in Chandigarh, the fragmentation of the property is impermissible. By laws in this regard have also been framed. Only provisions of Section 3 and 4 of the Partition Act are applicable i.e. by determining share in case one of the parties is able to make out a case but as noticed above, the plaintiff had not been able to prove ingredients of fraud and misrepresentation, much less, not stated to have claim qua 1/3rd share. If she aggrieved about receiving money by her husband, she could have taken action in accordance with law but not in the mode and manner as has been done. It has also come on record that the appellants, after making entire payment and execution of the documents, had taken the possession of the suit

property by getting it vacated from the tenants from the ground floor and constructed top floor of the suit property.

(vii) It is a settled law that experts gave their opinion in favour of parties who brought them but the fact remains that expert of the plaintiff has candidly admitted that he had not prepared the photographic chart. Even otherwise, he compared the specimen signatures given by Jagdev Kaur before the Police in FIR No.393 dated 18.12.2002. I am in full agreement with Mr. Vikas Bahl, Senior Advocate that the parties having mala fide intention would not give the specimen in the mode and manner usually done in order to have an opinion in their favour but the fact remains that the plaintiff has not been able to shatter the testimony of DW10, H.S. Nagra, who had been subjected to extensive cross-examination. It would be relevant to extract the relevant answers given to the questions raised in cross-examination by PW7, Davinder Parshad as under:-

“Q: Is it correct that photographic chart is necessary part to be submitted in the report for demonstration purposes and no inference can be drawn whatsoever without seeking the photographic chart?”

A: It is correct.

Q: Is it correct that when a person is not satisfied with the deal, he/she may sign differently or in disguise on the documents of the deal just to create confusion and litigation later on?

A: It may be true as a general rule but not in all cases.

Q: Why have you not taken admitted signatures of Jagdev Kaur of date prior to 14.8.1996 like bank signature or admitted signature on attorney of 23.7.1986. You did not take these signatures for comparison in your first report of dated 20.04.2002 and also not taken these admitted

signatures in your second report dated 31.12.2006?

A” It is correct. In my view, the same were not needed as the concerned person has signed her standard signatures in a consistent way?

The Courts below, in my view, have committed illegality, perversity, much less, falsity in disbelieving the statement of the aforementioned witness.

(viii) Moreover, the registered document carries presumption of truth and it is a notice to whole world. This view of mine is verified by the ratio decidendi culled out from the judgment of this Court in **Tejbir Singh's case** (supra).

(ix) In my view, it is a case of greed which has surfaced, as in the meanwhile, the price of the property increased. In this background of the matter, defendant Nos.1 to 3 proceeded ex parte and supported the case of Jagdev Kaur. They have not come forward to contest the case.

For the foregoing reasons, I am of the view that both the Courts below have committed gross illegality and perversity, much less, abdicated their duties by not appraising the documentary as well as oral evidence. In the light of above observations, the substantial questions of law are decided in favour of the appellants-defendant Nos.5 and 6 and against the respondents-plaintiffs. The second appeal is allowed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes