

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

RSA-2629 of 2016 (O&M)

Date of decision: 25.05.2016

Tarsem Singh and another

...Appellants

Versus

Balkar Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. V.K. Kaushal, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-7029-C-2016

Keeping in view the averments made in the application which is supported by an affidavit, the same is allowed. The delay of 190 days in filing the present appeal is hereby condoned.

CM-7030-C-2016

This is an application for condonation of delay of 110 days in refiling the appeal. It is averred that the appeal was returned with objections on 24.12.2015. Thereafter, delay was

caused as certain additional documents which could be arranged and handed over to the counsel on 16.05.2016.

Keeping in view the averments made in the application and the accompanying affidavit, and the fact that the objections were minor in nature, there appears to be sufficient cause for allowing the same. The delay of 110 days in refileing the present appeal is hereby condoned subject to all just exceptions.

RSA-2629-2016

The plaintiff/respondent No.1 filed a suit for declaration. The trial Court vide judgment and decree dated 03.09.2013, decreed the suit.

2. Aggrieved against the findings of trial Court, the defendant/appellants (defendant Nos. 1 and 2 in the suit) and defendant No.3 (proforma respondent No.2 herein) filed two separate appeals which were dismissed by the learned first Appellate Court, vide judgment and decree dated 17.04.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of defendant Nos. 1 & 2.

4. On behalf of the appellants, it is contended that both

the Courts have misinterpreted and misconstrued the material evidence on record. The findings recorded by the learned trial Court is contrary to the pleadings of the plaintiff/respondent No.1 and erred by holding that the defendants have not produced any handwriting expert to compare the thumb impression of the plaintiff on the General Power of Attorney, whereas, the plaintiff/respondent No.1 himself alleged that the general power of attorney is false and fabricated and does not bear his signatures. The learned 1st Appellate Court has failed to consider that the appellants and the attesting witness of the general power of attorney are residents of same village i.e. Wadal Bhattewad and has wrongly recorded that they belong to different villages. Further, the learned 1st Appellate Court has laid much emphasis on the photograph of respondent No.1 by holding that the same is not visible which shows that the general power of attorney was executed by fraud, whereas, the learned trial Court held that the general power of attorney is a registered document, therefore, question of fraud or misrepresentation does not arise at all.

5. Heard, the learned counsel for the appellants and perused the record.

6. The parties to the *lis* are son, daughter in-law and father. It is admitted that respondent No.1 is owner of $\frac{1}{2}$ share of the land measuring 9 kanals and 7 marlas, situated in village Ibban Kalan, Tehsil Amritsar. It is further admitted that appellant No.1 had executed a sale deed in favour of appellant No.2 on the basis of general power of attorney, Ex.D1. Perusal of the record reveals that respondent, Balkar Singh, father of appellant No.1, has denied the factum of execution of power of attorney and also stated that the photograph on the power of attorney is not visible. The appellants have not produced any finger print expert to compare the thumb impression of attesting witnesses on the general power of attorney. The photograph appended on the alleged general power of attorney is also not visible. It has been duly proved on record that said general power of attorney is a result of fraud. No substantial piece of evidence has been produced to show that respondent No.1 has ever executed power of attorney in favour of the appellants. In the face of the evidence and material on record, this Court feels that there is no merit in the instant appeal and the observations of both the Courts below are correct. There is no illegality or perversity in the judgments and decrees passed by the Courts below. No

substantial question of law arises for consideration. Hence, no interference is called for.

Dismissed in limine.

25.05.2016

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(JITENDRA CHAUHAN)
JUDGE