

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

RSA No. 678 of 2016 (O&M)

Date of Decision: 14.12.2016

Kiran Dev Singh Sarang and another

.....Appellants

Vs.

Lt. Col. (Retd.) Piara Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr. Arvinder Arora, Advocate,
for respondent no. 1.

Mr. Vishal Sodhi, Advocate,
for respondent no. 2.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendants in a suit filed by the respondent-plaintiff, seeking a decree of declaration to the effect that he is owner in possession of house no. 1038, Sector 27-B, Chandigarh and that the transfer made by the third defendant, i.e. the Estate Officer, Union Territory, Chandigarh, of the said property, in favour of the present appellant-defendant no. 1 (now represented by his legal representatives), on the basis of the General Power of Attorney executed by the plaintiff in favour of the second appellant-defendant, is an out come of fraud and cheating and is not binding upon the plaintiff.

A decree of permanent injunction was also prayed for by respondent no. 1-plaintiff (hereinafter referred to as the plaintiff), restraining the present appellants from alienating the suit property in any manner whatsoever. A decree of mandatory injunction was also prayed for, restraining the present appellants from making any unauthorized construction on the ground floor of the house of the suit property and “from disturbing the financial position, living and occupying the suit premises on the first floor.” The said first floor was stated to be occupied by the family of the other deceased son of the plaintiff, with the plaintiff and his wife living on the ground floor.

It needs to be stated at the outset that the plaintiff is the father of the first (now deceased) appellant-defendant and the father-in-law of the second defendant.

Presently, other than the plaintiff, the Estate Officer of the Union Territory, Chandigarh, has been impleaded as respondent no. 2, the said person having been impleaded as respondent no. 3 in the suit filed by respondent no. 1-plaintiff.

2. The plaintiff is stated to be a retired Army Officer, more than 88 years of age on the date of filing of the suit, i.e. on 03.05.2008. (As per his date of birth given, i.e. 05.04.1918, he would be 90 years old then). He was allotted plot no. 1028, Sector 27-B, Chandigarh, measuring 1333 sq. yards, on 20.05.1958, by the respondent-Estate Officer, in lieu of property stated to have been left behind by him in Lahore, Pakistan and possession of the said property was taken by him on 24.11.1958. (The aforesaid house is actually the bone of contention, and is hereinafter referred to as the suit property).

Thereafter, the plaintiff raised construction on the ground floor and first floor of the house and started living in the said house with his wife, two sons (including the late first appellant) and two daughters, from 1965. (Though it is stated that he was discharged from the Army on 05.04.1968).

It was further stated in the plaint that he gave the first floor of the house to his son, the late Dr. Daman Dev Singh Sarang and his family and had rented out two rooms, a kitchen, a store, a latrine, a bathroom and a common '*Baranda*' on the ground floor of the house, to one Shashi Kiran and Shiv Kumar Gupta.

The first appellant, i.e. the other son of the plaintiff, Kiran Dev Singh Sarang, and his family were residing on the ground floor along with the plaintiff and his wife, but were stated to have a separate kitchen on the ground floor itself.

The daughters after their marriage were stated to be living in the house of their 'in-laws'.

3. On 28.06.1994, some trouble arose on account of a theft in the house of Dr. Daman Dev Singh Sarang (on the first floor), due to which a complaint was made to the police and eventually a compromise was arrived at between the said son and the present appellants.

4. Thereafter, it was stated that as the tenants “were not having a good reputation”, the plaintiff executed a power of attorney in respect of the suit property on 28.08.1997 in favour of the second appellant, i.e. his daughter-in-law, authorizing her to file an ejectment petition in respect of the tenanted part of the suit property, against the said tenants.

The second appellant is stated to have appeared as a witness in the ejectment petition filed, which was eventually however, dismissed on

28.02.2001, with an appeal also having been dismissed on 15.04.2002.

A Civil Revision bearing No. 3912 of 2002, is stated to have been filed against that judgment, which at the time of filing of the suit, was pending in this Court.

5. It was further contended that after the dismissal of the suit, the power of attorney executed on 28.08.1997 was cancelled by the plaintiff on 07.03.2001 and another power of attorney was thereafter executed on 03.12.2004, in favour of the late first plaintiff, i.e. in favour of the plaintiffs' son, Kiran Dev Singh Sarang. The instrument was stated to have been executed so as to authorize the said son to get a loan against the suit property from the bank, as due to an age bar, the plaintiff could not get a loan.

The loan was stated to have been sanctioned by M/s Citi Financial Bank for a sum of Rs. 11,50,000/-, after which it was averred that various documents including the power of attorney, a will, two blank papers and a pass-book including a copy of an ejectment letter and other documents relating to the suit property, were misplaced by the first appellant, which angered the plaintiff and he got DDR no. 9, dated 27.05.2005, registered at the Police Station Sector 26, Chandigarh. The power of attorney was also got cancelled "later on".

Yet further, it was contended that on account of the pendency of Civil Revision No. 3912 of 2002 in this Court, filed by the plaintiff against his tenants, he executed yet another power of attorney in favour of his daughter-in-law, i.e. the second appellant herein, on 26.11.2007, to pursue the said revision petition, as the plaintiff was not able to do so due to his old age.

6. The present dispute actually starts from this point because it is thereafter alleged in the plaint, that instead of pursuing the aforesaid petition in this Court, the second applicant made an application to the Estate Officer on 28.12.2007, to issue a “No Objection Certificate” for the transfer of the suit property, and also submitted an affidavit that it may be transferred in favour of her husband, i.e. the late first appellant, son of the plaintiff.

An indemnity bond and the General Power of Attorney executed, were stated to have been submitted along with the application.

In response to the aforesaid application, the Estate Officer is stated to have issued a letter dated 07.01.2008, intimating the other son of the plaintiff, Dr. Daman Dev Singh Sarang, with regard to issuance of the application for transfer of ownership rights, due to the fact that Dr. Daman Dev Singh had made an application to the said officer on 16.09.1999, that prior to transfer of the suit property, he should be intimated, as there were “other legal heirs” to the property.

Since Dr. Daman Dev Singh Sarang had expired on 21.09.2006, the letter was returned undelivered, even though the family of Dr. Daman Dev Singh Sarang was living in the house. Hence, it was contended by the plaintiff, that no intimation regarding the transfer was given either to him, or to his wife, or to his two married daughters, even though their names were duly mentioned by the plaintiffs' other son, in his application dated 16.09.1999.

7. It was yet further contended that, in fact, the letter dated 07.01.2008, written by the Estate Officer, was actually received by the second appellant herein, i.e. the daughter-in-law who had made the

application for the transfer, allegedly due to her “manipulation”.

It was further contended that thereafter, a no objection certificate was issued for execution of a conveyance deed in respect of the suit property in the name of Kiran Dev Singh, and the appellant submitted the said document on 22.01.2008 to the Estate Officer, along with an affidavit dated 17.01.2008, even though the house was already mortgaged with the City Financial Bank, due to the loan taken against it.

8. The plaint also stated that the behaviour of the present appellants with the plaintiff had become very rude and that they started picking quarrels with the plaintiff and family members of the late Dr. Daman Dev Singh Sarang. Allegedly, they also threatened the plaintiff to sell his agricultural land, as they needed money. It was alleged that the request of the plaintiff that he had made the property out of his hard earned money and that being an old man he had to look after his wife and the children of his pre-deceased son, was ignored by the appellants, who kept pressurizing him to sell the house or his agricultural land.

9. The plaintiff then made a complaint to the Deputy Inspector General of Police, Chandigarh, against the present appellants, to the effect that they had got the suit property transferred virtually without his knowledge, on the basis of a power of attorney which stood cancelled on 28.01.2008 and that intimation regarding such cancellation had also been given orally to appellant no. 2, who had also been intimated in writing, vide a letter sent under postal certificate on 28.01.2008.

10. Thus, on the aforesaid averments, it was contended in the suit of the plaintiff, that the transfer made by the third respondent, i.e. the Estate Officer, on the basis of the General Power of Attorney executed, was

cancelled without intimation to and consent of the other legal heirs to the property, which was an illegal transfer, null and void *ab initio*, amounting to a breach of trust and was not binding upon the plaintiff.

11. It was also contended that as per a notification dated 14.06.2007, issued by the Chandigarh Administration, any property can be transferred to legal heirs without consideration, with only a transfer fee of Rs. 10,000/- to be paid by the transferee.

Thus, it was further contended, on the basis of the said notification, the suit property was got transferred by appellant no. 2 herein, without the consent of the plaintiff and that the transfer dated 08.02.2008 was liable to be declared null and void.

Yet, further, it was stated that the plaintiff visited the Estate Office on 15.04.2008, and on investigation came to know of the transfer of his house.

Consequently, the suit was filed on 03.05.2008, as already noticed.

12. Upon notice issued to them, the present appellants (defendants no. 1 and 2 in the suit), filed a joint written statement, taking preliminary objections on maintainability, the plaintiff not having come with clean hands, and having been misguided and misled by “his grand-son, Vikram Dev Singh”, who allegedly wanted to grab the property.

It was further submitted that the suit was also not maintainable against the first defendant in any case, since he was the owner of the suit property and no injunction can be granted against a true owner.

Yet further, it was contended that documents that are registered with the Sub-Registrar, Chandigarh, are not delivered on the same date and

are delivered on any other date between 9:00 a.m. to 11:00 a.m. and that the alleged cancellation deed dated 28.01.2008 (cancelling the power of attorney executed in favour of the second appellant herein), was not delivered on the same date.

It was also contended in the preliminary objections that the defendants did not get any financial gain by getting the house transferred in the name of the first defendant, rather they “gained liability” for payment of the loan taken from Citi Financial.

Further, it was averred that the transfer in any case was with the express consent of the plaintiff, who remained quiet till 27.04.2008, when he was instigated by Vikram Dev Singh to make a complaint to the police. Yet further, it was stated that the Citi Financial had issued an NOC expressing no objection to transfer of the house the first appellant-defendant.

The written statement stated that the Estate Officer did not register any lien relating to the loan granted to the plaintiff and therefore, transferred the suit property to Kiran Dev Singh Sarang, for which an NOC was required to be issued by Citi Financial. It was also contended that the said company had become defunct and was sold to a different management, who in connivance with the plaintiff and his grand-son, were with holding or had destroyed the records relating to the issuance of the NOC and in any case, no rule or law required an NOC to be obtained from a private body/company, relating to any liability.

13. On merits, the first part of the plaint was admitted, with regard to the plaintiff and his children living in the suit property since 1965, however, stating that after the marriage of the first appellant herein, with the

second appellant, they along with their children were living with the plaintiff in a common kitchen which was “separated” on 17.06.2008, on the asking of Vikram Dev Singh. It was further contended that Dr. Daman Dev Singh Sarang had made a false complaint to the police against the first appellant and thereafter had compromised the matter with him, with the plaintiff himself standing as a guarantor. The appellants-defendants also contended that there was never any dispute between them and the plaintiff at any time and in fact there was great love and affection, which was reflected from the fact that the plaintiff was also a guarantor to the loan, as well as the co-applicant along with the late first appellant, which in fact was not liked by the other brother and his family.

14. As regards the documents, i.e. GPA, the will, two blank papers, pass-book etc. having been misplaced, it was contended that the documents were misplaced by the plaintiff himself, in respect of which he had lodged a DDR on the advice of the first appellant, and that the power of attorney (dated 03.12.2004) was also got cancelled on his advice only, as the plaintiff used to share all matters with him.

Yet further, it was contended that the other son, Dr. Daman Dev Singh Sarang, had been living on the first floor since 1981 and his family had been actually disowned by the plaintiff vide a public notice and even after the death of Daman Dev Singh on 21.09.2006, the declaration was not revoked by the plaintiff.

15. As regards the execution of the power of attorney in question, i.e. the one dated 26.11.2007, in favour of the second appellant, it was contended in the written statement, that it had been “deliberately given”, to deal with the house and all its affairs and was not restricted to the filing of

cases only. Allegedly, the appellants had asked the plaintiff as to why he was executing the instrument, there being no necessity for it, to which he was alleged to have replied that his desire was that all the moveable and immovable property was to be enjoyed and owned ultimately by defendants no. 1 and 2 only, and their family. Hence, the power of attorney was executed to facilitate all/any affairs concerning the house in question, so that there should not be any difficulty and interference from the side of the family of the late Dr. Daman Dev Singh Sarang.

16. It was averred that in view of the aforesaid facts, the second appellant-defendant had approached the Estate Officer for transfer of the house in favour of the first appellant, with the consent of the plaintiff, and that all proceedings and actions were within the plaintiffs' knowledge as he was being informed of the same by the appellants. It was contended that the Estate Officer had followed all procedure and had thereafter issued the letter dated 08.02.2008, transferring the house in question in favour of the first defendant. However, thereafter, in the month of March 2008, Vikram Dev Singh had instigated and misguided the plaintiff, due to which the complaint and the FIR were lodged against the present appellants.

As regards the letter dated 07.01.2008, it was contended that it had remained undelivered to the family of Daman Dev Singh Sarang as they were not available and that vide memo no. 800609, dated 07.01.2008, the same letter was also addressed to the plaintiff through his GPA, i.e. the second appellant. Allegedly, the appellants had informed the plaintiff and had also read the letter to him.

17. Lastly, it was again reiterated that the late first appellant was a close confidante of the plaintiff, who had made a lot of money by investing

in immovable property at the instance of the said appellant, i.e. his son.

On the aforesaid contentions by the present appellants-defendants, the suit was sought to be dismissed.

18. The Estate Officer, i.e. defendant no. 3, also filed a written statement taking preliminary objections on non-maintainability of the suit for want of a notice under Section 80 CPC; and on merits, admitting the allotment of the plot to the plaintiff.

The execution of the GPA dated 28.08.1997 in favour of the second appellant and its cancellation on 07.03.2001 was also admitted. It was stated that the plaintiff had intimated the Estate Office that the first appellant had misplaced/lost various documents on 03.11.2004, including a GPA registered on 03.11.2004, a Will, two blank papers etc. and that he had also submitted a copy of an affidavit and DDR no. 9 dated 27.05.2005 to that effect.

19. As per the Estate Officer, the GPA executed by the plaintiff on 26.11.2007 in favour of the second appellant, was not for only pursuing the case pending in this Court (Civil Revision No. 3912 of 2002).

The factum of the second appellant having applied on 29.12.2007 as the attorney of the plaintiff, for a no objection certificate for transfer of the suit property to a blood relation, was also admitted. (Clause 8 of the GPA dated 26.11.2007, was referred to in the written statement though not reproduced).

On the basis of the aforesaid application, it was admitted that two letters dated 07.01.2008 were issued, one to the plaintiff through his GPA and the other to Dr. Daman Dev Singh Sarang, by registered post, in view of the letter of 1999, addressed by Dr. Daman Dev Singh for

intimation to him about any request for an NOC, in respect of the suit property. The letter having been received back undelivered due to the death of Dr. Daman Dev Singh was also admitted, further stating that the NOC was issued on 29.01.2008, only after completing all “pre-requisite formalities and documents”.

20. The written statement of the Estate Officer also admitted that a copy of a letter addressed to the Superintendent of Police, dated 27.04.2008, was also supplied to the office and that on 28.04.2008 the plaintiff had intimated that the power of attorney executed by him in favour of the second appellant had been cancelled by him on 28.01.2008. However, that fact having come to the knowledge of the Estate Office only on 28.04.2008, with there being no document of cancellation supplied earlier, knowledge of cancellation of GPS on 28.01.2008 was denied.

It was also stated that the transfer of the property was made in terms of the notification dated 14.06.2007 and due to lack of any knowledge of cancellation of the GPA.

On the aforesaid contentions, the third defendant also prayed for dismissal of the suit.

21. A replication having been filed by the plaintiff, to the written statement filed by the first two defendants (present appellants), the following issues were framed by the learned Civil Judge (Jr. Divn.), Chandigarh:-

“1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP

4. *Whether the present suit is not maintainable? OPD*

5. *Whether the plaintiff has concealed the material facts from the court? OPD*

6. *Whether the plaintiff has not affixed proper court fees? OPD*

7. *Relief.”*

Subsequently, two additional issues were also framed as follows:-

“1A. Whether the NOC dated 16.01.2006 Ex. PW-4/15 issued by the Citi Financial Consumer Finance India Limited is forged and fabricated which was never issued by the said company? OPP

1B. Whether the plaintiff in connivance with Vikramjit Singh and the present management of the said Finance Co. got destroyed the records relating to the issuance of NOC dated 16.01.2008? OPD”

22. To prove his case, the plaintiff examined 10 witnesses and led various documents by way of evidence. The appellants-defendants both tendered their affidavits by way of examination-in-chief, but thereafter the first appellant, i.e. Kiran Dev Singh, is stated to have died. The second appellant, Promila Rani, appeared as DW-1 and proved the letter of transfer dated 31.01.2008. A third witness, Ravinder Singh, was also examined as DW-3, who identified three documents, Exs. DW1/A, 3/A and 3/B.

No evidence was led by the third defendant, i.e. the Estate Officer.

23. Upon appraising the pleadings, the evidence and the arguments before him, the learned Civil Judge (Jr. Divn.), Chandigarh, first observed

that this was a case where the love and affection shown by the plaintiff to his son and daughter, cost him dearly at the fag end of his life.

Going on to the merits of the controversy, it was found that the plaintiff had executed three GPAs in favour of the present appellants at various times and had created an agency by way of a third GPA dated 26.11.2007, which was the actual cause of the controversy.

Citing from the Indian Contract Act, 1872, Sections 201, 206 and 208 were specifically noticed, which read as follows:-

201. Termination of agency.—*An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

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206. Notice of revocation or renunciation.—*Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.*

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208. When termination of agent's authority takes effect as to agent, and as to third persons.—*The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.*

Illustrations

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards by letter, revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter revokes his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

As regards what constitutes notice (in reference to Sections 206 and 208 hereinabove) the learned Civil Judge referred to Section 3 of the Transfer of Property Act, 1882, which reads as follows:-

3. Interpretation clause.- *In this Act, unless there is something repugnant in the subject or context,-*

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“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

24. Thereafter, recording a finding that the instrument of power of attorney dated 26.11.2007 had been issued for the purpose of litigating in this Court (in the Civil Revision Petition), a further finding was recorded by the Civil Judge that yet appellant no. 2 moved an application on 27.12.2007

to get the suit property transferred in favour of her husband, i.e. the first appellant.

On the letter issued by the Estate Office dated 07.01.2008, the learned Court recorded a finding that though this letter was issued in response to the letter of Daman Dev Singh dated 16.09.1999, and it was returned to the office with the report that the said person had expired, however in the application / letter dated 16.09.1999 the late Daman Dev Singh had mentioned his own name, the names of his three sisters and of his brother, i.e. appellant no.1 Kiran Dev Singh, as the legal heirs of the plaintiff, but no intimation regarding issuance of the no objection certificate was given to those persons by the Estate Office.

25. As regards the pivotal issue of communication to the present appellants, of the cancellation of the power of attorney issued on 26.11.2007, it was found that the power of attorney was cancelled by the plaintiff on 28.01.2008, vide a registered deed of cancellation of that date (Ex.PW4/17), with the case of the plaintiff being that oral communication was made to the defendants in the presence of the wife of the plaintiff (Smt. Bhupinder Kaur), his son-in-law Vinod Kumar (PW7) and PW6 Gurcharan Singh, and such communication was also made in writing under postal certificate (UPC), vide a letter dated 28.01.2008 (Ex.PW4/18), in respect of which postal receipts in the form of Ex.PW2/1 and 2/2 were also exhibited.

From the testimonies of PWs 6 and 7, i.e. Gurcharan Singh and Vinod Kumar, the learned trial Court recorded a finding that the registered cancellation deed bears the signatures of PW6, who also testified that he had visited the house of the plaintiff on 28.01.2008, had accompanied him to the Sub Registrars' office, where Sh. Sandeep Dhiman, Advocate, met

him and on instructions the counsel prepared a cancellation deed for cancellation of the instrument of power of attorney dated 26.11.2007.

Thereafter, as per PW6, the plaintiff appended his signatures on the cancellation deed, which was thereafter registered in the presence of this witness and of Shri Sandeep Dhiman, who also put his seal on the document.

Further, PW6 was found to have testified that the letter sent under postal certificate was prepared by the plaintiff, giving information to appellant no.2 herein about the cancellation of the GPA, after which the letter was posted (UPC) at the post office in Sector 19 Chandigarh, on way to Sector 27B, with the postal certificate also having been obtained at that time from that post office.

PW6 was further found to have testified that he had dropped the plaintiff at his house no.1028, Sector 27-B, Chandigarh, at about 5.15 PM, where PW7 Vinod Kumar (the plaintiffs' son-in-law) was present along with Kiran Dev Singh and Promila Rani, as also the plaintiffs wife Smt.Bhupinder Kaur. As per this witness, the plaintiff informed his son and daughter-in-law that he had cancelled the GPA, after which both Promila Rani and Kiran Dev left the drawing room without uttering a word.

26. The learned Civil Judge also recorded a finding that in cross-examination the testimony of PW6 remain unrebutted on material points.

Rejecting the contention of the counsel for the defendants (present appellants) that the name of PW6, Gurcharan Singh, never having been mentioned in the plaint, his testimony had to be taken to be beyond pleadings, the learned Civil Judge held that the cancellation of the power of attorney on 28.01.2008 duly having been stated in the plaint and with the

signatures of PW6 having been found to be appended on the registered cancellation deed, Ex.PW4/17 (as a witness), the defendants could not be said to have been taken by surprise by examination of this witness and with the plaintiff himself also having, in his testimony, corroborated that the cancellation deed had been conveyed under postal certificate to the defendants, which fact was further proved by Kishan Ram (PW2), an Assistant from the Post Office, Sector 19, Chandigarh, who had also produced the register pertaining to the postal certificate and identified the original receipt dated 21.08.2008, the testimony of PW6 could not be discarded.

27. Interpreting the term “to have notice”, the learned trial Court also recorded a finding that the plaintiff and the present appellants, having resided together under the same roof till June 2008, with a joint kitchen, it had to be inferred that they had knowledge of cancellation of the GPA, being residents under the same roof with the plaintiff.

It was further held that with earlier of instruments of power of attorney also having been cancelled by the plaintiff, no negligence could be attributed to him.

28. Thus, it was finally held that the defendants had knowledge of cancellation of the power of attorney dated 28.01.2008, and the transfer letter actually having been issued by the Estate Office on 08.02.2008, the transfer was also held to be fraudulent and therefore void *ab initio*.

Having held as above on the main issue, the other issues with regard to injunction on alienating the suit property etc. were naturally also held in favour of the plaintiff and against the defendants.

29. On the additional issues framed, i.e. whether the no objection certificate dated 16.01.2008, issued by M/s City Financial Consumer Finance India Limited (Ex.PW4/15), was a forged and fabricated document or not and whether the plaintiff in connivance with Vikramjit Singh and the management of the finance company had got the records pertaining to the aforesaid certificate destroyed, the testimony of PW9, Vishavdeep Gupta, (legal coordinator of the company), was referred to by the Civil Judge to hold that no such NOC was issued by the company, though it was presented to the Estate Office and hence it was held that the said certificate was a forged and fabricated document.

On the other hand, finding no evidence to prove that there was any connivance between the company officials, Vikramjit Singh and the plaintiff, with regard to destruction of the records relating to the issuance of the aforesaid certificate, that issue was also held in favour of the plaintiff and against the defendants.

30. On the aforesaid findings, the suit of the plaintiff was decreed in his favour, holding him to be the owner in possession of the suit property, declaring the transfer made by the third defendant, i.e. the Estate Officer, in favour of the first defendant, on the basis of the power of attorney executed in favour of the second defendant by the plaintiff, to be null and void, it being an “outcome of fraud and cheating”. A mandate was also issued to the appellants-defendants, restraining them from making any illegal and unauthorised construction on the ground floor of the suit property, in terms of the prayer of the plaintiff.

31. The present appellants having filed an appeal before the lower appellate Court, the learned Additional District Judge, Chandigarh, first

noticed the pleadings and the issues framed and thereafter went on to appraise the evidence led and the arguments made before him.

That court essentially considered the controversy to be the issue around the communication of the cancellation of the general power of attorney, and the effect thereof.

32. Like the lower Court, the first appellate Court also noticed the fact that the cancellation of the power of attorney took place on 28.01.2008, vide a registered cancellation sale deed, and also went on to notice the testimony of PW6, Gurcharan Singh, to the effect that he had accompanied the plaintiff to the Registrars' office, where the cancellation deed was drafted by the Advocate (Sh.Sandeep Dhiman), after which the letter under postal certificate was posted at the post office and thereafter, upon reaching home, the plaintiff informing his son and daughter-in-law of the cancellation of the GPA dated 26.11.2007, in the presence of his son-in-law Vinod Kumar and his (plaintiffs') wife, Smt.Bhupinder Kaur.

Like the lower Court, the next Court also held that simply because Gurcharan Singh's name has not been stated in the plaint, but with the testimony duly corroborated by the cancellation deed itself, signed by this witness, and further corroborated by the testimony of the plaintiff, and the posting of the letter under UPC also having been proved by the official of the post office (PW Kishan Ram), it was not possible to believe that the appellants were not aware of the cancellation.

Hence it was held that the transfer of the property thereafter to appellant no.1, showed the malafide intention of the appellants.

The reasoning adopted by the lower Court with regard to there being a common kitchen, due to which it was not possible that the

appellants did not come to know about the cancellation, was again reiterated by the first appellate Court.

Case law cited by the lower Court was also referred to by the learned Additional District Judge, on when a person can be said to have notice of a fact.

33. Thus, holding that with the actual transfer of the property having been completed only on 08.02.2008, much after the cancellation of the general power of attorney in favour of the second appellant, with the appellant held to be in the knowledge of the cancellation, the judgment of the learned Civil Judge, decreeing the suit of the plaintiff was upheld.

34. On the additional issues with regard to the no objection certificate issued by the finance company on 16.01.2008, again the judgment of the lower Court was upheld on the basis of testimony of PW9, i.e. the official of the finance company, further observing that the second appellant herein, in her cross-examination, contradicted herself by first saying that the certificate was sent by the company directly, whereas thereafter she stated that she had sent a letter to the Estate Officer, EX.PW4/14, annexing the no objection certificate along with it.

Hence, the judgment of the Civil Judge was upheld on the additional issues also.

35. In this 2nd appeal before this Court, Mr. V.K.Sachdeva, learned counsel for the appellants, detailed the entire facts, stressing that the application to the Estate Officer, for transfer of the property to her husband, had been made by appellant no.2 on 28.12.2007, i.e. one month before the cancellation of the power of attorney executed in her favour and as such, her action could not be faulted in any manner, the power of attorney duly

authorising her to transfer the property. Learned counsel specifically pointed to the fact that the power to sell, transfer, gift or mortgage the suit property and to execute and sign the conveyance deed of the house had been specifically granted to appellant no.2 by the plaintiff, vide the registered instrument of power of attorney dated 26.11.2007. Hence, Mr. Sachdeva submitted that the Estate Officer having acted upon an application made by a duly authorised person and having effected the transfer after following proper procedure, no fault could be found with the transfer, by which appellant no.1 became the lawful owner of the property. He submitted that the transfer took effect on 29.01.2008 vide the no objection certificate issued on behalf of the Estate Officer on that date (Ex.PW4/19), which was subsequently given effect to by the conveyance deed dated 31.01.2008, Ex.D5. Pursuant to that, a transfer letter was also issued on 08.02.2008, thereby completing the transaction initiated on 28.12.2007 when the power of attorney was very much in force.

36. Mr. Sachdeva next submitted that even accepting that the power of attorney was cancelled on 28.01.2008, such communication of the cancellation was never made to the appellants and as such, even any action thereafter by appellant no.2 could not be questioned as per settled law. In this regard, learned counsel cited a judgment of the Supreme Court in ***Greater Mohali Area Development Authority and another vs. Manju Jain and others, AIR 2010 SC 3817***, wherein, citing from previous case law, it was held that though a certificate of posting might lead to a presumption that a letter had reached the addressee, however, it cannot be taken to be an inevitable presumption and the Court may refuse to draw such a presumption.

It was further held that until a document is actually communicated to the person concerned, it cannot be taken to have been actually served upon him or that he had knowledge of it.

Thus, learned counsel submitted that no proof of actual receipt of the letter posted under certificate having been led, with the 2nd appellant specifically denying such receipt, cancellation of the power of attorney could not be held to have been in her knowledge so as to enable her to desist from acting any further.

Mr. Sachdeva submitted that this is other than the fact that firstly, the appellants have doubted even the actual posting of the letter under certificate and more importantly, the application for transfer of the suit property having admittedly been made at a time when the power of attorney was very much in effect, the subsequent transfer was only a natural consequence thereof.

37. Learned counsel next pointed to the fact that even as per the cancellation deed Ex.PW1/5, it was clearly stated in paragraph 2 thereof that the principal (plaintiff) would be bound by all acts, deeds and things done by the attorney, till the date of registration of the cancellation deed, i.e. upto 28.01.2008.

He next submitted that the power of attorney had actually been issued by the plaintiff out of love and affection for his son and daughter-in-law (appellants) and simply because he came under the influence of his grand son from his other son, that would not negate the effect of what was intended by the plaintiff, at the time when the instrument was executed.

In this regard, Mr. Sachdeva cited a judgment of the Calcutta

High Court in *Mohendra Nath Mookerjee vs. Kali Proshad Johuri, 1902*

(XXX), CAL. 265, wherein it was held that if the authority of an agent to admit execution of a document is revoked before registration, but such revocation is not known either to the grantee of the document nor to the registering officer, the document of registration would not be invalidated, even though it is registered by the agent after the revocation of his authority.

Similarly, learned counsel cited other judgments to that effect, which are not considered necessary to be referred to, because eventually the issue would mainly devolve upon the knowledge of the revocation/cancellation of the power of attorney by the principal, and the conduct of the attorney, thereafter.

38. Mr. Sachdeva further argued that the fact that even the plaintiff in his cross-examination had admitted that there was no need to send a letter under postal certificate when there was a common kitchen, which further showed that the postal certificate was a created document in collusion with an official of the postal department, i.e. PW2 Kishan Ram. Thus learned counsel submitted, that with neither the Estate Officer having been informed of the cancellation of the power of attorney and there being actually no proof of conveyance of the cancellation, further seen with the fact that eventually criminal proceedings against the appellants were initiated only three months later, in April 2008 (on 27.04.2008), by the plaintiff, all proved that appellant no.2 acted in good faith in transferring the suit property to appellant no.1, right from 28.12.2007 till 31.01.2008, when the conveyance deed was finally registered.

Hence, Mr. Sachdeva submitted that both the Courts below have wholly erred in decreeing the suit of the plaintiff in the face of the evidence to the contrary and the law settled on the issue of communication

of the revocation of a power of attorney by the Principal.

39. Per contra, Mr. Arvind Arora, learned counsel appearing for the respondent-plaintiff, submitted that no matter when the application for transfer of the suit property had been made, actual interest in the property was transferred only vide the transfer deed dated 31.01.2008 (Ex.D5), which was admittedly 3 days after the cancellation of the power of attorney was duly registered on 28.01.2008. Learned counsel further pointed to the testimony of PW5, Surinder Kumar, a senior assistant in the Estate Office, Chandigarh, to the effect that as per the noting sheet, the file (for transfer) was dealt with on 29.01.2008, when it was also accepted by the Estate Officer.

Mr. Arora submitted that therefore it was obvious that the file was dealt with in undue haste, at the instance of the appellants, after they had gained knowledge of cancellation of the power of attorney on 28.01.2008.

40. Mr. Arora next pointed to the cross-examination of appellant no.2, where, after denying that the property had been fraudulently transferred by her to her husband, she admitted that only her mother-in-law knew about the transfer and not the plaintiff. The witness further stated that “otherwise the plaintiff will gift the property to pingalwara”.

41. Mr. Arora next referred to the testimonies of Pws 6 & 7, i.e. Gurcharan Singh and Vinod Kumar, wherein both these witnesses testified that after registration of the cancellation deed the plaintiff had come and informed the appellants in the presence of these witnesses and in the presence of the wife of the plaintiff, that he had cancelled the deed.

42. Mr. Arora thereafter submitted that there was collusion between officials of the Estate Office and the appellants, could further be seen from the fact that despite the fact that the names of all the children of the plaintiff and that of the plaintiffs' wife were given in the letter dated 16.09.1999, written by the other son, i.e. Daman Dev Singh, to the Estate Office, information with regard to an application having been made for transfer of the suit property, was sent vide the letter dated 07.01.2008, by the Estate Office, only to the address of Daman Dev Singh, and when the letter was returned with the remarks that he had died, no effort whatsoever was made by the officials of the office to intimate other family members whose names were given in the application and not even to the plaintiff himself.

43. Next, Mr. Arora pointed to the order of the learned Civil Judge (Jr. Divn.) Chandigarh, dated 22.08.2008, disposing of an application filed by the plaintiff under Order 39 Rules 1 & 2 of the CPC, seeking a restraint on the appellants-defendants from alienating the suit property any further.

Learned counsel submitted that the appellants were playing a fraud upon the plaintiff, became obvious from the fact that they were, even during pendency of the suit, attempting to sell the suit property, despite the fact that by the aforesaid order they had been restrained from doing so. He submitted that in fact an agreement to sell had been entered into by the appellants with a third party, but eventually that suit was decreed in favour of the prospective vendee only to the extent of recovery of the money paid by him to the appellants.

44. Learned counsel next submitted that even in terms of Section 206 of the Indian Contract Act, by which it is stipulated that reasonable notice must be given to the agent with regard to revocation of the agency, so

that such revocation does not result in damage to the agent, the damage in the present case was actually to the principal and not to the agent, i.e. the second appellant, because she was transferring the property to her husband, so as to derive a fraudulent benefit, depriving a very old man of his property.

45. Next, learned counsel for the respondent referred to a judgment of a Division Bench of this Court in *Amritpal Singh vs. Chandigarh Administration and others, 2012(4) RCR (Civil) 784*, to submit that simply by issuance of a no objection certificate, no right accrued in any person and, as per the judgment of Division Bench, there was no requirement in the Capital of Punjab (Development and Regulation) Act 1952, or the rules framed thereunder, for a no objection certificate to be granted in respect of selling or allotting a property which was held on a free hold basis.

Hence, Mr. Arora submitted that even the issuance of the no objection certificate on 29.01.2008 did not amount to vesting of any rights in the first appellant, as the deed of transfer was executed and registered only on 31.01.2008.

46. Mr. Arora also referred to the fact that the plaintiff had subsequently disowned defendant no.1 vide a public notice published in a daily newspaper on June 17, 2008 (Ex.PW4/31). Hence, it was contended that it was because of the fact that the appellants had played a fraud upon the plaintiff, actually misusing the power of attorney issued to appellant no.2, that the deed was cancelled, upon the plaintiff coming to know that the transfer had been made only in favour of the first appellant, also leading to him disowning his son.

47. Finally, learned counsel for the respondent-plaintiff reiterated

the reasoning given in the judgments of the Courts below, in support of his stand before this Court.

48. In rebuttal, Mr. Sachdeva learned counsel for the appellants, firstly submitted that Section 206 of the Indian Contract Act could not be read in isolation and needed to be seen with Sections 204 and 205 thereof, of which the former provision stipulates that the principal cannot revoke the authority given to his agent, after the authority has been partly exercised. Thus, he contended that the application for transfer already having been made one month before the revocation of the power of attorney, a subsequent cancellation would not effect the action already taken, pursuant to which the suit property was actually transferred on 29.01.2008 and 31.01.2008.

49. Mr. Sachdeva next submitted that as a matter of fact, that there was no question of a fraud having been perpetuated, because it was natural for the plaintiff to execute a power of attorney in favour of his daughter-in-law for transfer the suit property to one son, i.e. her husband, as the other son (Daman Dev Singh), had already been disowned by him vide a public notice published in the year 2006 (Ex.R1).

50. In conclusion, Mr.Sachdeva while reiterating his earlier submissions, stated that no fraud could be presumed, as the appellant had already been acquitted in criminal proceedings by the learned Judicial Magistrate on 19.01.2015.

He also submitted that the finding of the learned first appellate Court, to the effect that the transfer application was made after 28.01.2008, is a wholly perverse finding, as actually the application was made on 28.12.2007.

On the aforesaid arguments, learned counsel for the appellants reiterated his prayer for allowing the appeal and reversing the judgment and decree of the courts below.

51. Having heard learned counsel for the parties in detail and having considered the impugned judgments of the learned Civil Judge and learned Additional District Judge, as also having appraised the evidence pointed out by learned counsel for the parties, as available from the records of the courts below, I am of the opinion that this appeal does not deserve acceptance at all.

Other than the issue of whether a fraud was committed by the appellants on the respondent-plaintiff, who even at the time of the filing of the suit (02.05.2008) was shown to be 90 years old, the controversy otherwise mainly rests on the issue as to whether the registered cancellation deed dated 28.01.2008 was duly conveyed to the attorney, i.e. appellant no.2 herein.

52. Therefore, first coming to that issue.

On that, firstly, as regards the issuance of the letter to the said appellant under postal certificate (Ex.PW4/18), I see no reason to disbelieve the testimonies of three witnesses, i.e. the aged plaintiff himself (PW4), PW6 Gurcharan Singh, as also the official from the post office, PW2 Kishan Ram, to the effect that the said letter was posted under certificate on 28.01.2008, with the stamps of the post office, of the said date, duly led by way of evidence (Exs.PW2/1 and PW2/2).

No doubt, learned counsel for the appellants had submitted these stamps could be 'procured', but the onus to prove that was upon the defendants, which they are not seen to have discharged in any manner.

Yet, even if an inference is taken that it is difficult to disprove that official record was manufactured, in the opinion of this Court that would also make no difference to the outcome of the case because further, the letter in question is not pivotal to the question of whether the cancellation of the GPA had been conveyed to the 2nd appellant herein. In any case, it is to be accepted that there is no specific proof of service upon appellant no. 2, of the said letter addressed to her, informing her that the power of attorney executed in her favour had been cancelled.

53. However, having found so, this Court yet finds it unable to believe that a 90 year old person would go to the trouble of going to the office of the Sub Registrar to get a deed of cancellation of the power of attorney registered and then not even inform his daughter-in-law and son, as were admittedly living in the same house with him, that he had cancelled the said deed.

The registration of the cancellation deed is not in any doubt, in view of the fact that a Clerk from the office of the Sub Registrar, PW-1 Ravinder Singh, duly testified that the cancellation of the deed had been entered at serial no.3789 of book no.4, Volume 294, at page no.78, on 28.01.2008, and that he had brought the original register also along. In fact this witness proved the registration of the transfer deed also, and the instrument of the power of attorney itself, in favour of the defendants.

Hence, with the registration of the cancellation deed duly proved, it would be wholly against all norms of normal human behaviour, for the person who was executing the cancellation deed, especially at such an advanced age, to not even inform his attorney of the said cancellation, when the attorney was living in his own house. Hence, I find no reason to

disagree with the reasoning of the courts below, by which they accepted the testimonies of the plaintiff himself as also of PWs 6 & 7, to the effect that the factum of the cancellation of the power of attorney had been conveyed orally by the plaintiff to the appellants, on the date of the cancellation itself, immediately after he had sent a written communication to her (appellant no.2), under postal certificate on that date (28.01.2008).

Thus, as regards communication of the cancellation deed, the finding of the learned courts below to that effect requires no interference with, on that simple reasoning alone.

54. Next is the question with regard to non-communication of the cancellation to the Estate Office.

Without a doubt, the plaintiff could otherwise also have made an application immediately to the Estate Office, to not give effect to any application made by his attorney, for transfer of his house. However, it is the specific contention of the plaintiff in his affidavit (submitted by way of his examination-in-chief) before the learned Civil Judge, that he actually came to know of the transfer when he visited the Estate Office on 05.04.2008, and on inspection of the file, came to know that the transfer of the house had already been effected. Obviously, that would also explain the delay in filing of a complaint to the police, on 27.04.2008, other than the fact that even under such circumstances, a father is generally reluctant to lodge criminal proceedings against his children.

As pointed out by learned counsel for the respondent-plaintiff, in his affidavit before the learned Civil Judge, the plaintiff had specifically stated in paragraph 13 thereof, that he had cancelled the power of attorney after seeing the attitude of his daughter-in-law and son, which, as stated in

the immediately preceding paragraph of the affidavit, had become very rude towards him, allegedly also threatening him and pressurising him to either sell the house or his agriculture land. Hence, the cancellation of the power of attorney on 28.01.2008 was obviously not on account of knowledge at that stage that an application for transfer of the house had already been made by the second appellant, on the strength of that power of attorney, but on account of the behaviour of the appellants with the plaintiff. Thus, in such a situation, it would obviously not occur to the plaintiff to write to the estate office to not heed any application for transfer, or with regard to cancellation of the power of attorney, he having no knowledge that any such application for transfer had been actually made.

55. The question to be now examined is the effect of non-communication of the cancellation of the power of attorney to the Estate Officer, by the plaintiff.

Once it is found by this Court that the cancellation of the power of attorney on 28.01.2008 was not linked to any knowledge of any application already having been made by the second appellant to the Estate Officer, for transfer of the house, thus there actually being no cause for communication of such cancellation to the estate office, such non-communication would therefore not be of any consequence as regards the case of the plaintiff for declaring the subsequent transfer to be null and void.

The only person whom he was required at that stage (without knowledge of an application for transfer having been already made) was his attorney herself and that having been done by him by way of oral communication, as already held by this Court, in the light of the testimonies of the plaintiff and two other witnesses, and he also having sent a letter

under postal certificate to her reducing such information of cancellation into writing, he would not expect her or his son to make any application for transfer of the house, or take any action with regard to the house in terms of the power of attorney, (its cancellation already having been conveyed to her).

In fact, it actually strengthens the case of the plaintiff to the effect that he did not have knowledge of any application already made, and that he was simply cancelling the power of attorney on account of the behaviour of his daughter-in-law and son towards him, which cancellation, he conveyed to them orally and in writing. Thus, on 28.01.2008, there would be no urgency in his mind, with regard to making any communication to the Estate Officer or to any other person, other than the attorney herself, with regard to the cancellation of the power of attorney.

To repeat, the moment he obtained actual knowledge of a transfer having been effected after 28.01.2008 (knowledge to him coming on his visit to the estate office on 05.04.2008), he acted on the same by lodging a complaint to the police.

Thus, the cancellation of the power of attorney having been duly registered on 28.01.2008, and this Court already having held that it cannot be believed that such cancellation was not conveyed to the attorney by an aged man who took the trouble of going to the Registrars' Office to have the cancellation registered, then it was incumbent upon the appellants to desist from making any further application for transfer of the property before the Estate Officer.

56. In this regard I also agree with the contention of the learned counsel for the respondent, to the effect that suddenly after the cancellation

of the power of attorney on 28.01.2008, the transfer was effected post haste between 29.01.2008 and 31.01.2008.

Without a doubt, the application for transfer had been made one month earlier on 28.12.2007, but the timing of another application made by the first appellant to the Estate Officer (Ex.PW4/21), definitely raises an eyebrow with regard to the sudden haste in the transfer being effected after 28.01.2008. It is to be specifically noticed that the photocopy of the said application (Ex.PW4/21) does not disclose any date on it; but it states that an indemnity bond along with a photograph was being annexed alongwith. That bond is seen to be dated 31.01.2008. Thus, the application was obviously made on that date, i.e. three days after the cancellation deed and on that very date, the transfer deed (Ex.D5) , was registered before the Sub Registrar, Chandigarh.

Still further, the testimony of PW5, i.e. the Senior Assistant from the Estate Office, also makes it amply clear that the file was dealt with on 29.01.2008. Though undoubtedly, the affidavit of the 2nd appellant, and the NOC stated to have been given by M/s City Financial were submitted on 17.01.2008/22.01.2008, however, on 29.01.2008, the file was taken up and dealt with (as per the aforesaid testimony of PW5) and within two days thereafter, the transfer was effected on 31.01.2008, on the same day that another application for transfer was made by the first appellant, i.e. the intended transferee, Kiran Dev Singh.

In the entire circumstances, that is too much of a coincidence, to actually be a coincidence, in the opinion of this Court.

57. This is other than the basic fact that the second appellant having been informed of the cancellation of the power of attorney, as

already discussed, the appellants were thereafter duty bound to ensure that they did not act upon any power of attorney and make any further application for transfer. This would be especially expected of a son and a daughter-in-law of a very aged person.

58. The aforesaid circumstances are to be yet further seen with what obviously slipped out from the mouth of the second appellant in her cross-examination, to the effect that had the property not been transferred, the plaintiff would have gifted it to the 'pingalwara' (home for destitutes). Thus, it appears to be quite clear that the entire action of the appellants was to pre-empt the plaintiff from alienating the suit property to anyone other than themselves and therefore, the moment they came to know that the power of attorney had been cancelled, they adopted every method possible to ensure that the transfer took place within 2-3 days thereafter.

59. Coming then to the effect of Section 204 of the Indian Contract Act 1872. The said provision reads as under:-

204. Revocation where authority has been partly exercised.—*The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.*

Illustrations

(a) A authorizes B to buy 1,000 bales of cotton on account of A and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in

A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Undoubtedly in the present case, an application had been made by the attorney (appellant no.2) one month before the revocation of the power of attorney. However, in the opinion of this Court, that would have absolutely no effect in the present case because no obligation had been created in respect of any third party on the basis of the application made by the attorney. The attorney made an application for transfer of the suit property to her own husband, i.e. the son of the plaintiff and therefore, even if any act had been done under the power issued, in such circumstances it would not act as an estoppel, on the principal, even in the face of Section 204, from revoking the authority given by him to his daughter-in-law. It may have been another matter if the intended transferee was a third party, thereby creating a right in that party, but where the agent (attorney) acted to transfer the property actually in her own benefit, such benefit not being different from that of her husband, I find the argument of the learned counsel for the appellants in that regard to be unacceptable. Hence, learned counsel for the respondent in fact is correct in stating, that even in terms of Section 206 of the Contract Act, no damage was caused either to the agent or to a third party, the agent in the present case having had notice of the revocation of the power of attorney.

60. That, in fact, brings us to the next question, of whether actually there was any intention of the plaintiff to authorise the second appellant to transfer the property on his behalf to her husband alone. I find even that presumption difficult to believe, because if that was the intention, the

daughter-in-law, could also simply have executed a gift / transfer deed and registered it in favour of his son, i.e. the husband of the second appellant (appellant no.1).

Therefore, the act of the plaintiff in executing a power of attorney in favour of his daughter-in-law, though as per its wordings it undoubtedly authorised her to alienate the suit property, it was obviously with an intention of either selling it to a suitable buyer, or possibly to all legal heirs of the appellant. This Court would obviously not conjecture with regard to the second possibility, but it is extremely difficult to draw an inference that the power of attorney executed was to empower the daughter-in-law to make a transfer in favour of her husband, when, simply, if that were the intention of the plaintiff, he could have himself straightway executed and got registered a transfer deed in favour of his son (the late first appellant).

61. Further in this regard, Sections 215 and 216 of the Contract Act would need to be referred to, in this case. The said provisions read as under:-

***“215. Right of principal when agent deals, on his own account, in business of agency without principal’s consent.—If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.*”**

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. Principal's right to benefit gained by agent dealing on his own account in business of agency.—*If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.*

Illustration

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it."

62. In the opinion of this Court with the agent / attorney, dealing with the suit property in her own interest (it not being different to that of her husband), she was bound to obtain the consent of the plaintiff to make any such transfer, and since she did not, it is obvious from the revocation of the power of attorney, and the entire circumstances of the case as already

enumerated and discussed, the aforesaid provisions would very much come to the aid of the plaintiff for repudiation of the transfer, the attorney having misused the power given to her, in her own favour and that of her husband.

This is in addition to the fact that with the power of attorney having been revoked on 28.01.2008, no further application should have been made by the appellants for a transfer of the house, which the late first appellant actually did, immediately after such revocation.

Hence, there is no manner of doubt in the mind of this Court, that the very advanced stage of the plaintiff was taken advantage of by the appellants, and it was actually never his intention to empower appellant no.2 to transfer the property in favour of appellant no.1, which is an act that he could have done himself in any case.

63. For all the reasons discussed herein above, finding no merit in this appeal, it is dismissed, with costs of ₹25,000/-.

(AMOL RATTAN SINGH)
JUDGE

December 14, 2016.

Nitin / Davinder

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.