

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****Date of decision: 04.10.2017****RSA No.385 of 2016 (O&M)**

Davinder Singh &amp; another

...Appellants

Vs.

Tarlok Singh &amp; another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Vijay Lath, Advocate, for the appellants.

**RAJIV NARAIN RAINA, J.**

1. The appellants are the defendants in the suit for declaration brought by the plaintiffs to the effect that they are owners in possession of a plot measuring 4 Marlas described in the head note of the plaint. The relief in the suit was for declaring the power of attorney dated 17.06.2009 and the sale deed dated 04.01.2010 executed by defendant No.1 – Davinder Singh in favour of his wife i.e. defendant No.2 – Krishna Devi are illegal, without consideration, without authority, *void ab initio* and not binding upon the rights of the plaintiffs and the same are liable to be set aside.

2. In short, defendant No.1 – Davinder Singh as power of attorney holder of the plaintiffs sold the suit property to his wife – defendant No.2. The making of the power of attorney was attributed by the plaintiffs as playing a fraud on their rights on the pretext of constructing a house on the suit plot. On coming to know that fraud was played, the plaintiffs cancelled the power of attorney by a registered cancellation deed dated 30.12.2009. Intimation of cancellation was through a letter sent Under Postal Certificate (UPC). On 04.01.2010, defendant No.1 – Davinder Singh acting under

authority of power of attorney, which had been cancelled, transferred the suit property in favour of his wife – defendant No.2. Plaintiffs asserted that they remained in possession of the property in dispute. It is not a disputed fact that plaintiff No.1 Tarlok Singh was owner of the suit property.

3. On notice, defendants put in appearance and asserted that plaintiffs entered into an agreement to sell the property in dispute on 21.05.2009 with one Balwinder Kumar son of Sewa Ram i.e. non-party for a sale consideration of ₹4,25,000/-. On the basis of such agreement to sell, Balwinder Kumar entered into a back to back agreement to sell with defendant No.1 - Davinder Singh on 17.06.2009. It was maintained that both the plaintiffs on the same date i.e. 17.06.2009 executed a general power of attorney in favour of defendant No.1 – Davinder Singh. Defendants asserted that plaintiffs handed over the original sale deed to Davinder Singh delivering possession of the suit land, that is, how the sale took place between the defendants, it is said. The suit was instituted to undo the transactions by declaring the power of attorney dated 17.06.2009 as invalid upon cancellation and to set aside the consequential sale deed.

4. The plaintiffs' assertion in the plaint was that Davinder Singh is a builder, whereas admission came that Davinder Singh was an employee of the Electricity Department, Punjab. The trial Court opined that once execution of power of attorney is established on record onus shifts more strongly upon the plaintiffs to prove that defendants got the same executed by means of fraud. Plaintiffs had failed to prove that fraud was played. There is no doubt on the facts that the power of attorney was cancelled by registered cancellation deed dated 30.12.2009 bearing No.4168 on

Municipal record. The suit has been dismissed by the Civil Judge (Junior Division), Jalandhar vide judgment and decree dated 27.05.2014.

5. Aggrieved by the judgment and decree dated 27.05.2014, plaintiffs carried an appeal. The court of first appeal summed up the case of the plaintiffs noticing the asserted facts that plaintiffs owned the suit property and wished to construct a kothi thereon. They consulted defendant No.1 – Davinder Singh, who is a builder. He agreed to construct a kothi as per the requirements of plaintiffs and assured them that he would construct a building after getting the plans sanctioned from the Municipal Corporation, Jalandhar. For that purpose, Davinder Singh brought the plaintiffs and their sons to Tehsil Complex, Jalandhar on 17.06.2009, where he in the presence of the Deed Writer and one Lambardar got their signatures and thumb impressions on various papers. The plaintiffs and their sons signed/thumb marked the papers placed before them in bona fide belief that it was for the purpose of construction of a house. As time elapsed, the plaintiffs harboured doubt when defendant No.1 – Davinder Singh remained elusive upon which they searched the papers and from where came to know about the general power of attorney prepared by defendant No.1 – Davinder Singh, that is, what led to the cancellation by registered cancellation deed. Plaintiffs asserted that defendant No.1 – Davinder Singh was informed of cancellation both orally and by post. Despite notice, the sale deed was effected on 04.01.2010 from husband to wife. With sale deed in hand, the defendants set out to obtain possession of the suit property and that is when the suit was instituted in the Civil Court at Jalandhar.

6. Upon notice, defendants appeared and put in their written statement and defended the power of attorney and sale deed as legal and

valid based on a general power of attorney signed by the parties claiming that possession was delivered to Davinder Singh and all ownership rights were transferred to the wife of Davinder Singh. They are owners of the suit property and neither the plaintiffs nor anybody else has any right, claim or title over the suit property as described in the plaint. Defendants asserted that the suit is an afterthought with cooked up story to extract money from them. The defendants relied on agreement to sell dated 21.05.2009 executed by the plaintiffs in favour of one Balwinder Kumar son of Sewa Ram, who further entered into an agreement to sell dated 17.06.2009 with the defendants.

7. The agreement dated 21.05.2009 contains the recital of delivery of possession, but plaintiffs argued in first appeal that the same was not a registered document and could not be taken into consideration as evidence. The plaintiffs asserted that power of attorney dated 17.06.2009 was obtained in a fraudulent manner and on coming to know about the fraud committed by defendant No.1 – Davinder Singh, the power of attorney was cancelled. A remarkable feature was noticed by the learned first Appellate Court that the sale price in the agreement to sell dated 21.05.2009 was ₹4,25,000/- whereas the sale consideration in the sale deed was ₹2,40,000/-. This aspect confirms the view of the appellants that the sale deed was a fabricated document. Learned Appellate Court reviewed the evidence and read from there an admission in the cross-examination of PW-1 Tarlok Singh that the agreement dated 21.05.2009 (Ex.DA) was executed between them and Balwinder Kumar son of Sewa Ram. Plaintiffs came to know Davinder Singh through Balwinder Kumar. Both the parties had produced their respective evidence both oral and documentary before the trial Court. The

notice of cancellation of power of attorney was produced as Ex.P6 and the UPC receipt as Ex.P7. On analysis of entire evidence on record, the Appellate Judge observed that the trial Court had overlooked Exs.P6 & P7 being the notice and UPC receipts cancelling the power of attorney. The findings of the trial Court on Issue No.1 of non-sending of intimation regarding cancellation of power of attorney issued to the defendants were erroneous and the court reversed the same. The Appellate Judge held that cancellation of power of attorney and service of due notice on defendant No.1 was proved on record. On reaching this conclusion, there remains no doubt that defendant No.1 - Davinder Singh had no right or authority to execute sale deed on 04.01.2010 in favour of his wife – defendant No.2 and court rightly held the transaction to be void as the sale deed does not confer any title in favour of defendant No.2 and the action is not binding upon the rights of the plaintiffs. The Court held that agreement Ex.D1 has no evidentiary value as the same is an unregistered document when it recites that possession was delivered. If that recital was not there, then the document was not compulsory registrable.

8. There was another vital aspect touched by the Appellate Judge finding that there is no reference of the agreement in the sale deed dated 04.01.2010 and this is an element of fraud played on the plaintiffs and, therefore, reliance placed by the defendants on the ruling in J.C.Mehra Vs. Smt. Kusum Gupta, 2006(1) RCR (Civil) 31 was distinguishable on facts and rightly held its ratio does not apply to the facts of the present case. The trial Court had not considered the case from these angles, which is a result of misreading of evidence and ignoring an important part of it. Consequently, findings on Issue Nos.1 & 2 have been reversed. Issues No.3, 4, 5 & 6 were

not pressed by the defendants, as the onus to prove the same was on them. These issues were disposed of as not pressed. Issue No.8 regarding affixing of ad valorem court fee on the plaint was duly considered by the Appellate Judge, Jalandhar. The trial Court had held that the plaintiffs were not required to affix ad valorem court fee and those findings were not assailed by the defendants in appeal or at the hearing. When the conclusion was reached that defendant No.1 had no authority to execute sale deed in favour of his wife, the plaintiffs were not required to affix ad valorem court fee on the sale deed. The finding on Issue No.8 was affirmed, but the judgment and decree was set aside as not sustainable in law or in fact and for proper reasons. Resultantly, the appeal has been accepted and the power of attorney and the sale deed have been set aside. The plaintiffs are held to be owner in possession of the suit property and the defendants are restrained from interfering in their possession over the suit property or to alienate the same in any manner.

9. Before this Court, Mr. Vijay Lath has based his arguments on Section 54 of the Transfer of Property Act, 1882 which defines 'sale' to mean 'sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised' and Section 202 of the Contract Act, 1872 which deals with 'termination of agency, where agent has an interest in subject matter' to mean 'where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest'. He draws attention to Illustration (a) to Section 202 of the Indian Contract Act, which reads as follows:

“(a) A gives authority to B to sell A’s land and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.”

What Mr. Lath wishes to derive from these provisions is difficult to understand in the facts of the present case. If Davinder Singh was an agent, he had no interest in the property except through a power of attorney to do the acts mentioned in the recitals on behalf of the owners including sale. The two Illustrations i.e. (a) & (b) sharpen the provisions of the main Section and the case of the appellants does not fall in any one of the Illustrations or in the subject matter of Section 202. He relies on Romesh Mohan & another Vs. Raj Krishan & others, 1984 PLR 211 to contend that when vendor has received sale price and possession is delivered, when specifically provided in the agreement to sell, power of attorney is irrevocable. The vendor continued to be the agent in spite of any cancellation of the power of attorney. In the present case, the plaintiffs had asserted that they were in possession of the suit property despite sale. It is only in case where sale consideration has passed and possession given, the sale being based on power of attorney, then Section 54 of the Transfer of Property Act and Section 202 of the Contract Act would apply. No clear evidence is on record coming from the defendants that they were in possession of the suit land. In the present case, passing of sale consideration under the agreement has not been proved. In any case, the registered cancellation deed is prior in time to the sale deed and a finding of element of fraud has come in the judgment of the first Appellate Court, which is not liable to be disturbed. Therefore, the judgment of Karnataka High Court relied on by Mr. Lath in Smt. Subhadra & another Vs. M. Narasimha Murthy

& others, 2012 AIR (Karnataka) 19 is not applicable. This case rested on receipt of consideration by the vendor and execution of power of attorney was duly established on evidence. The case is, therefore, distinguishable on facts.

10. Lastly, it is argued that reliance on the certificate of posting could not have been placed as a certificate of posting can be manipulated. If the defendants point out on the veracity of the certificate of posting, they could have summoned the Postman with the original record of the office. The lower Appellate Court has accepted due service of notice of cancellation of power of attorney. There is no refutation by the defendants that apart from UPC letter, they were not informed orally about the cancellation by the plaintiffs. Sections 16 & 114 of the Evidence Act, 1872 may not bind court to presume receipt of letter sent under Certificate of posting. The presumption is rebuttal, if drawn. If the presumption is rebuttable, then the onus was on the defendants to discharge to compel the court not to presume due receipt of letter. At any rate, due diligence had it been done by defendant No.1 would have resulted to their disclosure and knowledge from the Municipal record that the power of attorney was cancelled on 30.12.2009, by a registered instrument. Accordingly, reliance of Mr. Lath on the decision of Madras High Court (Madurai Bench) in Sivaperuami Vs. S. Viswanathan & others, 2014 (1) CTC 447 is misplaced on the facts of this case. The surrounding and attending circumstances have also to be taken into consideration with regard to the conduct of the parties by the court of first appeal. The sale being from husband to wife on the strength of a power of attorney and sale consideration being under-valued from the amount agreed upon in the agreement to sell between the plaintiffs and Balwinder

Kumar and Balwinder Kumar not produced as a witness either by the plaintiffs or by the defendants to throw light on the subject matter the sale deed cannot hold as legal and valid transfer of property in dispute.

11. Consequently, for the above reasons, I find that no interference is called for in this appeal, which is ordered to stand dismissed, as no substantial question of law arises for consideration.

**04.10.2017**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

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| <i>Whether speaking/reasoned:</i> | <i>Yes</i> |
| <i>Whether Reportable:</i>        | <i>No</i>  |