

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

**RSA No.4422 of 2015 (O&M)
RSA No.4587 of 2015 (O&M)
Date of Decision: 03.08.2017**

Kulwant Kaur and others

.....Appellant

Vs.

Suhawa Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.S.K.Aneja, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

CM No.10614-C of 2015 in RSA No.4422 of 2015

For the reasons mentioned in the application, delay of 156 days in filing the appeal is condoned.

Application stands disposed of.

CM No.11022-23-C of 2015 in RSA No.4587 of 2015

For the reasons mentioned in the applications, delay of 20 days in refiling and delay of 145 days in filing the appeal are condoned.

Applications stand disposed of.

Main Case

The appellants/defendants have come up in appeal against the judgments and orders of the trial Court dated 14.03.2012 and learned lower appellate Court dated 09.07.2014 whereby, suit of the plaintiff Suhawa Singh for declaration i.e. owner in possession of the suit land and the sale deed dated 27.12.2004 allegedly executed by the defendant No.2 in favour of his wife defendant No.1 on the basis of General Power of Attorney dated

03.11.2004 is illegal and liable to be null and void has been decreed.

The brief facts of the case are that plaintiff purchased specific khasra numbers of land measuring 12 kanals comprised of khewat No.65 khatoni No.118 and thereafter, he alongwith his brothers Munsha Singh and Balbir Singh purchased specific khasra numbers of land measuring 20 kanals comprised of khewat No.65, khatoni No.120 and plaintiff along with his brother Balbir Singh and Prem Singh purchased specific khasra numbers of the land measuring 24 kanals comprised of khewat No.69, khatoni No.132 situated in Chak Pun nawali, Tehsil Jalalabad. The plaintiff was married with Kammo Bai and out of this wedlock, a daughter namely Manjit Kaur was born. The plaintiff sold an area measuring 6 marla i.e.6/1000 share of 50 kanals situated in village chak Pun nawali,tehsil Jalalabad in favour of Kishan Singh son of Kashmir Singh vide sale deed 03.11.2004 bearing indenture No.3425 and also executed special power of attorney dated 03.11.2014 in favour of Kashimr Singh son of Gurdit Singh for mutation purpose relating to the above said land measuring 6 marlas and the said sale deed was witnessed by Kashmir Singh son of Uttar Singh and Dayalo Bai Sarpanch of Chak Pun nawali who also happens to be the witness of special power of attorney. On the same day on 03.11.2004, during the process of completion and registration of sale deed bearing wasika No.3425, the defendant No.2 Kashmir Singh,Kishan Singh vendee of sale deed referred above, Dayalo bai Sarpanch of village Chak Pun nawali and deed writer Ramesh Sethi by conspiring with each other fraudulently with malafide, dishonest and guilty intention to grab the land of plaintiff, without his consent or intention procured General Power of Attorney allegedly executed

need or necessity with the plaintiff to appoint or nominate the defendant No.2 as his General Attorney for alienation of disputed land.

The defendant No.2 alienated the suit land detailed in the head not of the plaint as well as judgment in favour of his wife defendant No.1. The aforesaid sale deed and the mutation No.1586 recorded in pursuance of sale deed in favour of defendant No.1 and hence the present suit was filed.

On notice, defendants No.3 to 13 did not turn up despite service and they were proceeded against ex-parte. Defendants No.1 and 2 appeared and filed joint written statement and raised preliminary objection that plaintiff had no cause of action or locus standi to file the present suit and also by taking the plea that plaintiff executed a general power of attorney in favour of defendant No.2 with his sweet will and as per his own instructions which was got attested in the office of Sub Registrar, Jalalabad after witnessing the same by two respectable persons of the village and thereafter, defendant No.2 alienated the land in dispute in favour of defendant No.1 after taking due consideration, reply was filed and thereafter, the following issues were framed:

1. Whether the plaintiff is owner of the suit property?

PPP

2. Whether the sale deed dated 23.12.2004 executed by defendant No.2 in favour of defendant No.2 is illegal, null and void and is result of fraud and undue influence?

OPP.

3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.

4. Whether the defendant No.2 is bonafide purchaser for

consideration?

5. Whether the suit is not maintainable in the present form? OPD

6. Relief.

Both the Courts below after going through the materials on record, the findings on issues No.1 to 3 has been given in favour of plaintiff. The general Power of attorney dated 03.11.2004 Ex.P5/D2 was attested by PW-3 Krishan Singh son of Kashmir Singh and DW-7 Dayalo Bai, Ex.Sarpanch of village Chak Pun nawali. So one of the witness has deposed in favour of plaintiff while other has deposed in favour of defendants. Another remarkable feature of the case was that on 03.11.2004, two other documents had been executed as sale deed Ex.P3 qua land measuring 6 marlas in favour of PW-3 Krishan Singh son of Kashmir Singh and the said sale deed was attested by Dayalo Bai, Sarpanch and defendant No.2 Kashmir singh son of Uttar Singh. Further on the same very date, plaintiff executed Special Power of Attorney Ex.PX in favour of Kashmir Singh son of Gurdit Singh who was none else but the father of vendee Krishan Singh for the purposes of getting the mutation of land purchased by Krishan Singh. Dayalo Bai while appearing as DW-7, in her cross-examination, she identified her signatures as attesting witness over sale deed Ex.P3 regarding 6 marlas land executed by Suhawa Singh plaintiff in favour of Krishan Singh. She has infact stated in her testimony that Suhawa Singh used to remain ill during those days and further stated that she is illiterate lady and therefore could not tell that what all documents were executed by Suhawa Singh on that date She further stated that Kulwant Kaur-defendant No.1 to be daughter in law of defendant Kashmir Singh and she was wife of Kashmir Singh. She categorically stated

that the sale deed regarding 6 marlas land Ex.P3, endorsement over which was Ex.P4 was executed about 10 to 11 AM and after that she went away with his brother in law Mukhtiar Singh. She further submitted that after that she did not come back to Tehsil Complex, Jalalabad for witnessing/attesting any documents. As per endorsement, the time of registration of said document was 2 to 3 p.m. Whereas, time of registration of general power of attorney Exp5/D2 was 4 to 5 PM as was demonstrated by the endorsement of the registrar Ex.DW3/E. Had,the said general power of attorney been executed on the said date i.e. 03.11.2004, the same would have got registered almost at the same time and there would not have been a gap of 2-3 hours. Hence, if we believe the testimony of DW-7 Dayalo Bai, she witnessed sale deed Ex.P3 executed by Suhawa Singh in favour of Krishan singh at about 10 to 11 AM and after that she went back to her village and as per her undisputed statement she never came back for attesting any other document in the Tehsil Complex, Jalalabad. Deed writer, Ramesh Sethi has been examined by defendants being scribe of the General power of attorney which had been entered by him in his register at Sr.No.810. Whereas, this very witness had also scribed admitted sale deed Ex.P3 executed by Suhawa Singh in favour of Krishansingh at Sr.N.809. After this very sale deed, special power of attorney Ex.PX was also executed by Suhawa singh in favour of Kashmir Singh, father of vendee Krishan Singh for the purpose of getting the mutation entered on the basis of sale deed Ex.P3. DW5 in his cross-examination had conceded about the execution of the aforesaid sale deed Ex.P3 qua land measuring 6 kanala by Suhawa Singh in favour of Krishan Singh and had admitted that same was scribed by him at the instance of Suhawa Singh plaintiff. He also endorse the fact that at the time

of scribing of Ex.P3, Suhawa singh was in good health and further stated that it may be special power of attorney Ex.PX be scribed by him at the same time when aforesaid Ex.P3 was scribed. But this special power of attorney Ex.PX was not registered by this scribe. Thus this very document Ex.PX had afforded opportunity to defendant No.2 to play fraud and misrepresentation upon Suhawa singh plaintiff and thereby extract general power of attorney in his favour. After coming to the knowledge of the aforesaid fraud and misrepresentation, Suhawa Singh got the general power of attorney cancelled through the cancellation deed Ex.P1 which was got registered on 27.04.2005. In the said deed, he had referred about the fraud and misrepresentation committed by his nephew Kashmir Singh son of Uttar singh. The aforesaid cancellation deed had been duly proved by PW-2 Harbhajan Singh Lambardar of the Village Chak Pun nawali. Lateron, the plaintiff moved an application to the police on the basis of which FIR No.136 dated 24.09.2005 Ex.P6 under Section 420/467/468/471/120-B IPC was registered against Kashmir Singh and Kulwant Kaur defendants, Dayalo Bai attesting witnesses, Ramesh Sethi, Deed Writer and Pankaj Kumar, Stamp vendor. In the aforesaid criminal case, detailed enquiry was conducted by Hans Raj, Incharge, E.O.Wing, Ferozepur who had found that defendant No.2 Kashmir Singh had in connivance with attesting witness Dayalo Bai and document writer Ramesh Sethi and stamp vendor Pankaj Kumar committed fraud and misrepresentation with plaintiff Suhawa Singh and therefore recommended legal action against the accused, It was only after the opinion of DA(Legal) was obtained that the aforesaid FIR was registered. Both the Courts found

could convince the courts that really there was exigency for the defendant No.2 to alienate the suit property. Kashmir Singh defendant admitted in his cross-examination that plaintiff was mentally and physically fit. Also this attorney Kashmir Singh failed to tell the necessity to the plaintiff to sell the land by way of appointing his general attorney. Thus, plaintiff Suhawa Singh had no occasion to execute general power of attorney in favour of his nephew Kashmir Singh. So the agreement to sell dated 22.12.2003 Mark DB could not be proved on the judicial file and remained doubtful. The defendants in the written statement has never been referred to the said agreement to sell dated 22.12.2003 Mark DB and secondly one of the attesting witness of the alleged agreement i.e. Hoshiar Singh stepped into witness box as DW-8 but ne never spelled out anything about this agreement. The defendants could not lead evidence beyond their pleadings and for that very reason, application for additional evidence moved by defendants was dismissed vide order dated 14.09.2011. Kulwant Kaur defendant No.1 during her cross-examination had stated that a sale consideration of Rs.8,40,000/- was paid to plaintiff but she did not obtained any receipt with regard to such payment. After dismissal of aforesaid application, defendants even moved an application under Order 6 Rule 17 CPC for amending their written statement by pleading that by virtue of agreement to sell dated 22.12.2003 as well as receipt dated 25.06.2004, a sum of Rs.8 Lacs was paid to the plaintiff but the said application was also dismissed by the Court vide its Order dated 28.09.2011. Thus in a way, defendants had tried to take up contradictory plea since in her cross-examination, defendant No.1 Kulwant Kaur stated that she never obtained

amendment of written statement, defendants intended to set up agreement to sell and receipt referred above at the fag end of the present case which would otherwise also changed the entire nature of defence of the defendants. Still further, perusal of reverse side of receipt dated 25.06.2004 reveals that the name as well as thumb impression of purchaser plaintiff Suhawa Singh are conspicuous by their absence. Another notable feature was that the stamp paper for the receipt dated 25.06.2004 had also been depicted to be purchased on 22.10.2003 i.e. the date of alleged agreement to sell. In fact, it bears number 4240 meaning thereby that all the stamp papers i.e. three leaves had been purchased on one and the same date. But the defendants have failed to examine stamp vendor Ashok Kumar from whose register their authenticity could have been verified. In case, entire sale consideration as per the alleged agreement to sell dated 22.12.2003 had already been paid, what was the hitch for defendant No.2 Kashmir to get the sale deed execute and registered in his favour particularly when he had accompanied Suhawa Singh on 03.11.2004 or for witnessing some documents? It was plausible when defendant No.2 can visit Tehsil Complex, Jalalabad for witnessing some document alongwith Suhawa Singh, he could have easily got the sale deed registered in his favour qua the entire land. The defendants have miserably failed to bring forth any reasonable explanation for such omission. From aforesaid discussion, it emerges that the alleged agreement to sell dated 22.12.2003 and receipt dated 25.06.2004 had not seen the light of the day for so long and have been produced only towards the end and as such possibility could not be ruled out that said document might have been manipulated and fabricated by the defendants in order to lend credence to

Defendant no.2 Kulwant Kaur had stated that no consideration was passed before Sub Register on the basis of Ex.P9 and volunteered that amount was paid to the plaintiff at home and they had made payment to the plaintiff in three or four installment and she categorically stated that she had not obtained any receipt regarding payment of alleged amount. It was also held that defendants have taken dule stand. On the one hand, it was being project that sale consideration was hanede over to plaintiff in three four installments. While on the other hand, it was being stated that plaintiff had been paid Rs.8 Lacs on the two different occasions i.e. on 22.12.2003 date of execution of alleged agreement of sell and on 25.06.2004 dated of execution of receipt cum extension of time Mark DB. From these fact, it emanates that virtually no penny was ever paid to plaintiff even at home or before the Sub Registrar and hence the impugned sale deed dated 23.12.2004 Ex.P9/Ex.D1 was without consideration.

Another remarkable aspect of this case was that during the execution and registration of impugned General Power of attorney Ex.P5/D2, the registration process had started functioning through computer and this very fact has been admitted by DW-3 Jagdish Vohra, Retd. Sub Registrar, Jalalabad who had proved his endorsement Ex.PW3/B to Ex.PW3/E on the reverse side of general power of attorney Ex.P5/D2. But with the naked eye it could be seen that a manual process had been adopted while registering general power of attorney and there was no digital photograph which depicts the photograph of Sub Registrar also. No cogent and convincing explanation had come forth regarding no adoption of registration process through computer. The argument that the electricity

the offices are having power supply back up by way of generator or inverter. So, said plea on the face of it was unacceptable by both the Courts below and another fact, defendant No.1 had filed a suit against plaintiff which had been dismissed by the Court of Sh.Jaapinder Singh, PCS, Civil Judge (Jr.Divn.), Jalalabad (W) vide his judgment and decree dated 23.02.2011 Ex.P10 and Ex.P11. The said Court had categorically held that the jamabandi for the year 2002-03 Ex.P6 clearly demonstrated that Suhawa Singh co-sharer was having specific possession over the suit land measuring 12 Kanals comprising in Rect No.20 khasra No.4(8-0), 5/2 (4-0) Ex.P8 of the sale deed dated 23.12.2004 (D1) was a sham transaction as no possession was handed over to vendee Kulwant Kaur and it always remained with plaintiff Suhawa Singh.

So, both the Court below after going through the reasons mentioned above had given the findings that defendant No.2 took advantage of the situation on 03.11.2004 when he had accompanied plaintiff to Tehsil Complex, Jalalabad for witnessing sale deed and special power of attorney whereby defendant No.2 in grab of execution of special power of attorney, manage to procure general power of attorney Ex.PY in his favour by playing fraud, deceit and misrepresentation on the basis of which he later on alienated the suit property in favour of his wife Kulwant Kaur-defendant No.1 without passing any consideration and delivery of possession. So, in view of the above, it was hereby held that the sale deed dated 23.12.2004 Ex.P9/D1 qua the suit property which was executed by defendant No.2 on the basis of general power of attorney dated 03.11.2004 Ex.P5/D2 and consequent mutation entered in the revenue record were illegal, null and

entitled to consequential relief of permanent injunction and accordingly defendant No.1 from alienating the suit land by any mode of transfer or otherwise from causing any type of interference into exclusive and joint possession of plaintiff over the land fully detailed in the head note of the judgment on the basis of impugned sale deed and its pursuant mutation. Furthermore, defendant No.1 was also restrained from raising any loan by mortgaging the above said land or any part thereof in favour of any persons including nationalized bank or cooperative society etc. Accordingly, these all issues were decided in favour of plaintiff and against the defendants.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present regular second appeals stand dismissed.

(RITU BAHRI)
JUDGE

03.08.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No