

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

RSA No.3486 of 2014 (O&M)

Date of decision: 06.04.2017

Gurmej Singh Sokhi

..Appellant

Versus

Chuni Lal and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. B.S. Rana, Sr. Advocate with
Mr. Rajinder Paul, Advocate
for the appellant.

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

Daya Chaudhary, J.

The present regular second appeal has been filed by appellant-Gurmej Singh Sokhi, who was plaintiff before the trial Court, to challenge judgment and decree dated 09.12.2013 passed by the Additional District Judge, Faridabad, whereby, judgment and decree dated 30.04.2013 passed by the Civil Judge (Junior Division), Faridabad has been reversed.

Briefly, the facts of the case as made out in the appeal are that appellant-plaintiff-Gurmej Singh Sokhi filed a suit through his power of attorney holder-Sh. Dilawar Singh Sangwan seeking declaration that GPA dated 02.06.2006 and sale deed dated 05.02.2008 were void and liable to be cancelled. He also prayed for permanent injunction restraining the defendants from carrying out further construction and alienating the suit property. He also sought a decree of possession of the suit property i.e., Plot

No.B-63 measuring 444 square yards situated in Ashoka Enclave, Extension No.II (Revenue Estate of Village Palla, New Sector 37, Faridabad). As per contents of the plaint, the plaintiff was residing at Nairobi (Kenya) and was unable to pursue the suit himself and appointed Sh. Dilawar Singh Sangwan as his power of attorney to pursue the case on his behalf. Originally, he was resident of Jalandhar City but because of business, he had shifted to Nairobi (Kenya) where he had been residing for the last 50 years. Defendants hatched a conspiracy to deprive him of his suit property by impersonation and got executed GPA No.2370 dated 02.06.2006 in their favour, which was registered in the office of Sub-Registrar, Jalandhar. It was also mentioned that even the photograph of the person, who impersonated himself as the plaintiff was affixed on the GPA but that person was not impleaded as party as his whereabouts were not known and he could not be traced even by the Police. The defendants joined some close relations of the plaintiff in the conspiracy and illegally procured the original title deed of the suit property, which was lying in his ancestral House No.548, Model Town, Jalandhar. The matter was reported to the Police. On the basis of said GPA, a sale deed of the suit property was executed in favour of defendants No.1 and 2, namely, Chuni Lal and Rajat Gupta for a consideration of ₹20 lacs vide registered sale deed No.24393 dated 05.02.2008. On knowing the fact of cheating and forgery, the plaintiff reported the matter to the Police through e-mail and FIR No.110 dated 26.04.2008 was got registered. As per case of the plaintiff, he was not even present in India at the time of execution of sale deed and GPA was executed by a fictitious person representing himself to be the plaintiff. The appellant-plaintiff never put his signatures on GPA

and never authorized defendants No.3 and 4 to execute any sale deed.

Written statement was filed by defendants No.1 and 4 by raising preliminary objections of locus-standi, maintainability, cause of action and concealment of true facts etc. It was also stated in the written statement that the suit property was purchased by defendants No.1 and 2 through registered sale deed dated 05.02.2008 and the amount of consideration was also paid by them to defendants No.3 and 4, who were GPA of plaintiff-Gurmej Singh Sokhi. The Will executed by plaintiff-Gurmej Singh Sokhi, the registered GPA executed in favour of defendants No.3 and 4 and original sale deed relating to suit property were handed over to Gurmej Singh Sokhi. Defendants No.1 and 2 also verified that defendants No.3 and 4 and made payment to Gurmej Singh Sokhi through Bank draft. The Building plan was also sanctioned by Municipal Corporation, Faridabad and prior permission was also obtained from Municipal Corporation for raising construction. No dues certificate was also obtained after depositing land tax with the Municipal Corporation, Faridabad. It was also the stand of the respondents-defendants that they became absolute owner in possession of the suit property.

On appraisal of evidence produced by both the sides, the suit filed by the plaintiff was decreed to the effect that GPA dated 02.06.2006 and sale deed dated 05.02.2008 were set-aside and the defendants were restrained from alienating the suit property vide judgment and decree dated 30.04.2013. A decree of possession qua suit property was also passed in favour of plaintiff.

Aggrieved by said judgment and decree dated 30.04.2013

passed by the trial Court, defendants-respondents, namely, Chuni Lal, Rajat Gupta, Akash Gupta and Usha Devi filed appeal before the Additional District Judge, Faridabad, which was allowed vide judgment dated 09.12.2013 and judgment and decree passed by the trial Court was set-aside.

The present regular second appeal has been filed by the appellant-plaintiff-Gurmej Singh Sokhi to challenge judgment and decree dated 09.12.2013 passed by the Additional District Judge, Faridabad, whereby, the judgment of trial Court has been reversed.

Learned counsel for the appellant submits that the well-reasoned judgment passed by the trial Court has been reversed whereas it was based on proper appreciation of evidence. The trial Court had given a specific finding that the GPA was not executed by the plaintiff and the person, by whom it was executed, was not examined as witness by the respondents-defendants, who claimed that said GPA was executed by the real owner of the property in dispute. It was also held by the trial Court that the defendants have suppressed the best evidence by not producing the person, who executed the GPA before the Court. Learned counsel further submits that even defendant-Rajat Gupta has admitted in his cross-examination that GPA was executed by the plaintiff-Gurmej Singh Sokhi, whose photograph was affixed on the documents. His copy of the passport was produced on record. Learned counsel also submits that the person, who executed the sale deed in favour of defendants, was found to be fake person as he was not traceable. By holding that the admission on the part of the defendants was relevant in the facts and circumstances of the case, the suit was decreed. Even the passport of person, who executed the GPA was also

impounded. The ration card and NOC on the basis of which, he applied passport were also found to be fake. FIR No.110 of 2008 was also registered at Police Station Sarai Khawaja. It was proved on record that GPA was not executed by the real owner but by an imposter and the same was admitted by the defendants also. Learned counsel for the appellant has also relied upon judgment rendered by Hon'ble the Apex Court in ***Jugraj Singh and another vs. Jaswant Singh and another, 1971 AIR (SC) 761***, judgments rendered by this Court in ***Sharomani Gurdwara Parbandhak Committee, Amritsar vs. Ram Sarup, 2004(4) RCR (Civil) 541***, ***Punjab National Bank vs. M/s. Parmesh Knitting Works and others, 1986 AIR (Punjab) 214***, ***Jugraj Singh and another vs. Jaswant Singh and others, 1967 AIR (Punjab) 345*** as well as judgment rendered by the Kerala High Court in ***K.A. Pardeep vs. Branch Manager, Nedungadi Bank Ltd., Manjeri and others, 2007 AIR (Kerala) 269*** in support of his contentions.

Learned counsel for the respondents submits that the judgment passed by the trial Court was reversed by the Lower Appellate Court by allowing the appeal filed by the defendants. Learned counsel further submits that the suit was not filed by a duly authorized person and no decree could have been passed against the defendants as the plaintiff himself had not filed this suit and even has not stepped into witness box. Learned counsel also submits that in case, the suit had not been filed by a competent person, no finding could have been given that GPA Ex.DW-5/B in favour of respondents No.3 and 4 was illegal, invalid or sale deed (Ex.P-1) could not have been executed on the basis of aforesaid GPA. By considering these facts, the appeal filed by the respondents-defendants was allowed and the

impugned judgment and decree passed by the trial Court was set-aside. Learned counsel for the respondents has also relied upon judgment rendered by Hon'ble the Apex Court in *Janki Vashdeo Bhojwani vs. Indusind Bank Ltd., 2005(1) RCR (Civil) 240* in support of his contentions.

Heard arguments of learned counsel for the appellant as well as counsel for the respondents and have also perused the judgments passed by both the Courts below as well as other documents available on the file.

Admittedly, plaintiff-Gurmej Singh Sokhi filed suit for declaration through his power of attorney Sh. Dilawar Singh Sangwan on the ground that GPA dated 02.06.2006 and sale deed dated 05.02.2008 were void and liable to be cancelled. He also prayed for relief of permanent injunction restraining the defendants from carrying out further construction over the suit property and also to alienate the same. A further prayer was also made for possession of suit property i.e., plot No.B-63, measuring 444 square yards situated in Ashoka Enclave, Extension No.II (Revenue Estate of Village Palla, New Sector 37, Faridabad). As per case of the appellant-plaintiff, he appointed Sh. Dilawar Singh Sangwan as his power of attorney to pursue his case on his behalf as he was residing at Nairobi (Kenya). The property in dispute was sold on the basis of GPA by some other person impersonating himself as the plaintiff. Not only, impersonation of the plaintiff was there but the sale deed was also got executed on the basis of fake and bogus GPA, which was executed by respondents No.3 and 4 in favour of respondents No.1 and 2. A complaint was made to the police through e-mail and FIR was got registered. As per case of the plaintiff, he was not present in India and never executed GPA in favour of respondents

No.3 and 4.

From the pleadings of the parties, the following issues were framed by the trial Court: -

1. Whether the plaintiff is owner in possession of the land mentioned in para No.1 of the plaint?OPP
2. If issue No.1 proved, whether the plaintiff is entitled for declaration, possession and permanent injunction on the ground mentioned in the plaint?OPP
3. Relief.

The defence of the defendants was struck off vide order dated 04.06.2009 and thereafter, they filed their written statement. The suit was decreed with costs vide judgment dated 28.08.2012. The defendants preferred an appeal and vide judgment dated 24.01.2013, judgment and decree dated 28.08.2012 was set-aside and it was ordered that the trial Court would give two effective opportunities each to the defendants to lead their evidence and to the plaintiff in rebuttal and thereafter, decide the matter afresh on the basis of material available on record. It was also observed that the order of striking of defence was never set-aside during the pendency of the trial but the trial Court had accepted the written statement and reply of the defendants and was bound to consider the documents. Thereafter, the defendants were given opportunity to lead their evidence.

Defendants in support of their case examined DW1-Surinder Pal, Assistant Manager, Gurgaon Gramin Bank, Palla Branch, Sarai Khawaja, DW2-Harinder Verma, Clerk, SBI, Sector-12, Faridabad, DW3-Arun Munjal, Ahlmad to the Court of CJJD, Faridabad, DW4-Raj Narain,

Clerk, Municipal Corporation, Faridabad, DW5-Parveen Kumar, Clerk, Sub Registrar's office, Jalandhar, DW6-Lalita Parshad, Clerk of Registrar's office, Delhi, DW7-Anil Kumar, Assistant, Office of DTP, Faridabad and DW8-Rajat Gupta.

On appraisal of evidence available on record, it was held by the trial Court that GPA was not executed by the plaintiff and the person, by whom it was executed, was not examined as witness by the defendants whereas the stand of the defendants was that the GPA was executed by the real owner of the suit property in favour of defendants No.3 and 4 who further sold the property by virtue of said GPA to defendants No.1 and 2. The person, who executed the GPA was neither produced nor examined but the ration card and the NOC on the basis of which, the passport was applied were found to be fake. It was proved on record that the GPA was not executed by the real owner but by an imposter. Defendant No.2-Rajat Gupta has also admitted in his cross-examination that the GPA was executed by a fake person. Even the person, who executed GPA in favour of defendants No.3 and 4 was not found to be traceable till the decision of the suit and the suit was decreed in favour of the appellant-plaintiff vide judgment and decree dated 30.04.2013.

The judgment of the trial Court was reversed by the Lower Appellate Court on the ground that the suit was not filed by a person, who was duly authorized and no decree could have been passed against the respondents-defendants as the plaintiff himself has not filed the suit and has not even stepped into the witness box. By holding that the suit was not instituted by a competent person, no finding could have been given that

GPA Ex.DW5/B in favour of respondents-defendants No.3 and 4 was legally, invalid or that the sale deed could not have been executed on the basis of aforesaid GPA.

Now the question for consideration before this Court is as to whether the judgment and decree passed by the trial Court can be set-aside on the ground that the suit was filed by a person, who was not duly authorized by the plaintiff.

Section 85 of the Indian Evidence Act provides for certain presumptions regarding power of attorney and the same is reproduced as under: -

“The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public..... was so executed and authenticated”. The presumption under Section 85 is regarding both execution and authentication in respect of all documents which purport to be power of attorney executed before and authenticated by the notary public. As for the power of attorney in hand, though the endorsement made by the notary is unsatisfactory, it cannot be said that the document is not a document which purports to be a power of attorney executed before and authenticated by a notary public. Significantly the document bears the seal of the notary. Non attestation by witnesses will

not be fatal to the power of attorney since it is not at all obligatory that a power of attorney should be attested by two witnesses. What is necessary is only its authentication.”

Rule 22 of the Civil Rules of Practice, deals with situations where the party appears by an agent other than a pleader. It provides that in view of Rule 22 agent is to file in the Court the power of attorney or other written authority authorizing him or a properly authenticated copy thereof. In the present case, there is no denial of the fact that the appellant has been authorized by the plaintiff as power of attorney, which comes within the ambit of expression ‘other written authority’. The identity of the signatory to the power of attorney is not disputed and the only dispute is of its value as a power of attorney.

It has been held by the Kerala High Court in **Narayanan Nair vs. John Kurien, 1988(1) KLT 673** that even an oral authorization will suffice. In said decision the learned Judge noticed that an affidavit was filed by the principal himself in which, he had stated that he had authorized his agent to defend him in the suit. This principle laid down in **Narayanan Nair’s case (supra)** may not be applicable to the present case but the power of attorney in question is liable to be construed as ‘other written authority’ for the purpose of Rule 22 of Civil Rules of Practice.

Same view was held by the Kerala High Court in **K.A. Pardeep's case (supra)**.

It has been held by the Court in **Ram Sarup’s case (supra)** that the power of attorney holder is also competent to represent the

concerned person. In that case, it was argued that in case, it was not proved that the concerned person was duly authorized representative of the petitioner but he was a person acquainted with the facts of the present case and thus was found competent to sign and verify the execution application.

Same view was held by this Court in **Punjab National Bank's case (supra)**. The observation made by this Court in Para No.7 of the judgment is reproduced as under: -

“7. It is not disputed that there is no prescribed or established form of nature and manner of authentication by a Notary Public. The same has to be gathered from the tenor, facts and circumstances of the power of attorney and its authentication by a Notary Public. The fact that the power of attorney was executed by a Director of the Plaintiff Bank duly authorised by a resolution of the Board of Directors to execute the same and this execution was made on 8.2.1973 and its attestation by a Notary Public was also done on the same day clearly indicates that the power of the attorney was executed before the Notary Public. Para 4 of the power of attorney further bears out that Shri Parkash Lal Tandon, a Director of the plaintiff-Bank, was duly authorised by a resolution of the Board of Directors of the plaintiff-Bank to execute the power of attorney delegating to Shri Puran Chand Kalia the powers mentioned in the said

power of attorney. This amply bears out that Shri Parkash Lal Tandon, Director of the plaintiff-Bank who executed the power of attorney, was a person competent to execute the same. Thus, its attestation by the Notary Public on the same date and time fulfils the requirements of its due authentication. It is worth mentioning that a specific averment was made by the plaintiff Bank in the plaint to the effect that Shri Puran Chand Kalia was a duly constituted attorney by virtue of a power of attorney executed in his favour by the Director of the plaintiff Bank, who had authorised to execute the same by a resolution of the plaintiff-Bank's Board of Directors. This averment was not countered by the defendant-respondents in their written statement. Rather they chose to make a vague denial for want of knowledge. Likewise, when Shri Puran Chand Kalia appeared in the witness-box as P.W.2 and brought the original power of attorney and proved on record its photostat copy Ex. P2/1, no question was addressed to him in cross-examination on any aspect touching the execution before and authentication thereof by the Notary Public. The authority of Sh. Parkash Lal Tandon to execute the power of attorney or the factum of its execution by him, was not questioned.

The vital aspect of the execution of the power of attorney before the Notary Public was not even touched in cross-examination although the document Ex. P2/1 made it manifest that the same was executed before the Notary Public. I, therefore, find that the learned District Judge erred in holding that the suit was not instituted by a duly authorised person. The institution of the suit by Shri Puran Chand Kalia, who was a duly constituted attorney by virtue of the general power of attorney Ex.P2/1 was valid in law.”

The appellant got information about the acceptance of the appeal filed by the respondents as well as dismissal of the suit and he got executed his general power of attorney dated 11.04.2014 because he was stated to be ill and was on bed. Even a fresh general power of attorney was got prepared in favour of Sh. Dilawar Singh Sangwan to pursue his case by way of filing appeal before this Court against judgment and decree dated 19.12.2013 passed by the Additional District Judge, Faridabad. The fresh general power of attorney was received by Sh. Dilawar Singh Sangwan on 19.04.2014 through courier at about 5.00 pm and thereafter, the present appeal was filed before this Court. Even delay of 40 days has occurred in getting fresh power of attorney prepared.

The Lower Appellate Court allowed the appeal filed by the respondents by holding that the suit was not filed by a duly authorized person as he was not having legal, valid and genuine power of attorney. It was also held that GPA in favour of Sh. Dilawar Singh Sangwan was of

dubious origin on the basis of documents annexed by the respondents-defendants with the application for additional evidence and the same was dismissed. The documents annexed with the application were sought to be produced by way of additional evidence but the appellant-plaintiff was not having any opportunity to rebut said documents as they were not even part of the evidence on record. The general power of attorney was attested by the Notary Public, namely, Sh. R.V. Singh and his stamp is existing on the same. Even on the basis of information, which was placed on record by the respondents-defendants, Sh. Ram Vir Singh was registered as Notary Public by the Union of India vide registration No.2282. There was nothing illegal in case it was signed by way of his initials and the same was not relied. The appearance of name of Sh. Ram Vir Singh as Notary Public as R.V. Singh on GPA (Ex. P-2) cannot be considered to hold that the Notary Public was not registered with the Union of India. Moreover, registration number is also appearing in the stamp of Notary Public along with his name and it was not rebutted by the respondents-defendants in any manner. Accordingly, the general power of attorney (Ex. P-2) in favour of Sh. Dilawar Singh Sangwan executed by the appellant-plaintiff-Gurmej Singh Sokhi cannot be held to have not been executed in proper procedure.

It has also wrongly been mentioned that the respondents-defendants filed joint written statement in the suit whereas the written statement was filed by the respondents-defendants after striking off their defence by the trial Court. It was never accepted and taken on record by the trial Court. Even the order of dismissal of the application was never challenged by the respondents-defendants. Even no issue was framed with

regard to general power of attorney, on the basis of which, the suit was filed by Sh. Dilawar Singh Sangwan acting as general power of attorney of the appellant-plaintiff-Gurmej Singh Sokhi. There was no issue of maintainability of the suit on the basis of GPA. The finding recorded by the Additional District Judge, Faridabad in allowing the appeal by discarding the general power of attorney in favour of Sh. Dilawar Singh Sangwan holding it to be of dubious origin, cannot be sustained in the eyes of law. Moreover, the appellant-plaintiff was never granted any opportunity to lead his evidence on this issue. Respondents-defendants did not lead any evidence on this issue. Accordingly, the findings recorded by the Lower Appellate Court with regard to general power of attorney being of dubious origin are perverse and are not sustainable in law. The appellant-plaintiff subsequently executed GPA at Nairobi (Kenya) and sent copy of the same to the Police. The entire challan including GPA in favour of Sh. Dilawar Singh Sangwan executed by Gurmej Singh Sokhi at Nairobi was placed on record as Ex.Pw8/1 by PW9-Saroj, Additional Ahlmad. Said power of attorney was also in the same terms and conditions and has come through official custody, which shows that Gurmej Singh Sokhi had appointed Sh. Dilawar Singh Sangwan as his power of attorney to pursue the civil as well as criminal case with regard to property in dispute. A wrong finding has been given by the Lower Appellate Court on the basis of entries in the passport Ex.PW3/B whereas it has not been established that Gurmej Singh Sokhi was in India on 07.05.2008 when GPA (Ex.P-2) was executed by him. The passport Ex.PW3/B was produced on record containing entries only with a view to prove that Gurmej Singh Sokhi was not present in India on the date

of execution of power of attorney on 02.06.2006 in favour of respondents-defendants No.3 and 4, on the basis of which, the sale deed was executed on 05.02.2008 in favour of respondents-defendants No.1 and 2. At the end, it is also relevant to mention here that in the absence of framing of proper issues, no evidence was led by the respondents-defendants and no opportunity to rebut any evidence regarding genuineness of GPA (Ex.P-2) has been made available to the appellant-plaintiff. Thus, the judgment passed by the Lower Appellate Court cannot be sustainable by holding that the findings have been recorded without framing any issue.

Accordingly, the present regular second appeal is allowed and judgment and decree dated 09.12.2013 passed by the Lower Appellate Court is set-aside. The case is remanded back to the Lower Appellate Court to consider it afresh keeping in view the facts and circumstances and observation as mentioned above and after framing proper issue and after giving proper opportunity to the parties.

06.04.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No