

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

RSA No.3593 of 1986 (O&M)

Date of decision : 05.07.2018

Amru Ram

...Appellant

Versus

Santokh Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Jagriti Kalia, Advocate for the appellant.

Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff is basically challenging the sale deed executed by defendant No.2 (his own son) in favour of defendant No.1 on 23.12.1981. Defendant No.2, son of the plaintiff, sold the property as Special Power of Attorney of the plaintiff. The plaintiff pleads that the aforesaid attorney is result of forged, fabrication and mis-representation. Special Power of attorney is registered with the Sub-Registrar. It is admitted position that Special Power of Attorney runs into two pages and both the pages have been thumb-marked by the plaintiff. There is further no dispute that the plaintiff-Amru Ram had thumb-marked the register of the scribe. The only controversy is with regard to the thumb-impression affixed by the plaintiff at the time of registration before the Sub-Registrar.

Both the Courts below after examining the evidence and after considering the evidence of attesting witness namely V.K. Chhabra and Scribe namely Nirmal Singh have held that such evidence of a Finger Print and Handwriting Expert cannot be used to record a finding that Special Power of Attorney was result of fraud or mis-representation.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the record.

Learned Senior Counsel appearing for the appellant has submitted that since registration of the Special Power of Attorney is not proved to be in accordance with law as the thumb-impression of the plaintiff-appellant affixed by the plaintiff at the time of registration of the Special Power of Attorney do not match, therefore, the power of attorney itself is to be ignored. He has further submitted that First Appellate Court has erred in recording a finding that Special Power of Attorney does not require compulsorily registration.

On the other hand, learned Senior Counsel appearing on behalf of defendant No.1 has submitted that he is stranger to the family and any misdeed by defendant No.2 cannot visit defendant No.1 with consequences of depriving the property particularly when execution of the power of attorney is proved on file. He has further drawn attention of the Court to the plea taken by the plaintiff that his thumb-impressions were obtained in the Income Tax Office under the pretext of settlement of some dispute of income tax but no evidence has been produced by the plaintiff in support thereof.

This Court has considered the submissions of the learned

counsel. As far as registration of the Special Power of Attorney is concerned, learned First Appellate Court has erred in recording a finding that Special Power of Attorney is not required to be compulsorily registered. Any power of attorney which authorizes the attorney holder to execute the sale deed is required to be compulsorily registered. Therefore, the finding to that effect by the First Appellate Court is set aside.

However, this itself does not improve the situation. In the present case, it is not in dispute that the plaintiff was to leave for United Kingdom on 24.11.1981. He executed attorney in favour of his own son i.e. defendant No.2. If there is any irregularity in the registration of the Special Power of Attorney, it is inter se between defendant No.2 and the plaintiff. Defendant No.1 has purchased the property on payment of valuable consideration. No explanation is forthcoming from the plaintiff as to how he thumb-marked the register of the scribe on 23.11.1981. Attention of the Court was not drawn to any evidence to prove that the register of the scribe was not maintained in due course.

In such circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

05.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**