

**RSA No.3533 of 1987 (O&M),
Cross Objection No.5-C of 1988 and
other connected appeal.**

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

**RSA No.3533 of 1987 (O&M),
Cross Objection No.5-C of 1988 and
other connected appeal.
Date of Order:2nd February, 2018**

Rur Singh (since deceased) through his LRs

..Appellants

Versus

Kashmir Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Majithia, Sr. Advocate, with
Mr. Shailendra Sharma, Advocate,
for the appellant.

Mr. Vipin Mahajan, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

This judgment shall dispose of Regular Second Appeal No.3533 of 1987, Cross Objection No.5-C of 1988 and Regular Second Appeal No.2542 of 1988, all arising out of the same suit. Parties shall be referred to by their names.

In the considered opinion of this Court, following substantial questions of law arise for determination:-

- (i) Whether a registered sale deed executed through a Power of Attorney of the owner can be set aside on the ground of inadequacy of the sale consideration?
- (ii) Whether a registered sale deed can be set aside by

the Court only on the basis of assumptions and presumptions?

It is not in dispute that Sadha Singh, unmarried and issueless, was the owner of the property in dispute. Plaintiff No.1 Kashmira Singh, is a son of brother of Sadha Singh, whereas defendant no.1 is son of another brother of Sadha Singh. Kashmira Singh and Amar Kaur filed a suit for declaration claiming that they are owners of the land measuring 16 kanals 6 marlas and the sale deeds executed by defendant no.1 Roor Singh claiming to be attorney of Sadha Singh are null and void and without consideration.

Learned trial court decreed the suit, whereas learned first appellate court has partly accepted the appeal and out of two sale deeds executed by Roor Singh, one sale deed executed in favour of defendant nos.2 and 3, namely, Kala Singh and Narinder Singh, dated 01.07.1981 has been upheld. Learned first appellate Court has found that late Sh. Sadha Singh had appointed Roor Singh as his attorney through registered General Power of Attorney, dated 23.06.1981. Learned first appellate court has held that execution of the General Power of Attorney by late Sh. Sadha Singh is proved from the statement of Roor Singh, defendant no.1 and Kehar Singh, Lambardar, attesting witness who has been examined as DW3. The General Power of Attorney is proved to have been executed by Sadha Singh with free will and volition. Both the courts have further upheld the registered Will-testamentary document executed by late Sh. Sadha Singh in favour of plaintiffs dated 20.10.1982. Learned first appellate Court has set aside the sale deed executed by Roor Singh in favour of Chhindo, defendant no.4 on the following grounds:-

- (i) Late Sh. Sadha Singh through his General Power of Attorney has executed two sale deeds, one in favour of Kala Singh and Narinder Singh with respect to land measuring 7 kanals 11 marlas for total sale consideration of Rs.14,000/-, whereas the second sale deed executed through attorney with respect to land measuring 8 kanals 15 marlas on the same day is for Rs.9,000/-.
- (ii) The relationship between the principal and the agents are fiduciary and the sale in favour of Chhindo who was alleged to be widow of the brother of Roor Singh appears to be fictitious transaction in order to defraud the principal.
- (iii) Chhindo and Roor Singh are living as husband and wife after the death of Bawa Singh and two sons were born from that relationship.

Now the stage is set for considering the questions of law.

QUESTION NO.(i)

Whether a registered sale deed executed through a Power of Attorney of the owner can be set aside on the ground of inadequacy of the sale consideration?

QUESTION NO. (ii)

Whether a registered sale deed can be set aside by the Court only on the basis of assumptions and presumptions?

The learned first appellate court has found that late Sh. Sadha Singh executed a General Power of Attorney in favour of Roor Singh,

defendant no.1, registered on 23.06.1981. In the General Power of Attorney, Roor Singh was given power to sell the property. Roor Singh executed two sale deeds as attorney of late Sh. Sadha Singh on 01.07.1981, one in favour of Kala Singh and Narinder Singh, whereas other in favour of Chhindo, defendant no.4. The sale deed in favour of Kala Singh and Narinder Singh was with respect to 7 kanals 11 marlas for a sum of Rs.14,000/-, whereas in favour of Chhindo it is with respect to 8 kanals 15 marlas for Rs.9,000/-. It is not disputed that late Sh. Sadha Singh remained alive for 1 years and 4 months approximately after execution of the sale deeds on 01.07.1981. Late Sh. Sadha Singh never disputed the correctness of the sale deeds or challenged the same. Late Sh. Sadha Singh was living in Jamshedpur, whereas the land was situated at village Hasanpur Kalan, District Gurdaspur, Punjab.

In the considered opinion of this Court, a registered sale deed executed cannot be set aside on the ground that the sale consideration is inadequate. The market price of the land depends upon so many factors like availability of source of cultivation, location of the land, quality of the land etc. etc.. A sale deed can only be set aside on the grounds on which a contract can be set aside. In this case, plaintiff has failed to establish any such ground. The first reason assigned by the Court to set aside the sale is thus found erroneous and hence reversed.

The second ground on which the sale has been set aside is that Chhindo and Roor Singh (attorney of Sadha Singh) are husband and wife and, therefore, they are closely related.

In the considered opinion of this Court even such ground

cannot be made a basis to set aside the registered sale deed.

Next ground on which the sale deed was set aside by the first appellate court is that the sale in favour of Chhindo appears to be fictitious transaction in order to defraud the principal.

In the considered opinion of this Court, there is no evidence available on the file that the sale was not with the consent of principal i.e. late Sh. Sadha Singh. Late Sh. Sadha Singh had remained alive for 1 years and 4 months approximately after the sale was executed in favour of Chhindo. Late Sh. Sadha Singh during his life time did not challenge the sale deed executed by Roor Singh in favour of Chhindo.

Fraud has to be pleaded and proved in accordance with Section 17 of the Contract Act and Order 6 rule 4 of the Code of Civil Procedure. In the present case, the findings of the learned first appellate court are only based on assumptions. The court has assumed the fraud as Chhindo was closely related to Roor Singh. In the considered opinion of this Court, the approach of the first appellate court in this regard was wholly erroneous.

In view of the discussion made above, the questions of law framed earlier are answered in favour of the appellants.

It may be significant to note here that the learned first appellate court has upheld the finding of the trial court upholding the registered Will executed by late Sh. Sadha Singh in favour of the plaintiffs. The Court has also held that the plaintiffs are entitled to claim rendition of accounts from the defendants while returning finding under issue no.7.

Thus, the Regular Second Appeal No.3533 of 1987 filed by Roor Singh and Chhindo is allowed to the extent that sale deed in favour of

Chhindo is upheld while reversing the finding of the learned first appellate court.

Plaintiffs have filed Regular Second Appeal No.2542 of 1988 and Cross Objection No.5-C of 1988.

This Court has already discussed the facts in detail.

Learned counsel for the appellants-plaintiffs in Regular Second Appeal No.2542 of 1988 has submitted that once a Will-testamentary document, in favour of the plaintiffs has been proved, the obvious inference is that Late Sh. Sadha Singh wanted to give all property to the plaintiffs. Hence, the sale deeds executed by Roor Singh after a period of 7 days from 23.06.1981 i.e., the date of execution of the General Power of Attorney was in a hurried manner and, therefore, liable to be set aside. He has further drawn attention to some evidence wherein presence of late Sh. Sadha Singh in the Tehsil premises has been admitted. He has submitted that once Sadha Singh was himself present, there was no occasion for Sadha Singh to execute the sale deed through Roor Singh (Attorney).

I have considered the submissions. However, this Court does not find any substance therein.

The owner had appointed a attorney with power to sell the property. Whether the property is sold immediately or after a lapse of some time would not make a registered sale deed invalid. The sale deed can only be set aside on very limited grounds. A registered sale deed cannot be set aside on the basis of assumptions and presumptions. Learned first appellate court after re-appreciation of the evidence has correctly found that since execution of the attorney by late Sh. Sadha Singh in favour of Roor Singh

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is proved, Roor Singh being attorney had the power to execute the sale deed.

In view of the discussion made hereinabove, the Regular Second Appeal No.3533 of 987 is allowed, whereas Regular Second Appeal No.2542 of 1988 and Cross Objection No.5-C of 1988 filed by the plaintiffs are dismissed.

**2nd February, 2018
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No