

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

**Regular Second Appeal No. 3409 of 2012 (O&M)
Date of Decision: December 03, 2018.**

M/s Sunraj Software Private Limited

.....APPELLANT(s).

VERSUS

Harchandi and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the appellant.

Ms. Pratibha Yadav, Advocate
for respondent No. 1.

Service of respondent No. 2 dispensed with
vide order dated 03.08.2015.

SURINDER GUPTA, J.(Oral)

Heard.

The plaintiff filed suit seeking relief of declaration that sale deed bearing *Vasika* number 1217 dated 03.05.2000 allegedly executed in favour of appellant by Jaswant Saini-defendant No.2 in his capacity as attorney of plaintiff/respondent No. 1-Har Chandi and mutation number 1207 dated 08.06.2000 are illegal, null and void. He also sought relief of injunction to restrain the defendants from interfering in his possession over the suit land.

As per the plaintiff, he had never executed any special power of

attorney in favour of Jaswant Saini authorizing him to execute the sale deed

of his land in favour of defendant No.1-appellant. This sale deed was executed in the office of Sub Registrar, Mumbai and as per Gazette notification of Government of Haryana, the sale deed of the land situated in Haryana can be registered only in the office of Sub-Registrar in whose territorial jurisdiction the land is situated.

Defendant No.1-appellant in its written statement took plea that plaintiff entered into an agreement dated 08.03.1996 with Rattan Lal and paid earnest money to the tune of ₹1,64,000/- to the plaintiff. That Rattan Lal was a mediator, who had approached defendant No.1-appellant with offer to sell the suit land. After receiving the entire remaining sale consideration of ₹40,00,000/-, plaintiff executed a special power of attorney in favour of defendant No. 2- Jaswant Saini and possession of land was also delivered to defendant No.1-appellant.

Learned trial Court observed that the land in question is situated in village Ghata, Tehsil Sohna, District Gurugram. The special power of attorney in favour of defendant No.2 was not a registered document. No evidence was led by the defendants to prove that possession over the suit land was delivered at the time of execution of sale deed. The special power of attorney was also not produced on file by the defendants and there was no explanation as to why the sale deed was registered at Bombay (now Mumbai). With these observations, the suit of the plaintiff was decreed for declaration as prayed for. However, the relief of injunction as sought by him was declined.

Not satisfied, defendants No.1 and 2 filed appeal before the Additional District Judge, Gurugaon (Gurugram), which was also dismissed

with the observations in para No.15 of the judgment as follows:

15. *“When the basic document, i.e. Special Power of Attorney has not been proved on the file, then all subsequent act, took on the basis of special power of attorney will comes to an end. The deposition of DW1 demolish the version of the appellants when DW1 had deposed during his cross-examination that on lost of special power of attorney no FIR was got lodged and stated it correct that the defendants even after getting the signatures of the plaintiff did not get it examined from any handwriting expert.....”.*

During the course of arguments, learned counsel for the appellant has fairly conceded that the original special power of attorney was not duly proved in this case. He submits that this document was lost along with sale deed. Even if the document has been lost, the party could prove the same by leading secondary evidence, which was neither sought nor produced. As the basic document authorizing Jaswant Saini, defendant/respondent No.2 to execute the sale deed of land of plaintiff in favour of appellant has not been produced or proved on file, no fault can be found with the concurrent judgment of the Courts below that the sale deed in favour of appellant is not a valid document.

The findings of fact recorded by the Courts below call for no interference in this appeal. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

December 03, 2018.
Jyoti-II

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No