

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

RSA No.322 of 2015 (O&M)
Date of Decision: February 19, 2018

Amritpal Singh and another

...Appellants

Versus

Amar Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.I.S.Mann, Advocate for
the appellants.

HARINDER SINGH SIDHU, J.

The defendants-appellants are in regular second appeal against the judgment and decree of the courts below, whereby, the suit of the plaintiffs-respondents has been decreed.

The plaintiffs had filed a suit for declaration to the effect that they were owners in possession of the land measuring 26 Kanals 15 Marlas 535/954 share out of land measuring 47 Kanal 14 Marla bearing Khewat No.130/1212 Khatauni No.361 Rect.No.92 Killa NO.7/2(6-12)18 (8-0) 19(3-4) 22(5-18) 23(8-0) 8(7-0) 13(9-0) vide Jamabandi for the year 2004-05 situated in the area of village Seerwali, Tehsil and District Sri Muktsar Sahib, and that the alleged sale-deed dated 23.7.2010 executed by defendant No.3 in favour of defendants No.1 and 2 was illegal and null and void, and not binding upon the rights of the plaintiffs. It was claimed that the plaintiffs were owners in possession of the suit land. They were illiterate

and rustic villagers belonging to the Bawaria Sikh community. They had

good relations with defendant No.3. As their ownership was not correctly recorded in the revenue records, they sought the help of defendant No.3, who suggested that the plaintiffs execute a Power of Attorney in his favour and he would pursue the matter of correction of revenue records with the authorities. Accordingly, they executed General Power of Attorney dated 27.3.2009 in favour of defendant No.3 for the sole purpose of enabling him to get the revenue records corrected. No right to alienate the land was given to defendant No.3. He got the revenue records of the plaintiffs corrected through Farad Badar No.26, but further taking undue advantage of the General Power of Attorney, he executed sale-deed No.309 dated 23.7.2010 in favour of defendants No.1 and 2, who were his sons. This was done without the consent of the plaintiffs. No consideration was passed to the plaintiffs, nor was there any necessity to sell the suit land. As soon as the misuse of the Power of Attorney came to the notice of the plaintiffs, they cancelled it on 11.10.2010.

The case of the defendants was that the plaintiffs had validly executed the Power of Attorney dated 27.3.2009 in favour of defendant No.3 which was registered in the office of Sub-Registrar, Bariwala in the presence of marginal witnesses. On the basis of the said Power of Attorney, defendants No.1 and 2 purchased the suit land from defendant No.3 for a consideration of Rs.7,70,000/- and sale-deed to this effect was executed on 23.7.2010 in the office of Sub-Registrar, Bariwala in the presence of witnesses and the Sub-Registrar. Defendant No.3 claimed that the sale-consideration of Rs.7,70,000/- was handed over to the plaintiffs and a receipt

in this regard was obtained from them.

On appreciation of the evidence led by the parties, the learned Trial Court concluded that the sale-deed could not be considered valid. It was noted that the plaintiffs had executed the General Power of Attorney in favour of defendant No.3 in 'circumstances of necessity'. Thereby the Power of Attorney authorised him to act on behalf of the executants only in case of necessity. The revenue record was corrected by Farad Badar and the corrections were incorporated in the Jamabandi. It was thereafter that the sale-deed was executed by defendant No.3. Defendant No.3 has not proved the legal necessity for sale of the suit property to defendants No.1 and 2, who were his sons. This inter-se relationship was itself a suspicious circumstance. It was also concluded that the defendants had not been able to prove that the sale-consideration of Rs.7,70,000/- had been passed on to the plaintiffs. It was recited in the sale-deed dated 23.7.2010 that the sale consideration was received by defendant No.3 before execution of the sale-deed and possession was delivered to the vendees at that time. The receipt of the sale consideration produced by the defendants was dated 26.10.2010. Thereby, the recitals in the sale-deed and the receipt Ex.D7 were contradictory. Moreover, DW7 Amritpal Singh admitted that neither he nor his brother was present at the time of sale. He was also not present at the time of writing of the receipt dated 26.07.2010. The receipt was handed to him by his father. The learned Trial Court thus concluded that the receipt Ex.D7 was not a genuine document. The first 10 lines therein were typed in single space and the next 6 lines were typed in double space which indicated that the signatures of the plaintiffs had been obtained first and thereafter, the contents of the receipt were typed. Moreover, defendants No.1 and 2 were

not present at the time of the execution of the sale-deed.

Accordingly, the suit was decreed.

The learned lower Appellate Court affirmed the findings of the Trial Court on all counts.

Findings of fact have been recorded by the courts below based on the evidence produced. Ld. Counsel for the appellant has not been able to demonstrate as to how these findings are perverse and against the record. No question of law arises for consideration in this appeal.

Accordingly, the appeal is dismissed.

February 19, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No