

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

**Regular Second Appeal No.6459 of 2018 (O&M)
Date of Decision: December 06, 2018.**

Kuldeep Singh and others

.....APPELLANT(s).

VERSUS

Inderjit Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Madan Sandhu, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is regular second appeal against the judgment passed by Additional District Judge, SAS Nagar (Mohali), whereby the judgment passed by Civil Judge (Junior Division), SAS Nagar (Mohali) decreeing the suit of the plaintiffs, was set aside and their suit challenging the execution of the sale deed dated 29.07.1987 on the basis of power of attorney dated 08.06.1987 alleging it as illegal, null and void, without consideration and result of fraud and misrepresentation, was dismissed.

Brief facts of the case are that Saroop Singh, who belonged to Scheduled Caste was allotted the suit land on 21.04.1972. This land was mutated in his name on 15.07.1987. As per his power of attorney dated 08.06.1987, in favour of Bahadur Singh, defendant No.8, the sale deed of the land was executed in favour of Inderjit Kaur, defendant No.2.

Plaintiffs have alleged that Saroop Singh was illiterate and

Harchand Singh, ex-patwari, defendant No.1 with a view to grab his land, obtained his thumb impressions on blank papers on the pretext of getting mutation of the suit land sanctioned and by using those documents, he got prepared the power of attorney dated 08.06.1987 in favour of Bahadur Singh, who further executed the sale deed of the land in favour of Inderjit Kaur.

The plea taken by the plaintiffs was contested by the defendants, who alleged that earlier an application was moved by plaintiffs to Deputy Inspector General of Police, Patiala on 30.12.2010 levelling similar allegations. Police got compared the thumb impressions of Saroop Singh on the documents in question with his standard thumb impressions and it was found that disputed thumb impressions and standard thumb impressions were of same person. Harchand Singh had nothing to do with this deal. As Saroop Singh was unable to deposit the instalments of allotment price, he approached Bahadur Singh for making payment and requested him to pay the due instalment and additional amount to him. He executed power of attorney dated 08.06.1987 in favour of Bahadur Singh giving him authority to deposit the entire outstanding instalments, obtain the sale certificate, get the mutation sanctioned and also to execute the sale deed of this land. On the basis of authority given by Saroop Singh vide power of attorney dated 08.06.1987, he executed sale deed dated 29.07.1987 and later on got the mutation No.757 sanctioned in favour of Inderjit Kaur.

Learned counsel for the appellant has argued that learned trial Court has set aside the sale deed on two grounds; firstly that conveyance deed/sale certificate was issued in favour of Saroop Singh on 23.07.1987, as

such, he was not competent to execute the power of attorney on 08.06.1987 in favour of Bahadur Singh and secondly, the sale deed was without consideration. The defendants have not produced any evidence to show that consideration was ever paid by Bahadur Singh to Saroop Singh. Plaintiffs came to know about the fraud played with them in the year 2010 and moved application to the police but no action was taken and thereafter, they filed the present suit after the death of Saroop Singh on 20.02.2015. The first Appellate Court has set aside the judgment of the trial Court without looking into the fact that Saroop Singh was illiterate person and his land was sold to Inderjit Kaur without his knowledge.

I have gone through the judgments of the Courts below with active assistance of learned counsel for the appellants.

The appellants-plaintiffs have challenged the legality and validity of sale deed dated 29.07.1987 after a period of about 28 years.

Learned counsel for the appellants submits that Saroop Singh died on 23.05.2012 and during his life time, he moved application regarding fraud played with him but the police had not taken any action.

It is evident that Saroop Singh remained alive for a period of about 25 years after execution of sale deed of suit land. It cannot be believed that land allotted to him was transferred, possession delivered, mutation sanctioned in favour of vendee but he never came to know of these facts. He is stated to have filed complaint to the police in the year 2010 i.e. 23 years after the execution of documents. The reason given by learned trial Court while setting aside the power of attorney and sale deed are not legally tenable. Power of attorney was executed in the year 1987 while the land

had already been allotted in favour of Saroop Singh in the year 1972. After allotment, Saroop Singh had to pay instalments of balance sale amount and seek execution of conveyance deed of suit land in his favour. Looking into all these facts, learned first Appellate Court observed in para 14 as follows:-

“14. Taking into account the facts and circumstances of the present case, this Court is of the considered view that there is no denial to the fact that the suit property was allotted to Saroop Singh on 21.4.1972 as mentioned by the plaintiffs themselves. It has been alleged that the sale certificate was issued in the name of Saroop Singh on 15.7.1987, hence Saroop Singh had no power to execute power of attorney in favour of Bahadur Singh on 8.6.1987 i.e before issuance of sale certificate. It is pertinent to mention here that there was already an allotment of suit property in favour of Saroop Singh since 1972. Therefore, being an allottee, he has the right over the suit property and the procedure for issuance of sale certificate is only in regard to make the allottee absolute owner of the property after the payment of requisite amount as fixed by the Government. There is no denial that till the execution of power of attorney on 8.6.1987 there was no sale certificate in favour of Saroop Singh and Saroop Singh on 8.6.1987 had executed the power of attorney whereby he had mentioned that he had authorized Bahadur Singh to deposit the installments of the suit property with the Custodian Department and to get the sale certificate and afterwards also to get the mutation sanctioned in his favour. Bahadur Singh, has also been authorized to file or face any litigation pertaining to the disputed property. Further, he had given him the powers to give the suit property on Chakota and also the power to enter into an agreement or to receive

the consideration and to execute the sale deed, mortgage deed, exchange deed etc. Therefore, vide this attorney dated 8.6.1987 Saroop Singh had given all the powers to Bahadur Singh to deal with the property. It has been alleged by the plaintiff that this power of attorney has been obtained by Bahadur Singh through impersonation but Kuldeep Singh in his cross-examination himself has admitted the thumb impression of Saroop Singh on this document. Moreover, there is also on record the report of Finger Print Bureau, Phillaur Ex.DW6/11 where it has been found that power of attorney bears the thumb impression of Saroop Singh. Therefore, the plaintiff had miserably failed to prove that this power of attorney has been obtained through impersonation.”

Learned first Appellate Court has also looked into the fact that to support plea of obtaining thumb impressions of Saroop Singh by misrepresentation, no evidence was produced on record. There was solitary statement of Kuldeep Singh, without any corroboration. Saroop Singh, who lived for 25 years after the year 1987, never agitated plea of misrepresentation and obtaining of power of attorney by fraud for 23 years, when the application was moved to the police, this suit was filed by his legal heirs 3 years after his death.

It was also proved on record that as per authority given to Bahadur Singh vide special power of attorney dated 08.06.1987, he had also paid the instalments of the allotment price of land vide receipt Ex.PW5/A and Ex.PW5/B. The sale deed was executed in favour of Inderjit Kaur for a sale consideration of ₹20,000/-. This plea of appellants-plaintiffs, who are legal heirs of Saroop Singh that no evidence was produced by respondents-

₹20,000/- to Saroop Singh, had no bearing on the legality and validity of the sale deed. If the sale consideration has not been paid to Saroop Singh, he could certainly proceed against his attorney on this issue.

Keeping in view the above facts and circumstances and on perusal of the judgment of the first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 06, 2018.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No