

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 17 of 2006**

Shri Gurubaksh Singh, aged 40 years, S/o Late S/ Joginder Singh of Regal Steel Industries Station Road, Raipur.

---- Appellant/plaintiff

Versus

Purshottamlal Keshwani, S/o Late Kewal Ram Keshwani, Aged about 61 years, Sant Nirankari Satsang Bhawan, Idgah Bhata, Raipur (C.G.)

---- Respondent/defendant

For Appellant/plaintiff	:	Mr. Manoj Paranjpe, Advocate.
For Respondent	:	Mr. G.D. Vaswani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/07/2019

(1) The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“Whether the findings recorded by both the Courts below that the power of attorney executed by the Sant Nirankari Mandal, Delhi, a registered society in favour of the plaintiff – Suryakant Khubchandani on 6.6.2002 was not proved, and therefore the plaintiff had no legal right to file this suit is contrary to law under Section 85 of the Indian Evidence Act ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The plaintiff -Suryakant Khubchandani instituted a suit as power of attorney holder of Sant Nirankari Mandal for eviction and arrears of rent. That suit was dismissed by the trial Court by deciding issues against the plaintiff including that the power of attorney (Ex.P-1) was not a validly executed document and on an appeal being preferred, it was upheld by the first appellate Court. Now, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

(3) Shri Manoj Paranjpe, learned counsel appearing for the appellant/plaintiff would submit that both the courts below have committed legal error in holding that power of attorney holder in favour of plaintiff is not proved particularly when it was attested / authenticated by notary public and, therefore, rebuttable presumption would arise in favour of power of attorney executed in his favour by virtue of provision contained in Section 85 of the Evidence Act.

(4) On the other hand, counsel for the respondent/defendant would support the impugned judgment and decree.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) Mr. Parajpe, learned counsel for the appellant/plaintiff has pressed into service Section 85 of the Indian Evidence Act, which states as under:-

“S.85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any

Court, Judge, Magistrate, Indian Consul or vice -Consul, or representative of the Central Government, was so executed and authenticated. “

(7) A careful perusal of the aforesaid provision would show that following two conditions have to be satisfied for applying the presumption under section 85 in respect of the execution of a power of attorney:-

“(1) It must be executed before a notary public or any other person referred to in section 85.

(2) It must be authenticated by the notary public or any person mentioned in section 85. If one of the conditions is not satisfied section 85 does not apply to raise any presumption in favour of that power of attorney.”

{See: *Electric Construction Equipments Co. Ltd. v. Jagjit Electric Works, Sirsa*¹}

(8) Reverting to the facts of the case – qua - (Ex.P-1), which is the power of attorney executed in favour of the plaintiff, it is attested by the Notary public but it nowhere appears that it was executed before Notary Public or any other person referred to Section 85 of the Evidence Act. None of the plaintiff's witnesses have stated in their statement before the court that it was executed before the Notary Public or any other person referred to Section 85 of the Evidence Act, therefore, no presumption under Section 85 of the Evidence Act would arise in favour of power of attorney (Ex.P-1) that it was validly executed and authenticated in favour of the plaintiff.

(9) In view of above, it cannot be held that both the courts below are unjustified in holding that plaintiff has failed to prove that the Sant Nirankari Mandal has executed valid power of attorney holder in favour of plaintiff on 6.6.2002. However, this will not bar the plaintiff to file fresh suit on the basis of power of attorney, if any.

1 AIR 1984 Del 363

(10) Accordingly, the second appeal is liable to be and is hereby dismissed. No cost(s).

(11) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

