

**RSA-316-1988 (O&M)**

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

**RSA-316-1988 (O&M)**

**Date of decision : 01.02.2019**

Bagher Singh and others

... Appellants

Versus

Jeon Singh (D) through LRs and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sanjiv Manrai, Senior Advocate with  
Mr. Sumit Jain, Advocate and  
Mr. Ajay Singh Parmar, Advocate  
for the appellants.

None for the respondents.

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**AMIT RAWAL, J. (ORAL)**

The present regular second appeal, at the instance of the defendants Nos.2 to 4, is directed against the judgment and decree dated 26.09.1987 of the lower Appellate Court.

The plaintiff instituted the suit for possession of land measuring 27 kanals 1 marla and in the alternative recovery of ₹90,000/- on the ground that the plaintiff was owner in possession of the suit land as co-sharer and had sold 8 kanals of land to defendant Nos.2 to 4 for a sum of ₹21,000/-, vide registered sale deed dated 03.06.1980, which was attested by Fauja Singh s/o Pali Singh and Piara Singh, Numbardar of Village Dhanaula, being friends and relatives of defendant Nos.2 to 4. The sale deed was scribed by Chajju Ram, deed writer. Defendant Nos.2 to 4 requested the

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plaintiff to execute the power of attorney in favour of defendant No.1-Surjit Singh, being their relative as the plaintiff was an old and feeble person. The plaintiff agreed and executed the power of attorney authorizing defendant No.1-Surjit Singh, who got the mutation sanctioned, but was flabbergasted to notice that on 05.06.1980 without the permission and information, Surjit Singh, attorney-holder, sold the land in favour of defendant Nos.2 to 4 by means of various sale deed and had also taken forcible possession of the suit land. A request of cancellation of the sale deed was not acceded to, therefore, the suit was filed as there was fraud and misrepresentation. The plaintiff came to know that Surjit Singh had sold the suit land by means of three registered sale deeds for a sum of ₹7500/- each, whereas the market price of the land, comprised, in each sale deed was about ₹30,000/-.

The aforementioned suit land was opposed by the appellants-defendants by taking the plea of maintainability, *locus standi*, vague etc. and on merits, it was alleged that the plaintiff had, on account of his own volition, sold the land measuring 5 marals vide sale deed dated 03.06.1980 in favour of defendant Nos.2 to 4 and appointed Surjit Singh as attorney on the even date, which was attested by Fauja Singh and Piara Singh. The sale deed was read over and explained to the plaintiff. It was a case of greed, but nothing beyond. The sale deed dated 05.06.1980 was as per market value of the land.

On the basis of the pleadings, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to the possession of the suit land? OPP*
2. *Whether the suit is properly valued for the purposes of court*

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*fee and jurisdiction? OPP*

*3. Whether the plaintiff has not right to sue? OPP*

*4. Whether the suit is bad for mis-joinder of parties? OPD*

*5. Whether defendant No.1 is entitled to special costs u/s 35A CPC? OPD*

*6. Whether the alleged sale deeds in favour of defendant Nos.2 to 4 are valid ones? OPD*

*7. Whether the alleged Mukhtiar-nama by the plaintiff in favour of defendant No.1 is void and illegal? OPP*

*8. Whether the plaint is vague? OPD*

*9. Whether the vendees are bona fide purchasers, if so to what effect? OPD*

*10 Whether the plaintiff is entitled to recover ₹90,000/- in the alternative? OPP*

*11. Relief.*

The plaintiff in support of the case examined Fauja Singh as PW1, Dr. V.K. Sobat as PW2 and himself as PW3 and brought on record the sale deed dated 3.6.80 (Ex.P1) and copy of jamabandi (Ex.P2), whereas the defendants examined Piara Singh, Numbardar as DW1, Sh. Kewal Krishan Gupta as DW2, Nirbhay Singh as DW3, Bagher Singh as DW5 and himself appeared as DW4 and brought on record various documents (Ex.D1 to Ex.D7). In rebuttal, the plaintiff examined K.S. Puri, Finger Print Expert as PW4 and brought on record Khasra Girdawari as Ex.P6.

On the basis of the evidence both oral and documentary, the trial Court dismissed the suit viz-a-viz the relief of declaration and possession, but decreed the suit for recovery of ₹22,500/-. Both parties being aggrieved filed the appeals and the appeal of the plaintiff has been allowed and the suit *in toto* was decreed, whereas that of the defendants has been dismissed. Hence, the present regular second appeal.

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Learned counsel appearing on behalf of the appellants-defendants submitted that the plaintiff did not cancel the power of attorney and there was no proof of fraud, which was executed on his own volition. The observation of the lower Appellate Court that the land measuring 32 kanals 2 marlas sold for ₹32,000/- by the plaintiff was of inferior quality than the land sold vide the impugned sale deeds, was without basis or evidence on record. The plaintiff was a wise man. The factum of registration of power of attorney was proved through the testimony of Sub-Registrar. In case, one of the witness, won over by the plaintiff was not sufficient to establish the fraud as ingredients of Order 6 Rule 4 of CPC had not been proved to the hilt. It was submitted by the plaintiff that he received a sum of ₹16,000/- before the Sub-Registrar after counting the same. The sale deeds were on account of his own volition, much less, as per the prevailing market price. Piara Singh was the witness of the sale deeds executed by the plaintiff, in his own capacity, as well as through attorney (Ex.D3 to Ex. D5) of 9 kanals 1 maral each.

The respondent No.1 being contesting respondent was proceeded *ex parte* vide order dated 27.02.2017 and respondent No.2 is proforma respondent. Accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that the following "Substantial Questions of Law" arise for determination:-

1. *Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity.*
2. *Whether the sale deeds (Ex.D3 to D5) were result of fraud and misrepresentation.*

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Before I could proceed with the arguments of Mr. Manari, from the judgment and decree of the lower Appellate Court, it is event that Jeon Singh, during the pendency of the appeal, had died and one Dhanna Singh filed an application for bringing on record his legal heirs. The lower Appellate Court did not decide the question of legal representative, which to be decided in the independent proceedings. Mr. Manrai, on instructions from his clients, submitted that no steps have been taken as the possession of the suit land, subject matter of the sale deeds (Ex.D3 to D5) is with the appellant.

It is a matter of record that Jeon Singh executed the sale deed dated 03.06.1980 in favour of the appellant-defendant, but on the same day, also executed an attorney in favour of defendant No.1-Surjit Singh, who sold the land to the appellants i.e. 9 kanals 1 marla of land each, in all the three sale deeds of 05.06.1980. Though it apparently appears that once he executed the sale deeds two days before, in favour of the appellants-defendants, what was the circumstances in execution of the attorney in favour of Surjit Singh/defendant No.1. I cannot remain unmindful of the fact that the plaintiff sought the relief of declaration by setting sale deeds and possession and in alternative, for price of the land. Surjit Singh, who was arrayed as defendant No.1, contested the suit by filing the written statement and stated that the consideration received in lieu of the sale deed, was paid to the plaintiff/respondent. Apparently, it appears to be a case of non-settlement between the plaintiff and attorney. Piara Singh, one of the attesting witnesses of the sale deeds, stated that Jeon Singh was a frail and feeble person and on account of his own volition, executed the power of attorney. Though Fauja Singh, witness of sale deeds (Ex.P1, Ex.P2, Ex.D3

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to Ex.D5), deposed in favour of the plaintiff, but it is a case, where out of two attesting witnesses, one witness deposed in favour of the plaintiff and other in favour of defendants. In my view, the lower Appellate Court ought not to have decreed the suit *in toto* and upheld the decree of the trial Court, which while declining the relief of declaration and possession, confined to it only alternative relief of ₹22,500/- and the same was most appropriate in view of the fact that the appellants-defendants had been in continuous possession of the suit property.

Keeping in view the aforementioned facts, the substantial questions of law, as framed above, are answered in favour of the appellants-defendants and against the respondents-plaintiffs. The judgment and decree, under challenge, is hereby set aside and that of the trial Court is restored.

Resultantly, the present regular second appeal is allowed.

**01.02.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**