

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

RSA No. 3735 of 2013 (O&M)

Date of decision: 16.7.2019

Parvesh Jain

...Appellant

Versus

Jeevinder Singh Sidhu and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikas Singh, Advocate,
for the appellant.

None for the respondents.

JAISHREE THAKUR, J.

1. This instant Regular Second Appeal challenges the judgment and decree passed by the Additional District Judge, Patiala, dated 26.3.2013, by which the judgment and decree passed by the trial Court dated 22.2.2010, was affirmed.

2. In brief, the facts are that the plaintiff/appellant (hereinafter referred to as '**the plaintiff**') filed a suit for declaration to the effect that the sale deed dated 7.9.2001 executed by respondent No.1 in favour of respondent No.2 in respect of Plot No.4, fully detailed in the head note, is illegal null and void and liable to be set aside. It was claimed that the plaintiff is owner of the plot in question having purchased the same vide sale deed dated 10.5.1994 and he being an old person, appointed respondent

No.1/defendant No.1 (hereinafter referred to as '**defendant No.1**') as his

General Power of Attorney with respect to the suit plot and authorized him to look after and manage the said plot. Defendant No.1 sold the said plot, vide sale deed dated 7.9.2001 to respondent No.2/defendant No.2 (hereinafter referred to as '**defendant No.2**'), who is none else but the wife of defendant No.1, for a meagre price of ₹1,20,000/-. The sale deed was challenged, inter-alia, on the grounds that the possession of the plot is still with the plaintiff; the present market value of the said plot is ₹6 lac, no notice of sale was given to the plaintiff and the sale deed does not confer any right title and interest upon defendant No.2.

3. On notice, the defendants contested the suit by filing written statement, taking preliminary objections regarding maintainability of the instant suit etc. The defendants averred that the plaintiff wanted to sell the property as he was in need of money and therefore, he approached defendant No.1 to sell the property. Therefore, plaintiff executed the General Power of Attorney in favour of defendant No.1 with an undertaking that he may execute sale deed in favour of any person. Defendant No.1 paid a sum of ₹50,000/- to the plaintiff vide cheque No. 282 drawn on Punjab National Bank, Model Town, Branch Patiala, which was cleared on 1.8.1995 and another sum of ₹70,000/- was paid by cheque No. 463 drawn on State Bank of Patiala PSEB Branch, Patiala, which was cleared on 4.9.29915 and thus in all a sum of ₹1,20,000/- was paid by the defendant No.1 to the plaintiff as sale consideration of the plot in question. It was further averred that the plaintiff has got three sons and in case there was no monetary transaction, the plaintiff could have executed the Power of Attorney in favour of any

one of his sons. Physical possession of the plot with the plaintiff was denied.

4. On the pleadings of the parties, the trial court framed as many as six issues. Thereafter, both the parties led evidence in support of their respective claims. The trial court, after scrutinizing the oral as well as documentary evidence, dismissed the suit of the plaintiff. Aggrieved against the judgment and decree of the trial court, the appellant herein filed an appeal before the first Appellate Court, which was dismissed, leading to the filing of the instant Regular Second Appeal.

5. Learned counsel for the appellant submits that both the courts below have erred in dismissing the suit filed by the plaintiff. It is submitted that the evidence led by the parties has not been considered in its right perspective. It is further submitted that both the courts below ignored the fact that the General Power of Attorney was executed by the plaintiff on 25.9.1995 and the payments are alleged to have been made on 1.8.1995 and 4.9.1995. Therefore, if the payments were in connection with the sale of the plot, then a recital to that effect must have been in the Power of Attorney. It is further submitted that that it is settled that even if a Power of Attorney is executed by the principal owner, then he does not cease to be the owner and if the sale deed is executed by the attorney, he must get a permission from the principal owner and must pay the sale consideration.

6. I have heard learned counsel for the appellant and have also perused the impugned judgments.

7. The entire dispute in the instant case is centered around the

General Power of Attorney executed by the plaintiff in favour of defendant No.1 and on the basis of which defendant No.1 sold the property in favour of defendant No.2. There is no dispute regarding the fact that the plaintiff executed the General Power of Attorney dated 25.9.1995 (Ex. P.7) in favour of defendant No.1, whereby the plaintiff authorized defendant No.1 to enter into an agreement, to receive earnest money, execute sale deed, gift deed, exchange deed, lease deed, partition deed, hand over the possession and get the mutation sanctioned. As noticed by the trial court, it has nowhere been mentioned in the Power of Attorney (Ex. P.7) that before dealing with the property in any manner, prior notice to the plaintiff is required or the said act of defendant No.1 should be in the knowledge of the plaintiff. So, once execution of the Power of Attorney has been admitted by the plaintiff, then he cannot wriggle out of the terms of the same, as agreed between them. It has also come on record that the General Power of Attorney, on the basis of which the sale deed was executed, has not been cancelled till it was acted upon by defendant No.1, while executing sale deed in favour of defendant No.2. While dealing with all the contentions as raised by the counsel for the plaintiff, the trial court dismissed the suit as filed by plaintiff. Aggrieved against the judgment and decree, the plaintiff filed an appeal before the first Appellate Court, who too dismissed the appeal. The first Appellate Court, while confirming the findings recorded by the trial court observed as under:-

“The General Power of Attorney Ex. P7 was executed by plaintiff in favour of defendant No.1 on 25.9.1995, though the sale deed Ex. P8 was executed on 7.9.2001. It is pleaded by

the defendants in their written statement that defendant No.1 paid a sum of Rs. 1,20,000/- to the plaintiff vide two cheques of Rs. 50,000/- and Rs. 70,000/- on 01.08.1995 and 04.09.1995 respectively. It is also clearly proved by the defendants that the said cheques were got encashed in the account of plaintiff. Ex. PW2/D is the copy of the pass book of the defendant no.1 wherein there are two entry of encashment of the above noted cheques in favour of S.C. Jain.

xx

xx

xx

Now it is not the case of plaintiff that there was any undue pressure or influence of any kind when he executed the Power of Attorney in favour of defendant No.1. Also it is not his case that there was some fraud played upon him by the defendant No.1 at the time of execution of the Power of Attorney. It is also conceded by the plaintiff that the Power of Attorney was not cancelled by him. He has also conceded that the Power of Attorney was inclusive of Power of sale of the plot. It is also proved on record that a sum of Rs. 1,20,000/- was already received by the plaintiff from defendant No.1. Therefore, merely because the sale deed was executed by defendant No.1 in favour of defendant No.2, who happens to be his wife, is not a ground to set aside the sale deed.”

8. From bare reading of the evidence brought on record, due execution of the General Power of Attorney (Ex. P7) stands duly executed and sale of the plot on the basis of same, for consideration also stand proved by the defendants. There is receipt of ₹70,000/- and ₹50,000/- by the appellant at the time when the General Power of Attorney was executed indicating that money had been received by the appellant. Both the courts below have appreciated the documentary as well as oral evidence on record and the pleadings of the parties in right perspective and no fault could be

found in the same. Learned counsel for the appellant has not been able to point out any perversity or irregularity in the impugned judgments. The judgments of both the courts below are well considered. No question of law, much less substantial question of law arises for consideration in the present appeal.

9. The Regular Second Appeal stand dismissed accordingly.

16.7.2019	(JAISHREE THAKUR)
prem	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No