

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

**RSA No.5606 of 2018 (O&M)
Date of Decision : 16.10.2019**

Surjit Kaur

.....Appellant

Versus

Harjinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.K.B.S.Mann, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff-appellant was dismissed by the trial Court vide judgment and decree dated 11.05.2017, and as even the appeal preferred against the said decree failed and was dismissed on 16.12.2017. She is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the case set out by the plaintiff was that she happened to be the owner in possession of the suit property measuring 28 kanals 9 marlas, situated at village Gandhar, Tehsil and District Sri Muktsar Sahib. Further, defendant No.1 was her real brother with whom she had very affectionate and loving relationship. However, she later came to know that defendant No.1, on the basis of the power of attorney dated 19.04.1996, alleged to have been executed by her in his favour sold the suit property in favour of defendant No.2. In fact, daughter of defendant No.2 is married to the son of defendant No.1, and thus, they are closely related to each other.

She never executed any power of attorney in favour of defendant No.1 and the same was a fabricated document. Consequently, the sale deed dated 23.05.2014, was also a result of fraud, hence, the suit.

In the written statement filed by defendant No.1, he maintained that plaintiff had appointed defendant No.1 as her General Attorney vide General Power of Attorney dated 19.04.1996. In terms of the said General Power of Attorney the plaintiff had given complete authority to defendant No.1 to mortgage, sell, gift, execute transfer deed, lease deed qua the suit land. Resultantly, he executed a registered sale deed dated 20.05.2014, in favour of defendant No.2. Thus, defendant No.2 was the owner in possession of the suit property and, therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that as per the case set out by the plaintiff herself, for, defendant No.1 happened to be her brother, the relationship between the two were extremely cordial. Although, she claimed that power of attorney dated 19.04.1996, was a result of fraud but no details, as necessary, were set out in the plaint. Likewise, plaintiff even failed to adduce any evidence to substantiate the plea of the fraud. Even otherwise, the plaintiff only questioned the sale deed dated 20.05.2014, but did not seek any declaration qua the power of attorney dated 19.04.1996. Still further an analysis of the power of attorney dated 19.04.1996 (Ex.D1), revealed that on the reverse side of it's first page endorsements were made by the stamp vendor regarding selling of stamp papers in the name of plaintiff. Subhash Kumar Mittal, Document Writer (DW1) and Mohinder

Singh (DW3) the attesting witnesses duly proved the execution of the Power of Attorney Ex.D1 in their deposition. Significantly, no suggestion was put to these witnesses if the document Ex.D1 was a forged or fabricated document or was prepared on a blank stamp paper thumb marked by the plaintiff. Not just that Ex.D1/A the endorsement of Sub Registrar also bears the thumb impression of the plaintiff. No one from the office of Sub Registrar was examined to prove that plaintiff never appeared before Sub Registrar for execution of the Power of Attorney. Still further the Power of Attorney was executed on 19.04.1996, whereas the present suit was filed 18 years thereafter on 30.05.2014. Although, the case set out by the plaintiff was that she actually acquired knowledge qua the execution of the sale deed dated 23.05.2014 when she met with Halqa Patwari for obtaining jamabandi of the suit property. No such jamabandi was brought on record though alleged to have been procured by on 23.05.2014. The plaintiff failed to examine the concerned Patwari to prove the alleged date of knowledge. Copy of the judgment dated 10.06.2011, passed by the Additional Civil Judge (Sr. Divn.), Sri Muktsar Sahib in Civil Suit filed by Harjinder Singh and plaintiff Surjit Kaur against the General Public and others (Ex.D15) completely falsify her version, for, the suit was filed on the basis of the Power of Attorney dated 19.04.1996 itself. Concededly the plaintiff never remained in possession of the suit property nor sought any correction in the khasra girdwari that were entered in the name of Harpal Kaur-defendant No.2. Thus, the only and the inevitable conclusion that could be reached: plaintiff failed to substantiate her claim for lack of cogent evidence.

On being pointedly asked, learned counsel for the appellant

could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

16.10.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No