

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

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**RSA-2199-2016(O&M)
Date of Order: 16.12.2021**

KARANJIT SINGH

..Petitioner

Versus

JIWAN SINGH (DECEASED) & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Bajwa, Advocate &
Mr. K.S. Kang, Advocate for the appellant.

Mr. Prateek Gupta, Advocate
Mr. Nikhil Sabharwal, Advocate
for respondent No.2 and 3.

ANIL KSHETARPAL, J(Oral)

The appellant is a plaintiff in a suit filed for grant of decree of declaration that the special power of attorney dated 12.12.1995 executed by his father-defendant No.1 in favour of his another son (the brother of the plaintiff) is without authority and consequently, the sale deed executed by defendant No.2(Ujjagar Singh-the brother of the plaintiff) in favour of defendant No.3(wife of defendant No.2), is liable to be ignored. Before proceeding further, it will be appropriate to draw a family tree:-

Sewa Singh

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Jiwan Singh (defendant No.1)
(son of Sewa Singh)

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Karanjit Singh (plaintiff-appellant)
(son of Jiwan Singh)

Ujjagar Singh
(son of Jiwan Singh)

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Rajvir Kaur (defendant No.3)
(wife of Ujjagar Singh)

The plaintiff, before shifting abroad, executed a general power of attorney on 20.06.1975, in favour of his father Sh. Jiwan Singh. The learned counsel representing the appellant has reproduced the relevant extract

of the aforesaid attorney, correctness whereof is not disputed by the learned

counsel representing the parties.

Hence, the same is extracted as under:-

I, Dr. Karanjit Singh s/o Jiwan Singh s/o Sewa Singh am resident of Machhiwara Tehsil Samrala. Whereas I am of property regarding which disputes keep arising. I am to go to foreign country Belgium for obtaining education and cannot look after and manage etc. my property myself. Because of this I have given my father Jiwan Singh s/o Sewa Singh s/o Dalel Singh resident of Machhiwara Tehsil Samrala general power of attorney on my behalf. It is agreed that General Attorney is authorized to file suits of every type, prosecute them and submit written statements, may appoint any lawyer, enter into compromise, may certify any papers in the suits, take oath or get it taken and submit applications of every type, may submit papers or take them back, give statement of every type, get execution affected, take possession and dispossess tenants, appoint arbitrator or commission, appoint any special attorney, get execution done on my behalf. He may take possession, oust tenants himself or through court and obtain possession, file appeal up-to the last court, prosecute it and file replies on my behalf. He may take loan in my name and may receive amount of every type on my behalf. He may dispose of my property of every type through sale, mortgage, gift, exchange or in any manner he wants, get mutation entered/sanctioned, execute registries and obtain price. Everything done by the general attorney would be acceptable to me. Dated 20.6.75. It was read over to me and after hearing I accept it to be correct. Sd. Karanjit Singh.”

Sh. Jiwan Singh purchased a plot in the name of his two sons namely Karanjit Singh (appellant) and Ujjagar Singh(defendant no.2) in the year 1981. Thereafter, he executed a special power of attorney, on the strength of the general power of attorney executed by the appellant on on 20.06.1975, authorizing Ujjagar Singh to sell half share of the aforesaid plot. Sh. Ujjagar Singh on the basis of that special power of attorney executed a sale deed on 22.12.1995. The plaintiff, on coming to know of the aforesaid sale, has filed the present suit. The defendant No.2 and 3 contested the suit and pleaded that Jiwan Singh had purchased the property in the name of his two sons and thereafter, the entire property has fallen to their share and

therefore, he was authorized to execute the sale deed in the favor of his wife.

Both the Courts, on appreciation of evidence, have dismissed the suit.

On 19.05.2016, the appeal was admitted while framing the following questions of law:-

“Whether the General power of Attorney dated 20.06.1975 Exhibit P-1 executed by the appellant-plaintiff in favour of respondent-defendant No.1-Jiwan Singh son of Sewa Singh son of Dalel Singh (father of the appellant-plaintiff as also respondent-defendant No.2) authorised him to appoint a Special Power of Attorney for any other purpose except for which so specifically provided for therein i.e. to file suits of every type, prosecute them and submit written statements, may appoint any lawyer, enter into compromise, may certify any papers in the suits, take oath or get it taken and submit applications of every type, may submit papers or take them back, give statement of every type, get execution affected, take possession and dispossess tenants, appoint arbitrator or commission and get execution done or for other purposes as well?”

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the record which was requisitioned.

The learned counsel representing the appellant has contended that Sh. Jiwan Singh had no authority to appoint a special power of attorney and therefore, the special power of attorney dated 22.12.1995 and the subsequent sale deed does not affect the rights of the plaintiff. He further contends that on the day the power of attorney was executed i.e. 20.06.1975, the plaintiff was not the owner of the disputed property and therefore, the general power of attorney is not applicable. He further contends that even if there is a power to appoint a special power of attorney under the general power of attorney, the same is only with respect to managing the litigation and not for transferring interest through sale etc.

Per contra, the learned counsel representing the respondent while

drawing the attention of the Court to the translated version of the general power of attorney dated 20.06.1975, contends that the plaintiff has specially authorized his father Jiwan Singh to appoint a special power of attorney. He further submits that a general power of attorney is not only for the purpose of managing the litigation but it is evident from the entire reading of the general power of attorney that the attorney includes the power of sale, mortgage, gift or exchange or transfer of property in any other manner. He further contends that once the appellant has appointed his father as the power of attorney holder and the same has never been revoked, then, Sh. Jiwan Singh has the authority to act on behalf of the appellant. He, hence, submits that even if the property was purchased subsequently, the power of attorney which had already been executed will operate qua the future property because the general power of attorney executed on 20.06.1976, was not with regard to any specific property. He further contends that the plaintiff did not appear in the evidence and therefore, the Courts have correctly drawn an adverse inference against the plaintiff.

From a careful reading of the general power of attorney executed on 20.06.1975, it is evident that Sh. Jiwan Singh has been specifically authorised to appoint a special power of attorney. The appointment is a delegation of power or in other words, it is in the nature of an appointment of an agent to act on behalf of the principal. Once the principal has delegated a power to an agent who is his representative, then, the principal is bound by the steps taken by his representative. In the present case, no doubt, while reading the first part of the power of attorney, it appears that the attorney is only to manage the litigation. However, it is evident that in the subsequent part, the attorney has been empowered to transfer the property through various modes. Coupled with that, there is a specific power to appoint a

special power of attorney. In such circumstances, the document in question is required to be read in its entirety. It cannot be read in piecemeal to draw any inference. At the cost of repetition, it may be noted here that all the parties are members of the same family. It is not in dispute that the plaintiff Karanjit Singh or his father has never stepped into the witness-box to prove any deception or fraud.

Keeping in view the aforesaid discussion, this Court does not find it appropriate to accept the first argument of the learned counsel representing the appellant.

The second argument of the learned counsel representing the appellant is with respect to the subsequent purchase of the property. It is observed that once a general power of attorney has been executed authorizing his representative to act on his behalf and the power conferred under the power of attorney is not restricted to a specified property, then, the power of attorney holder can, also, act on behalf of the executor, with respect to the properties, which may be acquired, subsequently. In these circumstances, there is no substance even in the second argument.

The learned counsel representing the appellant relies upon the judgment passed by the Hon'ble Supreme Court in **Bhatori Vs. Ram Piari, (1996) 11 SCC 655**, to contend that whenever the power of attorney uses the attorney for his own benefit, the same is required to be ignored.

This Court has perused the judgment passed by the Supreme Court. In that case, the Court found that a fraud has been played upon the appellant and respondent No.2 (Patwari of the village) has transferred the land in favour of his own wife on the strength of the power of attorney.

In the present case, both the Courts have concurrently found that

there is no fraud. It is well established that fraud is to be proved, in absolute terms, like in a criminal trial Court.

With these observations, the Regular Second Appeal stands disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

December 16, 2021

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No