

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

RSA-276-2015(O&M)

Date of decision:-30.11.2022

Rattan Singh deceased through LR's and others

...Appellants

Versus

Kuldeep Singh and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Parminder Singh, Advocate  
for the appellants.

Ms.Sonia G.Singh, Advocate  
for the respondent No.1.

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**H.S. MADAAN, J.**

1. Briefly stated, facts of the case are that plaintiffs Rattan Singh (since deceased) through his LR's i.e. Smt.Gurbachan Kaur – widow, Harjinder Singh – son; Joginder Singh (since deceased) through his LR's i.e. Sukhvinder Kaur – widow, Jitender Singh – son, Prabhjot Kaur, Jyoti and Palwinder Kaur – daughters as well as Bhupinder Singh son of Sh.Pishora Singh, all residents of village Sehadpura, Tehsil and District Karnal had brought a suit for grant of declaration and permanent injunction against Kuldeep Singh and Jasbir Singh.

2. As per the version of the plaintiffs, they claimed themselves to be owners in possession of agricultural land measuring

30 kanals 9 marlas to the extent of 3/5 share as reflected in the jamabandi for the year 2002-03; their mother Smt.Harnam Kaur had executed a registered Will dated 1.2.2005 in their favour; the executant of the Will Smt.Harnam Kaur had expired on 31.3.2005; the plaintiffs have been in cultivating possession of the suit land but defendants along with anti-social elements visited the spot a week before filing of the suit to dispossess the plaintiffs from the suit land and destroyed and damage crops of plaintiffs; however, the situation was saved with the intervention of the respectables; thereafter the plaintiffs searched the revenue record and came to know that the defendants in collusion with each other had got a fictitious, illegal and void registered Will dated 17.3.2005 for a fictitious consideration of Rs.1,05,000/- from the defendant No.2 and mutation No.391 sanctioned on its basis had been cancelled by the revenue authorities; the plaintiffs claimed that general power of attorney alleged to have been executed by Smt.Harnam Kaur on 8.12.2004 and *mukhtiare aam* are bogus not binding upon the rights of the plaintiffs; Smt.Harnam Kaur was aged about 95 years and she used to remain sick as per the medical record; Smt.Harnam Kaur was staying with the plaintiffs, who used to serve her and get her medically treated and she was not capable of executing any sale deed or general power of attorney in favour of defendant No.2 – Jasbir Singh; defendant No.2 Jasbir Singh played fraud with Smt.Harnam Kaur

and got a bogus general power of attorney and sale deed prepared to defeat the rights of the plaintiffs, which they had acquired through registered Will dated 1.2.2005 executed and registered in favour of plaintiffs. Feeling aggrieved, they had brought the suit in question.

3. On getting notice, the defendants had appeared and filed written statement in which they denied that plaintiffs are owners or in possession of the suit property. According to the defendants, Smt.Harnam Kaur was absolute owner of the property in question with which the plaintiffs had nothing to do and she being absolute owner could transfer the property to anybody either herself or through her general power of attorney; the execution of the Will was denied submitting that the Will was a sham transaction and no such document had been executed by Smt.Harnam Kaur. It was also denied that plaintiffs are in cultivating possession of the suit property or defendants had tried to dispossess them from the suit property because the plaintiffs are not in possession of the same, as such question of dispossessing did not arise; the general power of attorney and sale deed are false documents. It was further denied that Smt.Harnam Kaur was not in sound disposing mind at the time of execution of general power of attorney and sale deed. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

4. Replication was not filed. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for a decree for declaration as prayed for? OPP.
2. If issue No.1 is proved, then whether the plaintiffs are entitled for a decree for permanent injunction, as prayed for? OPP.
3. Relief.
5. The parties led evidence in support of their respective claims.
6. During the course of their evidence, plaintiffs examined Sh.Karambir Singh as PW1, Sh.Bhupinder Singh as PW2, who placed on record his duly sworn affidavit Ex.PW2/A, Sh.Raj Kumar as PW3 and Sh.Gulshan Singh as PW4. Thereafter, the plaintiffs closed their evidence after tendering certain documents.
7. On the other hand, defendant No.1 Kuldeep Singh had got recorded his statement as DW1 and he tendered in evidence his affidavit as Ex.DW1/A. The defendants further examined Sh.Karambir, Registration Clerk as DW2, Sh.Rampal as DW3 and Sh.Nishan Singh as DW4, who submitted his duly sworn affidavit as Ex.DW4/A. Thereafter, the defendants tendered certain documents and closed their evidence.
8. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiffs. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 9.9.2011.

9. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 26.9.2014 dismissed the same.

10. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and their suit be decreed.

11. Notice of the appeal was issued to the respondents but only respondent No.1 had put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. Both the Courts below by proper appraisal of evidence and correct interpretation of law have returned concurrent findings that Smt.Harnam Kaur had executed general power of attorney in favour of defendant No.2 Jasbir Singh and said Jasbir Singh had then executed the sale deed on her behalf. The general power of attorney executed by Smt.Harnam Kaur and sale deed executed by Jasbir Singh in favour of Kuldeep Singh were found to be legal and valid documents and no fault could be found therewith. It being so, the claim of the plaintiffs that Smt.Harnam Kaur was not possessed of sound mental faculties and could not execute general power of

attorney and sale deed through her attorney, pales into insignificance.

As regards the Will executed by Smt.Harnam Kaur, once she had transferred the property through her validly appointed general power of attorney, who had executed the sale deed, Smt.Harnam Kaur could not pass any title in the property to the plaintiffs since she herself had parted with the ownership and possession of the property. Such findings are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees.

14. No substantial question of law or fact arises in this appeal.

15. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

16. The appeal stands dismissed with costs accordingly.

30.11.2022  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**