

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3775 of 2017 (O&M)
Date of decision: 16.12.2022

Jaswinder Singh

..Appellant

Versus

Paramjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.K.Singla, Advocate
for the appellant.

Mr. P.S.Jammu, Advocate
for respondent no.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the findings of fact arrived at by the First Appellate Court, the plaintiff has filed the Regular Second Appeal. His suit for grant of decree of declaration, that as many as three sale deeds executed by his mother, through attorney Sh. Jagroop Singh (plaintiff's brother) are illegal, null and void and does not effect his rights, was decreed by the trial court but has been dismissed by the First Appellate Court. It is not in dispute that the property sold belonged to Smt. Balbir Kaur. Smt. Balbir

Kaur appointed her son Sh. Jagroop Singh as General Power of Attorney

vide GPA No.33, dated 17.02.2011 registered in the office of the Registrar at Seeto Guni, Tehsil Abohar. On the strength of the aforesaid attorney, Sh. Jagroop Singh executed three sale deeds on 24.02.2011.

3. The trial court, on the basis of conjectures and surmises, decreed the suit while observing that if Smt. Balbir Kaur could visit Seeto Guni, Tehsil Abohar, to execute the General Power of Attorney, then, she could have sold the property by executing the registered sale deeds herself. The suit filed by the plaintiff was decreed only on the basis of aforesaid observation. The First Appellate Court has reversed the judgment and decree passed by the trial court. It is important to note that one of the marginal witness DW4-Sh. Mohan Lal has appeared in evidence to support the execution of the General Power of Attorney. Meanwhile, Smt. Balbir Kaur had filed a separate suit to question the correctness of the General Power of Attorney which has been dismissed on 18.11.2022.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the judgments passed by the courts below and the record which was requisitioned.

5. The learned counsel representing the appellant while referring to Section 33 of the Registration Act, 1908 submits that the General Power of Attorney could only be executed and registered in Bathinda and not in Seeto Guni, Tehsil Abohar. In the alternative, he submits that the General Power of Attorney should have been executed only at a place where the immovable property is situated. On reading of the General Power of Attorney dated 17.02.2011, it is evident that Smt. Balbir Kaur has disclosed that she, at the moment, is residing in the village Bhagsar, which falls within the territory of Sub Tehsil Seeto Guni, Tehsil Abohar. Some part of

her property is located in village Bhagsar. Her two sons are also residing in village Bhagsar.

6. On a careful reading of Section 33 (1)(a) of the Registration Act, 1908, it is evident that the power of attorney can be executed and authenticated by the Registrar or the Sub-registrar within whose district or sub district the principal resides. As per the General Power of Attorney, Smt. Balbir Kaur was residing in village Bhagsar at the time of the execution and registration of the General Power of Attorney.

7. As regards the argument of the learned counsel that it should have been registered at the place where the property is situated, it is noticed here that the General Power of Attorney does not fall within the scope of Section 28 of the Registration Act, 1908.

8. In the end, the learned counsel representing the appellant contends that only one attesting witness of the General Power of Attorney has been examined and therefore, its execution is not proved. It is noted here that only limited documents require attestation by two attesting witnesses which primarily include a will, a gift and a mortgage. A General Power of Attorney or a Special Power of Attorney does not require attestation by witnesses. Hence, Section 68 of the Indian Evidence Act, 1872, is not applicable to the facts of the present case.

9. In any case, a registered power of attorney is not only admissible in evidence but it can be proved by mere production of it as per Section 33(4) of the Registration Act, 1908.

10. Keeping in view the aforesaid facts, no ground to interfere is made out.

11. Dismissed.

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

December 16, 2022
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(ANIL KSHETARPAL)
JUDGE

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