

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

**RSA-970-2019 (O&M)
Date of Decision : 24.08.2023**

Gursewak Singh

..... Appellant

Versus

Angrej Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Ajay Jain, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

1. This is plaintiff's second appeal against the concurrent findings of both the Courts below in a suit filed by the respondent-plaintiff for declaration and permanent injunction. The Court of Civil Judge (Junior Division) ,Dabwali dismissed the suit vide judgment and decree dated 16.11.2011. The appeal filed against the said judgment and decree was also dismissed by the Addl. District Judge, Sirsa vide judgment and decree dated 05.01.2019.

2. The facts, as emanating from the paper book, are that a suit was filed by the appellant-plaintiff seeking a declaration to the effect that the appellant-plaintiff and respondent-defendant No.4 i.e. Veerpal Kaur were owners in possession to the extent of half share over the land measuring 15 kanals 17 marlas 3 sarsai (comprised in three different parcels of land) (fully described in the plaint), situated at Village Panniwala Ruldu, Tehsil Dabwali, District Sirsa (hereinafter referred to as 'the

disputed land'). One Nazam Singh had three sons namely Gursewak Singh, Major Singh and Dici Singh and one daughter namely Veerpal Kaur. Angrej Kaur was the wife of Nazam Singh. Dici Singh had expired earlier. A general power of attorney dated 26.06.2014 was executed by Angrej Kaur in favour of her son Major Singh and within a week thereafter, i.e. on 02.07.2014, the share of Angrej Kaur was released in favour of Harpreet Kaur, daughter of Major Singh by way of a release deed executed by Major Singh. This led to the filing of the suit by Gursewak Singh who not only sought the declaration with regard to the disputed land but also challenged the general power of attorney dated 26.06.2014 as also the release deed dated 02.07.2014 Ex.DW1/B. It was the case of the appellant-plaintiff that the general power of attorney was the result of a fraud and the same was liable to be set aside as it had been executed by Angrej Kaur in favour of Major Singh to defeat the legal rights of the appellant-plaintiff and respondent-defendant No.4. It was alleged that taking benefit of the old age of Angrej Kaur, the general power of attorney had been got executed fraudulently.

3. The suit was resisted by the respondents-defendants. Angrej Kaur also filed a written statement stating that she had executed the general power of attorney out of her own free will in favour of Major Singh. The release deed was also stated to have been executed in a legal manner.

4. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the relief of Declaration as prayed for ? OPP

2. Whether the plaintiff is also entitled for the relief of Permanent Injunction as prayed for ? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
4. Whether the plaintiff is no locus-standi and no cause of action to file the present suit ? OPD
5. Whether the plaintiff is concealing the true and material facts from the Court ? OPD
6. Relief.

The parties led their respective evidence.

5. After examining the evidence and considering the matter, the trial Court dismissed the suit.

6. The appeal preferred against the said decision was also dismissed, leading to the filing of the present second appeal.

7. I have heard learned counsel for the appellant and have perused the paper book.

8. Sh. Ajay Jain, learned counsel representing the appellant strenuously urged that both the Courts below had erred in non-suiting the appellant-plaintiff. It has been contended that Angrej Kaur was in her old age and taking advantage of the same, the general power of attorney as also the release deed had been got executed by Major Singh. Learned counsel has submitted that the intention of the parties can be gauged from the fact that the release deed was executed within a period of one week from the date of execution of the general power of attorney. It has been contended that the general power of attorney did not confer any right upon Major Singh to alienate the property especially by way of a release deed.

Learned counsel has referred to the findings recorded by both the Courts

below and has submitted that the said findings are not sustainable. In support of his contentions, he has placed reliance upon the judgment of a Coordinate Bench of this Court in **Sukhbir Kaur versus Balwant Singh and another 2016 (4) PLR 593.**

9. I have considered the submissions made by learned counsel for the appellant.

10. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including **Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545,** was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in **Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92** respectively.

11. Reverting to the facts of the case, the respondent-defendant No.1 Angrej Kaur executed a general power of attorney on 26.06.2014 in favour of respondent-defendant No.2 Major Singh. Reference was made to the general power of attorney by learned counsel for the appellant-plaintiff in the Court. A photocopy of the same was also perused by the Court. It had duly been proved on record and had been produced as

Ex.DW1/A. It was duly mentioned in the said general power of attorney that respondent-defendant No.2 Major Singh had been appointed as an attorney to take care of the said property and to do any action in relation to the same. It was mentioned that Major Singh would have the right to sell, mortgage or to gift etc. to any person. Once the right to sell the property, to mortgage it and to gift it had been given, it cannot, by any stretch of imagination, be said that the release deed could not have been executed. The word "Aadi" which means "etc": was also mentioned in the general power of attorney which would mean that there was a right with Major Singh to sell the land, to mortgage it, to gift it or to alienate it by any other means which would include the execution of a release deed.

12. Still further, the plea of fraud was neither pleaded properly nor was proved. It is settled law that a fraud has to be pleaded and proved and the onus is on the person pleading it. Not only this, Angrej Kaur herself admitted the execution of the power of attorney in the written statement. No one could have restrained Angrej Kaur from executing a general power of attorney with respect to her share of the property. Both the Courts, therefore, did not commit any illegality in dismissing the suit filed by the appellant-plaintiff. Merely because the release deed was executed on 02.07.2014 i.e. one week after the execution of the general power of attorney dated 26.06.2014 would not mean that the same was not a valid document or that it was liable to be set aside. Once the general power of attorney executed by respondent-defendant No.1 Angrej Kaur on 26.06.2014 was found to be a genuine document, there would be no bar for respondent-defendant No.2 Major Singh to further execute the release deed in favour of Harpreet Kaur.

13. This Court, therefore, does not find any reason to interfere with the concurrent findings of law and facts recorded by the Courts below.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

24.08.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No