

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1669 of 2010 (O&M)

Date of Order: 21.07.2023

Mohinder Kaur

.Appellant

Versus

Amir Singh

..Respondent

RSA-1670 of 2010 (O&M)

Preetinder Singh and another

.Appellants

Versus

Amir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate,
for the appellants.

Mr. V.K.Sachdeva, Advocate
for the respondent.

ANIL KSHETARPAL, J

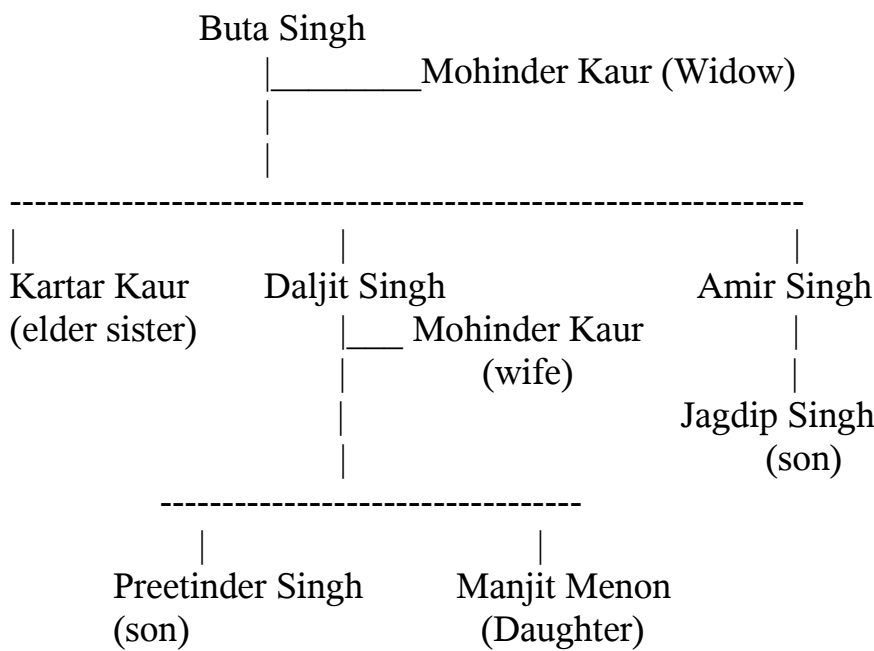
1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs.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

2. These two connected regular second appeals have come up for final disposal. In fact, these two appeals are arising from two different suits, one filed by Smt. Mohinder Kaur widow of late Sh. Daljit Singh, whereas the second suit filed by Preetinder Singh and Smt. Manjeet Menon, son and daughter respectively, of late Sh. Daljeet Singh. In both the suits, the

challenge is to the correctness of a consent decree passed on 14.09.1985.

3. Smt. Mohinder Kaur filed the suit on 30.11.1998, whereas Sh. Preetinder Singh filed the suit on 10.02.2003. In both the suits, it is claimed that the aforesaid judgment and decree is the result of fraud and Sh. Daljit Singh, their predecessor never executed a General Power of Attorney in the favour of his nephew Sh. Jagdip Singh.

4. In order to understand the inter-se relationship of the parties, it would be appropriate to draw a family tree.



5. The defendant while contesting the suits, claimed that in fact there was a family settlement between the parties according to which late Sh. Daljeet Singh agreed to transfer his land on payment of a sum of Rs.1,00,000/-. On 15.01.1982, late Sh. Daljeet Singh on receipt of Rs.1,00,000/- executed a General Power of Attorney authorizing Sh. Jagdip Singh (son of Sh. Amir Singh)to deal with the property in any manner including selling the same. It was further pleaded that after the decree, late Sh. Daljeet Singh raised a dispute with regard to the inadequate payment which resulted into reference of the dispute to their elder sister Smt. Kartar

Kaur. She after hearing both the brothers, in writing on 18.05.1986 gave her verdict directing Sh. Amir Singh to pay another sum of Rs.30,000/- to late Sh. Daljeet Singh which was accordingly paid.

6. Both the courts on appreciation of the evidence, returned the concurrent findings of fact that the registered General Power of Attorney dated 15.01.1982 was executed by late Sh. Daljeet Singh and in view of letter written by late Sh. Daljeet Singh and by the decision of Smt. Kartar Kaur, the dispute between the parties stood settled. Thus, both the courts held that the plaitniffs failed to prove that late Sh. Daljeet Singh never executed the registered General Power of Attorney in favour of Sh. Jagdip Singh which resulted into the consent decree dated 14.09.1985.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book. The photocopies of the record produced by the learned counsels representing the parties have also been examined.

8. Sh. Vijay Lath, the learned counsel representing the appellant(s) has submitted that the judgment and decree dated 14.09.1985 is the result of fraud. He submits that late Sh. Daljeet Singh, sought to be served with the notice in the suit by giving his postal address of New Delhi. He submits that without service of notice Sh. Jagdip Singh appeared in the suit and filed an admitting written statement. He submits that in fact Sh. Jagdip Singh himself was a beneficiary of the consent decree and therefore in view of Section 215 of the Indian Contract Act, 1872, the principal could revoke the agency at any point of time. He further submits that in the suit filed in the year 1985, the facts pleaded are incorrect and therefore, the decree has been

passed on the basis of those facts cannot be sustained. He relies upon the judgments passed in *Santosh vs. Jagat Ram and another, (2010) 3 SCC 251*, *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another, AIR 2012 (Supreme Court) 206* and *Krishan Kumar vs. Nand Lal, 2011 (1) RCR (Civil) 970*.

9. On the other hand, the learned counsel representing the respondent has drawn the attention of the court to the fact that the sole foundation of both the complaints is to the effect that the General Power of Attorney dated 15.01.1982 was never executed by late Sh. Daljeet Singh which has been found to be incorrect, hence, the suit has been correctly dismissed.

10. This Court has analyzed the arguments of the learned counsels representing the parties.

11. The first argument of the learned counsel representing the appellant is based on Section 215 of the Indian Contract Act, 1872 which provides that if an agent deals on his own account in the business of the agency without first obtaining the consent of principal, then the principal may repudiate the transaction. In the considered opinion of the Court, the aforesaid section will not apply for more than one reasons. Firstly, late Sh. Daljeet Singh during his life time never repudiated the General Power of Attorney or challenged the correctness of the consent decree though he remained alive for nearly 12 years after the date of decree. Secondly, Sh. Jagdip Singh suffered a decree in favour of Sh. Amir Singh. He was not direct a beneficiary of the same. Moreover, the General Power of Attorney is not in the course of business. The parties are closely related. In fact, they

were members of the same family. Moreover, Smt. Kartar Kaur, (aged 90 years) the elder sister of late Sh. Daljeet Singh and Sh. Amir Singh has entered witness box as DW7. She categorically stated that after the decree was passed, late Sh. Daljeet Singh was not satisfied with the terms of settlement. She heard both the brothers and thereafter gave verdict directing Sh. Amir Singh to pay another sum of Rs.30,000/- which was paid. She also stated that the decree was in the knowledge of late Sh. Daljeet Singh, who wrote her a letter, for intervening in the matter. The award passed by Smt. Kartar Kaur is Ex.DW7/1. She has also recognized letter written by her brother, which is Ex.DW7/2. Apart therefrom, late Sh. Daljeet Singh also wrote a letter on 10.10.1985 to Sh. Amir Singh. A reading of the aforesaid letter shows that there was a dispute between the brothers with regard to payment of the total amount. It was in that context that the award was passed. The learned counsel for the plaintiffs failed to impeach the credibility, despite searching questions in her cross-examination. Both the courts on preponderance of probabilities have concluded that there was a settlement between the brothers and the dispute stood resolved.

12. The second argument of the learned counsel representing the appellant is required to be examined in the context of the development which has taken place after the decree was passed. The Court cannot read the judgment and decree in isolation from the development which has taken place, subsequent thereto. As already noticed, the award dated 18.05.1986 was passed by the elder sister of both the brothers. Moreover, late Sh. Daljeet Singh though remained alive for nearly 12 years after the filing of the suits, never challenged the correctness of the judgment and decree

passed on 14.09.1985. Both the suits were filed after the death of late Sh. Daljeet Singh. Even Smt. Mohinder Kaur while filing the suit has disclosed the residential postal address of New Delhi.

13. This court has carefully read the judgment passed in **Santosh case (supra)**. The Supreme Court in the peculiar facts of the case came to the conclusion that the judgment and decree was obtained by fraud, therefore, the decree is a nullity. In that case, a helpless widow had fallen prey to the greed of her own elder brother-in-law. Her entire property was transferred by a consent decree which was obtained on the basis of misrepresentation. Moreover, an application for lodging a caveat was filed under Section 148A of the Civil Procedure Code, 1908. The Court came to the conclusion that the fraud has been played with Smt. Santosh and therefore, the judgment and decree is liable to be set aside. This judgment has been delivered in the peculiar facts of the case wherein the Court as a matter of fact found that a fraud has been played upon the widow. However, the ratio decidendi of the aforesaid judgment in the facts of the present case would not apply because the decision in **Santosh's case (supra)** is in the peculiar facts of the case.

14. The next judgment relied upon by the learned counsel representing the appellant is in **Suraj Lamp's case (supra)**. In this case, the Supreme Court was examining the question of requirement of registration in the context of the agreement to sell, general and special power of attorneys, Will and some other documents. The Supreme Court held that the agreement holder cannot claim ownership. As per Section 54 of the Transfer of Property Act, 1882, agreement to sell is neither considered a document of

title nor the deed of transfer of property therefore no absolute title is conferred over the suit property. Hence, the aforesaid judgment also has no application.

15. The next judgement relied upon by the learned counsel representing the appellant is in **Krishan Kumar's case (supra)**. In that case, the Court held that attorney holder nominated as per General Power of Attorney in absence of specific right is not entitled to enter into a compromise or to sell the same. As already noticed, this Court has considered the complete facts of the case. Hence, the judgment in **Krishan Kumar's case (supra)** is also not applicable.

16. The Court in a subsequent civil suit cannot go behind the decree passed in a previous suit unless the grounds for avoiding a contract are made out. Reliance can be placed on a Division Bench judgment in **Gurdev Kaur and another vs. Mehar Singh and others, 1989 Punjab Law Journal, 182.**

17. Keeping in view the aforesaid facts and discussions, no ground to interfere with the concurrent findings of fact arrived at by the courts below is made out.

18. Hence, both the appeals are dismissed.

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

July 21, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO