

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3736-2014 (O&M)

Reserved on: 27.07.2023

Date of decision: 02.08.2023

Joginder Mohan and others

..Appellants

Versus

Ram Rakha and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Bansal, Advocate for the appellants
Mr. S.S.Hira, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are 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. The correctness of the concurrent findings of facts arrived at by the courts below are assailed by defendant no. 1 to 3. The plaintiff's suit for grant of decree of possession with respect to the land measuring 54 kanals located in Village Barlowal, Tehsil Dasuya has been decreed.

3. The relevant facts, in brief, are required to be noticed, in order to understand the controversy involved in the present case.

4. Late Sh.Punnu Ram has four sons; Tek Chand, Ram Rakha @ Rakha Ram, Sh.Sangat Ram and Sh.Harbans Lal. The plaintiff Ram

Rakha was allotted land measuring 54 kanals on payment of Rs.4800/- and a mutation of land was entered in his favour on 22.03.1984. On 22.11.1983, he executed a Special Power of Attorney in favour of Sh. Sangat Ram, who on the basis of the aforesaid power of attorney, transferred the land vide sale deed dated 09.08.1984, in favour of his wife Smt. Kartari Devi and one of his brothers Sh.Harbans Lal. Thereafter, defendant no.1 and 2, Kartari Devi and Harbans Lal sold the property in favour of defendant no.4 to 9 vide registered sale deed dated 02.12.1991. On 22.03.1994, the plaintiff (Ram Rakha) filed a suit for possession alleging that the Special Power of Attorney was executed only to pay the instalments and get the sale certificate issued in favour of the plaintiff, however, Sh.Sangat Ram was not authorized to sell the property. While alleging that the plaintiff remained in possession of the suit property and about a year ago, defendants no. 4 to 9 took illegal possession, the suit was filed. Defendant no.4 to 9 were served through the mode of publication, however, they did not enter appearance whereas defendants no. 1 to 3 namely Smt. Kartari Devi, Sh. Harbans Lal and SH. Sh.Sangat Ram contested the suit. It was stated that vide registered Special Power of Attorney dated 22.11.1983 Sh. Sangat Ram was authorized to sell the property. Thereupon, Sh.Sangat Ram transferred the property in favour of his wife and one of his brothers on 09.08.1994 for a total sale consideration of Rs.5,000/- which was duly paid to the plaintiff. Lateron, defendant no.1 and 2 further sold the property in favour of defendant no.4 to 9 vide registered sale deed dated 22.12.1991. Questioning the maintainability of the suit in the present form, the

defendants prayed for dismissal of the suit. It has been alleged that the suit land is located at a considerable distance from village Daffar and hence, the plaintiff was not able to manage the said land and therefore, the Special Power of Attorney was executed in favour of Sh.Sangat Ram.

5. From the pleadings of the parties, the following issues were framed by the trial court for adjudication:-

“1) Whether the plaintiff is entitled to possession of the suit land? OPP.

2) Whether the plaintiff is owner of the suit land as allottee of lands from the Central Government ?OPP.

3) Whether the defendant No.3 is illegally, wrongly and fraudulently transferred the suit land of the plaintiff to defendant No.1 & 2?OPP.

4) Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD.

5) Relief.

And the following additional were framed on 16.10.2002:-

4-A Whether the registered special power of attorney dated 22.11.83 executed by the plaintiff in favour of defendant No.3 was for the purpose to sell the suit land on behalf of the plaintiff? OPD.

4-B Whether the suit of the plaintiff is not maintainable in the present form?OPD.”

6. Both the trial court and the First Appellate Court have declared that the second copy of the Special Power of Attorney available in the office of the Sub-Registrar has been interpolated. The word ‘authorization to sell’ (‘be kare’) has been added in the space between

the second last line and third last line. The courts have also held that Sh.Sangat Ram was working as a Kanungoo with the Revenue Department, Punjab, and therefore, he manipulated the record for his own benefit. The First Appellate Court has also held that the sale deed on 09.08.1994, was executed before the sale certificate in favour of Rakha Ram was issued as the instalments were yet to be paid. Therefore, the act of executing the power of attorney appears to be without any logical and meaningful purpose. The courts also held that the power of attorney is suspicious and doubtful and decreed the suit for grant of decree of possession.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. The only issue which arises for consideration is with respect to the interpretation of the Special Power of Attorney dated 22.11.1983. The pivotal issue that requires consideration is “Whether the Special Power of Attorney dated 22.11.1983, enabled Sh.Sangat Ram to execute and register the sale deed on behalf of Ram Rakha or not? It may be noted here that during the pendency of the Regular Second Appeal not only the record of the courts below was requisitioned but vide order dated 08.02.2019 even the original record from the office of the Sub-Registrar before whom the document was registered was also requisitioned.

8. The original notebook maintained by the office of the Sub-Registrar was retained in this Court. On its careful perusal, it becomes evident that two brothers namely Sh.Ram Rakha (the plaintiff) and Sh.Harbans Lal executed two separate Special Power of Attorneys in

favour of their brother Sh.Sangat Ram. Sh.Ram Rakha who was allotted 54 kanals land executed the Special Power of Attorney no.4164, dated 22.11.1983 in favour of Sh.Sangat Ram whereas Sh.Harbans Lal who was allotted 75 kanals 19 marlas of land vide Special Power of Attorney no. 4725 dated 22.11.1983, authorized Sh.Sangat Ram to pay the instalments to get the sale certificate issued and thereafter sell the property in any manner. There is no dispute that Sh.Harbans Lal while executing the identical power of attorney on the same date authorized his brother Sh.Sangat Ram to sell the property. A careful perusal of the Sub-Registrar's notebook proves that hand written second copies of both the Special Power of Attorneys have been retained in the register. The said copies are signed by the parties as well as the marginal witnesses, apart from the Sub Registrar. These Special Power of Attorneys are in the form of second original because these have not only been signed by the donee/executor but also signed by the marginal witnesses as well as the Sub-Registrar. There is no doubt that in between the second last line and third last line, the expression 'be kare' (authorizing Sh.Sangat Ram to sell) has been added. The question that now arises is, "whether it is an outcome of interpolation or merely a correction of an error?" The plaintiff Sh.Ram Rakha in his evidence has produced a certified copy of the Special Power of Attorney dated 22.11.1983, as PW1/A. Both the courts have compared both the copies and have held that this is a result of interpolation of the power of attorney.

9. Apart from hearing arguments of the learned counsel representing the parties, the translation of both the copies of the Special

Power of Attorneys have been prepared by the official Translator of this Court. The translation of the official Translator with respect to the second original of the Special Power of Attorney has been extracted hereunder:-

“Copy of Special Power of Attorney

No.4164 Plot 1 Value 3/- Pyare Lal, Stamp Vendor Dasuya
22-11-83

*I Ram Rakha @ Rakha Ram, aged 44 years, s/o
Sh.Punnu Ram s/o Khushala, am a resident of Daffer Tehsil and
District Hoshiarpur. That the land situated in the area of
Brarowal, Hadbast No.459 Tehsil Dasuya measuring 54-0, khata
no.41/76,*

<i>khasra nos.</i>	<u>9R</u>	<u>10R</u>
<i>11/1 12 14</i>	<i>16 17/1 22/1 24/2</i>	
<i>1-19 5-13 8-0</i>	<i>8-0 5-18 5-0 4-8</i>	

<u>15R</u>	<u>10R</u>	<i>Plot 07 land measuring 54K-0M has been purchased by me from the Department of Central Government. I appoint Sh.Sangat Ram s/o Sh.Punuu Ram, resident of Daffer, Tehsil and District Hoshiarpur as my Special Power of Attorney to pay off the instalments in respect of said land and scribe that he may pay instalments in respect of our abovementioned land, obtain sale certificate from the government department and get verified sale-deed, suffer verbal statement and tender an affidavit, sell the same. Everything done by him, shall be deemed as correct by me.</i>
<i>5</i>	<i>25</i>	
<i>7-2</i>	<i>8-0</i>	

Dated 22-11-83

*Executant
Sd/o Rakha Ram
(In Punjabi)*

*Special Power of Attorney
Sd/- Sangat Ram
(In English)*

*Witness
Ram Sharan Dass, Nambardar
Resident of Bodal
Sd/- in English*

*Witness
Hazara Singh s/o Ratan
Resident of ---- (some Text illegible)
Sd/- in Punjabi*

*Copy is as per original
Sd/-
Balkar Singh, Deed Writer
Dasuya (Hoshiarpur) 1977
Reg: no.510”*

10. Despite opportunity, learned counsel representing the respondent has not filed the written note of his submission although it has been filed by the learned counsel representing the appellant. On a perusal of Ex.PW1/A (certified copy produced by the plaintiff), it is evident that the power to sell has been written in a continuous and regular manner in the power of attorney. The translation of Ex.PW1/A produced by the plaintiff is extracted hereunder for clarity:-

“Special Power of Attorney

I Ram Rakha @ Rakha Ram, aged 44 years, s/o Punnu Ram s/o Khushala Ram, am R/o Daffer, Tehsil, District Hoshiarpur.

That the land located in the Hadbast no: 459, Tehsil Dasuya measuring 54 K 0 M khata no: 41/76 khasra

<i>nos.</i>	<i><u>9R</u></i>	<i><u>10R</u></i>	<i><u>10R</u></i>
<i>11/1</i>	<i>13 14</i>	<i>16 17/1</i>	<i>22/1 24/2</i>
<i>1-19,</i>	<i>5-13, 8-0</i>	<i>8-0, 5-18</i>	<i>5-0 4-8</i>

15R 10R , Plots-07, land measuring 54 Kanals 0 Marla
5 25

has been purchased by me in an auction. I appoint Sh.Sangat Ram s/o Sh.Punnu Ram R/o Village Daffer, Tehsil and District Hoshiarpur as my Special Power of Attorney to pay the instalments to the government for next months, and also to obtain the sale certificate. Also to sell the land and get the sale deed registered and verified and give oral statement, and to submit an affidavit. I shall deem everything done by him as correct. I have written this power of attorney to ensure clarity.

Dated 22-11-83

<i>Witness</i>	<i>Executant</i>	<i>Special Power of attorney</i>	<i>Witness</i>
<i>Ram Sharan Dass</i>	<i>Rakha Ram</i>	<i>Sangat Ram</i>	<i>Hazara Singh</i> <i>s/o Ratan Singh</i>

*Copy is as per original
Tehsil Officer, Dasuya
22/02/2002"*

11. If the power of attorney is loosely translated it has been stated that the donee will pay the instalments to the Central Government and will be authorized to execute the sale deed. He will be entitled to sell the property by getting the sale deed registered and execute the transfer deed or to tender affidavit. Whereas on loosely translating the second original it is read as, that the donee may pay the instalments in respect of the aforesaid land, obtain the sale certificate from the Govt. Department, get the sale deed verified, suffer a verbal statement and tender an affidavit, sell the same. As is evident the power to sell the property through registered sale deed exists in both the copies. Only the usage of expression 'power to sell' is at different places in both the copies. It appears that while preparing the copy of second original, from the original, the scribe while writing inadvertently omitted to include the power to sell initially but lateron he inserted it. Once the best document

of the plaintiff Ex.PW1/A proves that there was a power of sell, there was no occasion for the court to doubt its authenticity. From a bare look at the second original of the Special Power of Attorney it is apparent that the words added later on (i.e 'be kare') are written with the same pen and in the similar handwriting. The other reasons recorded by the First Appellate Court are also erroneous. Even if the sale certificate was not yet issued when the Special Power of Attorney was executed, there was no restriction on the power of sale. Moreover, in view of Section 43 of the Transfer of Property Act, 1882, any subsequent confirmation of title would validate the sale deed executed on 09.08.1994.

12. Moreover, the First Appellate Court has also erred while returning a finding that the Special Power of Attorney is suspicious and doubtful. The aforesaid finding is without the complete analysis of the record. First of all, the suit was filed after a period of nearly 11 years after the Special Power of Attorney was executed. It is after a period of 1 year when the sale deed was executed by Sh.Sangat Ram in favour of his wife and one of his brothers Sh.Harbans Lal. Sh.Sangat Ram did not transfer the property entirely to his wife but he also transferred ½ share to one of his brothers namely Sh.Harbans Lal. Thereafter, the wife and Sh.Harbans Lal continued to be the owners for a period of 7 years without any obstruction by the plaintiff. The wife and Sh.Harbans Lal sold the property in favour of defendant no.4 to 9 on 02.12.1991. The plaintiff after a passage of nearly 2 years and 4 months of the registration of the sale deed, filed the suit. He also never challenged the correctness of the sale deeds. Sh.Harbans Lal also executed a Special Power of

Attorney in favour of Sh.Sangat Ram in the similar manner in which the power to sell the property was specifically recited. Sh.Harbans Lal never challenged the same.

13. Consequently, being erroneous, the judgment and decree passed by both the courts are set aside. Hence, the appeal is allowed.

14. The Registrar General of this Court is requested to return the original notebook of the office of the Sub-Registrar against the proper receipt.

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

02.08.2023
rekha

(ANIL KSHETARPAL)
JUDGE

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