

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

109

**RSA-564-2018 (O&M)  
Decided on : 21.08.2023**

MANJIT SINGH

. . . Appellant

Versus

GURMEET KAUR AND ORS

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Naresh Kumar Manchanda, Advocate  
for the appellant.

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**SANJAY VASHISTH, J. (Oral)****CM-1370-C-2018**

This is an application under Section 151 CPC for condonation of delay of 1 day in refilling the appeal.

For the reasons stated in the application, the same is allowed and the delay of 1 day in refilling the appeal is condoned.

**CM-1371-C-2018**

This is an application under Section 5 of the Limitation Act for condonation of delay of 6 days in filing the present appeal.

For the reasons stated in the application, the same is allowed and delay of 6 days in filing the present appeal is condoned.

**RSA-564-2018**

1. Present appeal has been filed by the plaintiff - Manjit Singh, for seeking partial modification of the impugned judgment and decree, whereby, decretal of suit in its entirety by learned trial Court has been modified, by dismissing the suit *qua* the rights of defendant No.7 namely Gurmeet Kaur (appellant No.6 before the Appellate Court) in the land.

2. Factual matrix, as narrated by the counsel for the appellant is that defendant No.1 *qua* her own right and defendants No.2 to 7 (son and daughters of defendant No.1-Arvinder Kaur) through a power of attorney entered into an agreement to sell dated 19.10.2006 with plaintiff (appellant herein), in regard to the land admeasuring 5 kanals 7 marlas at the rate of Rs.3,50,000/- per acre and Rs.1,75,000/- was received as earnest money. Balance sale consideration of Rs.59,063/- was agreed to be paid at the time of registration of the sale deed which was to be executed on 28.09.2007 (target date).

3. As per the pleadings raised by the plaintiff (appellant herein), possession of the land measuring 5 kanals 7 marlas was also handed over to the plaintiff, at the time of the execution of agreement to sell.

4. Thus, the suit was filed for seeking proprietary possession as owner by way of specific performance of contract *qua* the land subject matter of the sale agreement dated 19.10.2006 and owned by defendant Nos.1 to 7. In the suit, defendant No.1 was proceeded *ex parte*, however, defendant Nos.2 to 7 filed a joint written statement and took a specific stand and raised a preliminary objection regarding maintainability and locus standi.

5. On merits, it was pleaded that neither defendants ever executed any alleged power of attorney in favour of defendant No.1, nor they wanted to sell their property in dispute.

6. Further pleaded that defendants No.2 to 7 never entered into any agreement to sell with the plaintiff nor received any amount as earnest money.

7. From the pleading of the parties, learned trial Court framed issues on 25.02.2011.

For the sake of convenience, issues framed by learned trial Court are reproduced here below:

“1) *Whether on 19.10.2006, defendants executed an agreement to*

*sell in favour of the plaintiff on receipt of earnest money?OPP*

*2) Whether the plaintiff has always been ready and is ready and willing to perform his part of the agreement?OPP*

*3) Whether suit is not maintainable?OPD*

*4) Whether the plaintiff has no locus standi to file this suit? OPD*

*5) Whether the agreement in question is false and fabricated? OPD*

*6) Whether the plaintiff is entitled for possession by of specific performance of the agreement, or in the alternative for recovery as prayed for?OPP*

*7) Whether the plaintiff is entitled for perpetual injunction as prayed for?OPP*

*8) Relief.”*

After examining the witnesses, appreciating the evidence, and going through the contentions of both the sides, the suit was decreed in its entirety by learned trial Court.

8. In the first appeal filed by the defendants No.2 to 7, findings for decretal of suit *qua* the rights of defendant Nos.1 to 6 in the land was kept intact and appeal *qua* that part was dismissed.

9. However, on examining the fact that in the special power of attorney dated 05.05.2010 executed in favour of Surjit Singh, signature of defendant No.7-Gurmeet Kaur (appellant No.6 before learned Appellate Court) was not appearing, the learned 1<sup>st</sup> Appellate Court allowed the appeal to that extent, by modifying the judgment and decree passed by the learned trial Court.

10. Relevant findings given by the learned 1<sup>st</sup> Appellate Court at paragraph No.12, 13 and 14 are as under:

**“12.** *As far as the appellants are concerned, though they have denied having ever executed any Power of Attorney in*

*favour of defendant No.1 (respondent No.2) to enter into any agreement for sale of their share in the suit property, it is worth-while to note that except for such denial in the present case, the appellants have taken no steps to initiate any sort of action against respondent No.2 (defendant No.1) for entering into sale agreement in respect of their property without any authority from them which would not have been the case had they infact not executed any Power of attorney in favour of defendant No.1. Rather, they would have swung into action against defendant No.1 immediately and the inaction on their part in this regard, clearly spells out that they had authorized the defendant No.1 to enter into sale agreement by means of Power of Attorney Ex.P2. Even otherwise, as already noted above, none of the appellants stepped into the witness box during the course of trial to deny the execution of such Power of attorney in favour of defendant No.1 as the execution or non-execution of Power of Attorney can well be adjudged to be a matter within the special knowledge of the defendants themselves and not in the knowledge of Surjit Singh who appeared to depose on behalf of the defendants but again even the Power of attorney in his favour has not been proved. This conduct of the appellants and particularly their non-appearance in the witness box to specifically deny the execution of any Power of attorney by them in favour of defendant No.1 gives rise to the adverse inference to be drawn against them that they had set up a false defence by denying the execution of Power of Attorney in favour of defendant No.1. As a result, the finding of the learned lower court holding the validity of the agreement to sell executed by defendant No.1 for herself and on behalf of defendants Nos.2 to 6 (appellants Nos.1 to 5) does not call for any interference. However, it becomes clear on perusal of the Power of Attorney Ex.P2 that appellant No.6 (defendant No.7 in the suit) is not at all the executants or signatory to the said Power of Attorney as a result whereof defendant*

*No.1 did not have any authority on behalf of said appellant to enter into any agreement for sale of share of defendant No.7 (appellant No.6) or to bind the said defendant with her act of entering into agreement. As a consequence, I am of the considered view that the Judgment and decree of the learned trial Court as against defendant No.7 (appellant No.6) as far as her share in the suit property is concerned, cannot be sustained and requires to be set aside by allowing the appeal partly.*

*13. No other point has been argued or raised before me during the course of arguments.*

*14. As a result of above discussion and observations, the appeal only on behalf of appellant No.6 Gurmeet Kaur succeeds and is thus allowed partly by setting aside the Judgment and decree of the learned lower Court only to the extent of share of appellant No.6 Gurmeet Kaur in the property in dispute and the Judgment and decree qua the share of remaining appellants as also respondent No.2 Arvinder Kaur is hereby upheld and affirmed. Decree sheet be prepared accordingly. The appeal file be consigned to the Record Room and that of the lower court along with a copy of this Judgment be sent back to the quarter concerned?”*

11. Only argument addressed by counsel for the plaintiff (appellant herein) is that once, possession of the area 5 kanals 7 marlas had been handed over, at the time of agreement to sell dated 19.10.2006 and defendant No.7 is daughter of defendant No.1 and real sister of defendants No.2 to 6, First Appellate Court while considering the circumstances in its totality could have dismissed the appeal filed by all the defendants No.2 to 7.

12. I have considered the submissions and without getting impressed with the same, am of the view that once, there was no power transferred by

defendant No.7 in favour of anybody, then there was no occasion with the plaintiff to enter into an agreement to sell for the share of land owned by her i.e. defendant No.7. Before this Court, it is again admitted by the appellant that on the power of attorney executed in favour of Surjit Singh (DW-1), signatures of defendant No.7 are not appearing.

13. Therefore, considering the well reasoned observations/findings given in paragraph No.12 by the First Appellate Court, I do not find any reason to deviate from the opinion expressed and thus, finding no irregularity, illegality or perversity in the impugned order and decree passed by the First Appellate Court, this Court maintains the same and **dismisses** the present appeal.

14. Disposed of.

15. Pending application(s), if any, shall also stand disposed of.

(SANJAY VASHISTH)  
JUDGE

**August 21, 2023**  
*Lavisha*

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| <i>Whether speaking/reasoned:</i> | <i>Yes/No</i> |
| <i>Whether Reportable:</i>        | <i>Yes/No</i> |