

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

127-1

RSA-1379-1987 (O&M)

BHARPUR SINGH AND OTHERS

... Appellants

VERSUS

MUKHTIAR SINGH AND OTHERS

... Respondents

A N D

127-2

RSA-1886-1987 (O&M)
Date of Decision: 11.03.2024

MUKHTIAR SINGH AND ANOTHER

... Appellants

VERSUS

SHAMSHER SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Akshay Bhan Sr. Advocate with
Mr. Santosh Sharma and Mr. Harsh Gupta,
Advocates for the appellants in RSA-1379-1987 and
for the respondents in RSA-1886-1987.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Parvinder Singh and Ms. Devyani Sharma,
Advocates for the appellants in RSA-1886-1987 and
for the respondents in RSA-1379-1987.

VINOD S. BHARDWAJ, J. (ORAL)

Since the dispute in question pertains to the same piece of land,
originally owned by Sunder Singh, both these RSAs, which arise from

different suits, are being decided by a common judgment. The facts in brief of both the appeals are being extracted hereinafter below:

FACTS OF RSA NO.1379 OF 1987 TITLED AS BHARPUR SINGH AND OTHERS VERSUS MUKHTIAR SINGH AND OTHERS.

The appellant-plaintiff had preferred a civil suit on 19.02.1981 for joint possession of 1/3rd share in the land measuring 147 Kanals 16 Marlas situated in the revenue limits of village Longowal on the averment that Mukhtiar Singh and Sunder Singh were owners to the extent of half share each in land measuring 147 kanals 16 marlas. Sunder Singh used to reside in Burma and he appointed one Shamsher Singh son of Sewa Singh as his attorney vide power of attorney executed in Burma on 20.12.1978. 1/3rd share of the land in dispute was sold by Sunder Singh, through his power of attorney holder Shamsher Singh, in favour of the Rattan Kaur wife of Sewa Singh and plaintiffs Bharpur Singh and Thakar Singh sons of Sewa Singh i.e mother and brothers of Shamsher Singh- the power of attorney holder, respectively by virtue of a registered sale deed dated 04.05.1979. It is claimed that on the strength of the abovesaid document that had been legally and validly executed, the plaintiffs became owners of 1/3rd share of the land in dispute and that they are entitled to joint possession. Since the defendants refused the title of the plaintiffs over the 1/3rd share of the disputed land, a suit for joint possession was filed by the plaintiffs.

Mukhtiar Singh and Gurdev Kaur (appellants in RSA No.1886 of 1987, through LRs) filed their written statements, wherein the status of Sunder Singh as owner to the extent of half share of the land in question was not disputed, but they denied the execution and registration of the sale deed

in favour of the plaintiffs to the extent of 1/3rd share of the suit land. It was further stated that Shamsher Singh son of Sewa Singh was not related to Sunder Singh and there was no occasion for Sunder Singh to execute a General Power of Attorney dated 20.12.1978 in favour of Shamsher Singh, and that Sunder Singh had not been seen or heard of for the last 20-30 years. It was also stated that prior to the above power of attorney, a General Power of Attorney was also used by Sewa Singh, father of Shamsher Singh, dated 24.03.1976 and the same was produced before the Revenue Authorities. Sewa Singh had executed a sale deed dated 17.07.1996 in favour of his sons i.e. the plaintiffs No.1 and 2 as well as Shamsher Singh (who is now the power of attorney of Sunder Singh). On the strength of the said sale deed as well as the General Power of Attorney, a mutation was sought to be sanctioned in favour of the plaintiff and Shamsher Singh, however, the said General Power of Attorney was not accepted by the Revenue Authorities and the request for entering and sanctioning the mutation in their favour was dismissed vide Ex.D4 dated 27.03.1980. It was also pleaded that since Shamsher Singh did not hold a valid General Power of Attorney, he could not have executed a sale deed with respect to the property in favour of the plaintiffs and that the suit was liable to be dismissed.

A replication was filed by the appellants-plaintiffs denying the allegations/stand of the respondents-defendants and reiterating the due execution of the General Power of Attorney in favour of Shamsher Singh by Sunder Singh.

On the basis of pleadings of the respective parties, the following issues were framed:

1. Whether Sunder Singh executed his power of attorney in favour of Shamsher Singh? OPP
2. Whether Shamsher Singh as a mukhtiar of Sunder Singh sold the suit land to plaintiffs on 04.05.1979? OPP
3. Whether the plaintiffs are entitled to joint possession of the suit land? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the defendants are entitled to any special costs? OPD
6. Relief.

The appellants-plaintiffs examined as many as four witnesses namely PW-1 Sardara Singh; PW-2 Khushdial Singh; PW-3 Nikka Singh and PW-4 Shamsher Singh (General Power of Attorney holder) and also produced and proved on record the General Power of Attorney dated 20.12.1978 as Ex.P1; the sale deed dated 04.09.1979 as Ex.P2; the jamabandi as Ex.P3 and also tendered a life certificate of Sunder Singh as Mark-A to substantiate their case.

To rebut, the respondents-defendants examined DW-1 Bagga Singh; DW-2 Mukand Singh; DW-3 K.C. Jaidka (Document Expert) and DW-4 Mukhtiar Singh and also produced on record the sale deed dated 23.05.1909 executed by Sunder Singh as Ex.D1; report of the document

expert K.C. Jaidka as Ex.D2; the orders of the Assistant Collector Ist Grade as Ex.D3 and Ex.D4; the order passed on an application under Section 372 of the Indian Succession Act, 1925 as Ex.D5 and copies of the judgment and decree and Civil Suit No.06 of 1980 as Ex.D6 and Ex.D7 respectively.

Upon consideration of the evidence adduced by the respective parties, the Court of Addl. Sr. Sub Judge, Sangrur came to a conclusion that the General Power of Attorney dated 20.12.1978 Ex.P1 is a suspicious document and despite presumption in favour of the plaintiffs, the said presumption stands sufficiently rebutted from the evidence adduced on record by the defendants. It was noticed by the Court that the appellants-plaintiffs, who are the purchasers of the share of Sunder Singh, are sons and wife of Sewa Singh, while Shamsher Singh- the General Power of Attorney holder is the brother of appellants-plaintiffs No.1 and 2 and son of appellant-plaintiff No.3 which was a suspicious circumstance. Shamsher Singh was neither related nor a friend and had no love and affection with Sunder Singh. No explanation had been put forth as to how and under what circumstances, the General Power of Attorney would have been executed by Sunder Singh in favour of a rank stranger, especially when he (Sunder Singh) was residing abroad for last many years and had not been heard of. A reference was also made to the judgment and decree dated 20.02.1980 passed in one Civil Suit instituted on 07.01.1980 by Sewa Singh, Rattan Kaur and Thakar Singh against Sunder Singh through his Power of Attorney holder Shamsher Singh, wherein Sewa Singh and others made an assertion that they had become owners of this very property by way of adverse possession. Shamsher Singh,

as a General Power of Attorney holder of Sunder Singh had filed an admitted written statement and on the basis of the said written statement a decree was passed in favour of Rattan Kaur, Thakar Singh and Sewa Singh. However, the said judgment and decree dated 20.02.1980 was never given effect to and has not been implemented. It was also noticed by the Addl. Sr. Sub Judge, Sangrur that the General Power of Attorney Ex.P1 is a document which has not been authenticated by any Notary Public and was only bearing seal of Public Immigration officer, who could not be established to be a Judge, Magistrate or a Notary Public. No other document had been brought on record to authenticate due execution of the said General Power of Attorney and to render it admissible in evidence. Reliance was also placed on the report of the Handwriting Expert/Document Expert, who compared the signatures of Sunder Singh on the General Power of Attorney Ex.P1 and the undisputed sale deed dated 23.05.1909 (standard document, on which the appellants-plaintiffs have also relied upon) and to hold that the signatures on both the documents were not by the same person. A discrepancy was also noticed as regards the absence of addresses of the witnesses in whose presence the General Power of Attorney was executed. It was also noticed that there was no identification of the witnesses indicating their parentage or their age and even no explanation had been furnished as to how, Shamsher Singh was in receipt of the said General Power of Attorney. It was also noticed that as on the date of the execution of sale deed on 23.05.1909, the age of Sunder Singh was 30 years then and as such, as on the date when the General Power of Attorney was executed in 1978 in favour of Shamsher

Singh, the executant would be 99 years of age. Reference was also made to the Succession Certificate Ex.D5 issued in a Petition under Section 372 of the Indian Succession Act, 1925 filed by the respondents-defendants to be heirs of Sunder Singh. The suit filed by the appellant-plaintiff was thus dismissed as the basic document Ex.P1 dated 23.12.1978 was found to be surrounded with suspicious circumstances.

Aggrieved of the same, an appeal was filed before the District Judge, Sangrur, which was also dismissed by the Addl. District Judge, Sangrur, vide judgment dated 05.02.1987. It was noticed by the Addl. District Judge, Sangrur that a mere production of the General Power of Attorney is not sufficient to prove its due execution and that the General Power of Attorney Ex.P1 was a suspicious document. The oral statement of Sardara Singh (PW1) was found to be not propounded the case of the appellants-plaintiffs and that no details of the attesting witnesses had been mentioned. Reference was made to the evidence already referred to above.

Hence, the present Regular Second Appeal was filed alongwith an application under Order 41 Rule 27 of the C.P.C. for leading additional evidence in the form of a General Power of Attorney executed on 28.09.1982 in favour of Shamsher Singh, which also ratifies the earlier General Power of Attorney and acts done consequent thereupon.

FACTS OF RSA NO.1886 OF 1987 TITLED AS MUKHTIAR SINGH AND OTHERS VERSUS SHAMSHER SINGH

The appellants-plaintiffs had filed a suit for Declaration and Permanent Injunction to the effect that Sunder Singh be declared as civil dead and that the respondents-defendants herein i.e. Shamsher Singh, Thakar

Singh sons and Rattan Kaur widow of Sewa Singh and others be restrained from interfering in the peaceful possession of the appellants-plaintiffs.

It has been averred that the property in question was initially vested in Godha Singh, who had one son Ghulla Singh. Ghulla Singh was succeeded by two sons namely Bagga Singh and Sunder Singh. The appellant-plaintiff Mukhtiar Singh is son of Bagga Singh (nephew of Sunder Singh) while Gurdev Kaur is the wife of Mukhtiar Singh (daughter in law of Sunder Singh). Hence, the appellant-plaintiff are related to Sunder Singh as his nephew and daughter in law. It was averred that Sunder Singh had not been heard of for the last more than 30-40 years and as such, he should be declared Civil Dead under Section 107 read with Section 108 of the Indian Evidence Act, 1872. The respondent-defendant No.1, Shamsher Singh claimed to be the General Power of Attorney holder of Sunder Singh, which was disputed as a fraudulent document and that the defendants ought to be restrained from relying upon the said General Power of Attorney to interfere in the possession of the plaintiffs-appellants. A restraint was also sought that the land of Sunder Singh be not transferred on the strength of the said document, since a Succession Certificate under Section 372 of the Indian Succession Act, 1925 had already been executed in favour the appellant-plaintiff Mukhtiar Singh.

The defendants Shamsher Singh and others (the plaintiffs-appellants in RSA No.1379 of 1987) filed their written statement wherein ownership and entitlement of Sunder Singh over the land in question was not disputed, however, it was denied that said Sunder Singh has not been heard

of for the last 30-40 years and be declared as Civil Dead. It was stated that Sunder Singh had been residing in Burma and he had sent his General Power of Attorney in favour of Shamsheer Singh and that the said General Power of Attorney was neither fictitious nor a forged or unlawful document. They claimed that they had every right to deal with the property in terms of the authority conferred upon them by the abovesaid General Power of Attorney.

Based upon the pleadings of the parties, the following issues were framed:

1. Whether Sunder Singh is civil dead and has not been heard of for the more than 7 years, if so, its effect? OPP
2. If issue No.1 is proved, whether the plaintiffs have become owners of the estate of Sunder Singh? OPP
3. Relief.

The parties led their respective evidences and the General Power of Attorney Ex.D1 dated 28.09.1982, as relied upon by the respondents, was considered as a document with respect to Sunder Singh being alive upto the date of its execution. The Court of Sr. Sub Judge, Sangrur considered the evidences led by the respective parties and dismissed the suit after recording findings against the appellants-plaintiffs. Aggrieved thereof, an appeal was filed before the District Judge, Sangrur bearing Civil Appeal No.161 dated 12.10.1984.

The matter was heard by the Appellate Court. The arguments advanced by the appellants-plaintiffs were also considered and it was recorded that the same are without force, despite noticing that the witnesses, who had appeared in the case, had last seen Sunder Singh in the year 1965 and had never seen him at any point of time thereafter. The findings recorded

qua the General Power of Attorney dated 28.09.1982 were reaffirmed and the evidence of the handwriting expert/forensic expert was disbelieved by recording that the experts usually tend to depose in favour of the party for whom they have appeared. The appeal was thus dismissed by the appellate Court. Hence, the present appeal.

Both these appeals pertain to the same piece of land for which the appellants-plaintiff are staking claim on the strength of the General Power of Attorney executed in their favour (with respect to the appellants-plaintiffs in RSA No.1379 of 1987) and while Mukhtiar Singh and other claim ownership over land, on the ground of Sunder Singh being Civil Dead, in RSA No.1886 of 1987.

Counsel for the appellant in RSA No.1379 of 1987 has raised the following arguments:

- (i) It is contended that Sunder Singh had executed a General Power of Attorney in favour of Shamsheer Singh in 1978 and that the said General Power of Attorney (Ex.P1 in RSA No.1379 of 1987) is presumed to be a document that had been validly executed. Hence, it has been said that Sunder Singh cannot be said of having not been heard of for the last 30-40 years since the said General Power of Attorney was executed on 20.12.1978. The right has devolved upon the appellants-plaintiffs on the strength of the sale deed executed in their favour by the General Power of Attorney, Shamsheer Singh.
- (ii) It is further contended that an application for leading evidence, in form of the General Power of Attorney executed on 28.09.1982, was also

moved before the trial Court, but the same was declined against which the proceedings eventually travelled upto the High Court. Vide order dated 21.02.1986 passed in Civil Revision liberty was granted to the appellants-plaintiffs to move an appropriate application to prove the said document. Hence, an application under Order 41 Rule 27 C.P.C. had also been moved by the appellants-plaintiffs for leading additional evidence in order to prove the General Power of Attorney dated 28.09.1982 executed in favour of Shamsheer Singh, the vendor of the appellants-plaintiffs. He further contended that said power of attorney also ratifies the earlier General Power of Attorney dated 20.12.1978. Thus a valid title has devolved upon them and that the respondents-defendants cannot be permitted to interfere in the lawful possession of the appellants-plaintiffs.

- (iii) It is further vehemently argued that in its judgment in the matter of **Jagraj Singh Versus Jaswant Singh** reported as **AIR 1971 SC 761**, the Hon'ble Supreme Court held that where the second General Power of Attorney states in express terms that if the first General Power of Attorney was defective and the same was being ratified, it authorizes the executant to execute a second power of attorney as well as to present the same for registration and would be relatable to the time when the first document was executed. The irregularity in execution of the first document would be deemed to be cured and as such, the General Power of Attorney dated 20.12.1978, on the strength whereof a sale has been executed by Shamsheer Singh in favour of the

appellants-plaintiffs, stands ratified and transfers a valid title in favour of the appellant-plaintiffs.

- (iv) He further submits that there is presumption that the document has been corrected and validly executed in view of Section 85 of the Indian Evidence Act, 1872 read with Section 33 of The Registration Act, 1908. It is thus pleaded that the appellants-plaintiffs in RSA No.1379 of 1987 hold a valid title with respect to the land in question. Their appeal thus be accepted and appeal by Mukhtiar Singh and others be dismissed.

On the other hand, learned counsel for Mukhtiar Singh son of Bagga Singh i.e. the appellant-plaintiff in RSA No.1886 of 1987 vehemently argues that Section 85 of the Indian Evidence Act, 1872 creates only a presumption with respect to the validity of a document executed outside India. He, however, further contends that such presumption is rebuttable and that there are numerous suspicious circumstances, which surround the due execution of the said document- General Power of Attorney and hence, the said document ought to be disregarded. He further contends that once these suspicious circumstances are taken into account cumulatively, the claim raised by Bharpur Singh and others i.e. the heirs/successors of Sewa Singh does not survive any further. Some of the such circumstances pointed out by the counsel for the appellants-plaintiffs in RSA No.1886 of 1987 are as under:-

- (i) It is contended that undisputedly Sunder Singh had executed a sale deed on 23.05.1909, from which the signatures of Sunder Singh, as

affixed on the General Power of Attorney dated 28.09.1982, were compared. The age of Sunder Singh was recorded as 30 years in the said sale deed of 23.05.1909 and as such, when the General Power of Attorney dated 28.09.1982 was executed, the executant was about 103 years of age. It is contended that the abovesaid circumstance itself raises a doubt as regards the survival of Sunder Singh at such advanced age.

- (ii) It is contended that even though the respondents (Shamsher Singh and others- LRs of Sewa Singh) claimed that the said General Power of Attorney had been duly executed, however, the witnesses cited by them have undisputedly deposed that they had last seen Sunder Singh only in 1965. Hence, even the beneficiaries under the General Power of Attorney had not seen or met the executant of the document i.e. Sunder Singh. Further, there is no explanation as to how and under what circumstances the said General Power of Attorney had been received by Sewa Singh and/or Shamsher Singh.
- (iii) It is further contended that even though a recital has been made in the General Power of Attorney dated 28.09.1982 that payment by way of pronotes dated 15.01.1979, 10.01.1979, 02.02.1979 and 10.03.1979 had been made in favour of Sunder Singh, however, no documentary evidence in support of abovesaid contentions had been adduced.
- (iv) It is further contended that Shamsher Singh or Sewa Singh had no affinity with Sunder Singh and they were not related to him; whereas appellant-plaintiff Mukhtiar Singh was nephew of Sunder Singh. Thus,

the chances of the execution of a General Power of Attorney in favour of a rank outsider- third party is neither probable nor normal in general course of events. The circumstances which would explain the background and the reasons for execution of the General Power of Attorney in favour of Sewa Singh and thereafter in favour of Shamsher Singh, having not been disclosed, the same would hence be a suspicious circumstances, which was required to be dispelled by the proponent of the General Power of Attorney.

- (v) It is further contended that insofar as Shamsher Singh is concerned, he is stated of 25 years of age as on the date when he deposed before the Court and even he has stated that he had last seen Sunder Singh in 1965 and at that point of time, he would be nearly six years of age. It is thus submitted that none of the persons, who had appeared in support of the General Power of Attorney, claimed to have seen Sunder Singh since 1965, whereas the General Power of Attorney relied upon by Sewa Singh and Shamsher Singh is claimed to have been executed in 1976, 1978 and thereafter in 1982.
- (vi) It is further argued that the appellants-plaintiffs, Mukhtiar Singh and others had examined a Forensic Expert/Handwriting Expert, Mr. Gian Parkash Sharma, (PW-8), who had placed on record his report. Mr. Gian Parkash Sharma had 40 years of experience as a Forensic Expert. The evidence adduced by Gian Parkash Sharma was, however, disbelieved on the strength of an expert evidence brought by the respondents-defendants (appellants-plaintiffs in RSA No.1379 of

1987), who was a simplicitor graduate and did not hold any valid degree/diploma in forensics. He further contends that even the said witness has accepted that nine crucial handwriting fundamental do not vary despite change of age. It is argued that the testimony of the expert produced by the plaintiffs could not have been belied or disputed on the strength of a deposition made by a person, who was not an expert and did not possess the requisite qualification and eligibility to carry out the requisite test(s) and submit a report.

(vii) A further argument is advanced that insofar as the General Power of Attorney dated 20.12.1978 (Ex.P1) is concerned, the said document was executed in the presence of Public Immigration Officer and that the said officer does not fall within the definition of a Notary, Court, Magistrate or even a consulate or representative so authorised. Hence, the validity of the said document had been duly and rightly disbelieved by the Court and insofar as the General Power of Attorney of 23.09.1982 is concerned, the respondents-defendants have failed to point out the manner in which they had received the said General Power of Attorney. The envelope, in which the said General Power of Attorney was delivered to them, has neither been brought on record nor has any explanation with regard to the mode of delivery has been tendered by them.

(viii) It is also argued by the counsel appearing on behalf of the appellants-plaintiffs that even though the entire case of the respondents-defendants (appellants in RSA 1379 of 1987) is based on the General

Power of Attorney dated 28.09.1982, however, the said General Power of Attorney has not been pleaded in the written statement filed before the trial Court. Hence, the document in question was beyond the pleadings and could not have been taken into consideration.

A further argument has been raised by the appellants-plaintiffs that the respondents-defendants (appellants in RSA No.1379 of 1987) have made repeated attempts at usurping the property of Sunder Singh. He submits that initially Sewa Singh (father of Shamsher Singh, Bharpur Singh and Thakar Singh; and husband of Rattan Kaur) had claimed that a General Power of Attorney had been executed in his favour by Sunder Singh on 24.03.1976. A sale deed was executed by Sewa Singh in favour of the three sons including Shamsher Singh, on the strength of the said General Power of Attorney, on 07.07.1976. An attempt at seeking sanction of mutation on the strength of the said sale deed was, however, declined vide Ex.D4 (in RSA No.1379-1987). He contends that thereafter, a civil suit was filed by Sewa Singh, Rattan Kaur and Thakar Singh as plaintiffs against Sunder Singh through his General Power of Attorney, Shamsher Singh (son of Sewa Singh). In the said civil suit, the plaintiffs (Sewa Singh, Rattan Kaur and Thakar Singh) claimed to have become owners of the suit land by way of adverse possession. A consenting written statement was filed by Shamsher Singh on the basis whereof a collusive decree was passed. However, the said decree was never implemented or given effect to. It is further argued that if Sewa Singh had already executed a sale deed on 07.07.1976, on the basis of a General Power of Attorney claimed to have been validly executed by Sunder

Singh on 24.03.1976, there was no occasion for Sewa Singh to institute a suit claiming title by virtue of adverse possession. If the General Power of Attorney had been rightly and validly executed in favour of Sewa Singh, the normal course would have been that the title ought to have been established on the strength of the documents which are claimed to have been validly executed, rather than claiming the title over the suit land by way of an adverse possession. The very foundation of a claim of adverse possession is admission of ownership of the person against whom a title is being sought to be established. Thus, in the abovesaid civil suit instituted in the year 1980, Sewa Singh and others had themselves produced the General Power of Attorney executed earlier in favour of Sewa Singh on the strength whereof the sale deed had been executed in favour of all his sons including Shamsheer Singh, who subsequently portrayed himself as a valid General Power of Attorney holder on behalf of Sunder Singh purportedly executed on 20.12.1978. He then contends that the said General Power of Attorney, which laid foundation for decree of the suit on 20.02.1982, was however, not executed before a Magistrate; Court or a Notary/Consulate General and as such, the said General Power of Attorney has already been disbelieved by the Court to have not been validly executed. The entire reliance is now placed by the defendants (plaintiffs-appellants in RSA No.1379 of 1987) on the subsequent power of attorney issued on 28.09.1982 (Ex.D1 in RSA No.1886-1987). He refers to the abovesaid power of attorney and contends that even though the abovesaid power of attorney ratifies the execution of the earlier power of attorney executed before the Public Immigration Officer, however,

it is not akin to consideration or ratification of the sale deeds that have been executed in the meanwhile by Sewa Singh or even thereafter by Shamsheer Singh. If the intent of the executant had been to approve the transfer of the title by the power of attorney, there was no occasion as to why the subsequent document/sale deed by the General Power of Attorney in favour of the respondents (appellants-appellants in RSA No,1379 of 1987) ought not to have been reflected.

It is also vehemently argued that even though said Sunder Singh is stated to be executing documents repeatedly i.e. the General Power of Attorney in favour of Sewa Singh in the year 1976; another General Power of Attorney in favour of Shamsheer Singh in the year 1978; and a fresh General Power of Attorney on 28.09.1982, a Living Certificate Mark-A on 09.08.1981 i.e. in close proximity, however, for the reasons not assigned, the said Sunder Singh has preferred not to appear before the Court and make a deposition. There were no circumstances to justify the non-appearance of the said executant (Sunder Singh) before the Court and to make a deposition in support of the due execution of the said documents.

By referring to the above, it is contended that taking into consideration all the aforesaid suspicious circumstances cumulatively, the solitary reliance of the appellants-plaintiffs in RSA No.1379 of 1987 that the burden of proof would stand discharged merely by production of the General Power of Attorney is not sufficient. The onus has been sufficiently discharged by the plaintiffs-appellants in RSA No.1886 of 1987 and hence, the presumption fails to exist in favour of Bharpur Singh and others passing

on the burden on them to establish due execution of the said document (General Power of Attorney).

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file as well as the evidences referred to above with their able assistance.

Even though it is not in dispute that Section 85 of the Indian Evidence Act, 1872 read with Section 33 of the Registration Act, 1908 creates a presumption in favour of due execution of a document, which is brought before a Court, however, such presumption is rebuttable and is not absolute given fiction in law. The proponent of the document is required to dispel all surrounding circumstances that exist.

A perusal of the noticeable suspicious circumstances referred to above and relied upon by the counsel for the plaintiffs-appellants in RSA 1886 of 1987 specifically shows that there are numerous discrepancies in the execution of the document-General Power of Attorney dated 28.09.1982. No satisfactory explanation with respect to the said document has been furnished by the plaintiffs-appellants in RSA No.1379 of 1987 and their reliance has solely been on the judgment of the Hon'ble Supreme Court in the matter of **Jagraj Singh Versus Jaswant Singh (supra)**. Even though the said proposition laid down in the said judgment is not in dispute, however, the said judgment itself holds that the presumption created by law is rebuttable and is not an affluent presumption.

A perusal of the evidence also shows that even though the documents were exhibited before the trial Court, however, the mode of proof

and due execution was objected to by the appellant-plaintiffs in RSA 1886 of 1987 and that no observation/finding has been recorded by the Courts below with regard to the objections raised pertaining to the mode of proof. The execution of the General Power of Attorney dated 20.12.1978 is undisputedly before the Public Immigration Officer, who is not any of the authorities/officers as stipulated under Section 85 of the Indian Evidence Act, 1872 and the only document which would fulfill the said requirement, would be the document executed on 28.09.1982, however, the proponent of the said document (General Power of Attorney) dated 28.09.1982 is, however, not in a position to reflect as to how and under what circumstances the same was received by him and how the same was delivered to him. It is not the case of the appellant-plaintiff, Shamsher Singh in RSA No.1886 of 1987 that he had gone to Burma and that the said document was executed in his presence. He has made no disclosure also, as to whether any person had handed over the same to him at any point in time. Even though an explanation has been made by Shamsher Singh (appellant-plaintiff in RSA No.1379 of 1987) that the said General Power of Attorney was received by him by way of post, however, the envelope, in which the said General Power of Attorney is stated to have been received by him, has not been produced or exhibited before the trial Court. Hence, the manner in which the said document had been received by the appellant-plaintiff in RSA No.1379 of 1987 has not been established. Further, a perusal of the aforesaid document shows that the vital particulars of the attesting witnesses of the abovesaid document have not been disclosed so as to determine their identity. It is also noticed that even if the said

document is accepted, the executant would be deemed to be of 103 years as on the date of execution of the said document. Given such advanced stage, the burden lays upon the proponent of the document to dispel that the executant was in good health at that point of time; a burden, which he has failed to discharge and to satisfactorily repel.

It is also noticed that there have been repeated attempts made by the appellants and their family in RSA no.1379 of 1987 to take possession of the land in dispute and they have been propagating different documents for substantiating their own claim. While the claim was initially lodged on the basis of a General Power of Attorney executed by Sunder Singh in favour of Sewa Singh on 24.03.1976, on the strength whereof a sale deed was executed on 04.05.1979 in favour of his own sons, a second General Power of Attorney was allegedly executed in quick succession on 20.12.1978 by Sunder Singh in favour of Shamsher Singh, who was the vendee of the same suit land on the strength of a General Power of Attorney executed in favour of his father. Further, another document was thereafter executed in 1981 i.e. within a period of three years as regards the Living Certificate and followed by a separate General Power of Attorney on 28.09.1982. It is again a suspicious circumstance as to what prompted execution of a separate General Power of Attorney in favour of Shamsher Singh, once a General Power of Attorney had already been executed in favour of Sewa Singh father of Shamsher Singh in the year 1976 and a sale deed with respect to the same land had already been executed. Besides, notwithstanding that the General Power of Attorney is claimed to have been executed in favour of Sewa Singh,

the appellants-plaintiffs in RSA No.1379 of 1987 do not impress upon their rights to flow from the execution of sale deed, on the strength of General Power of Attorney executed in favour of Sewa Singh, in favour of Shamsher Singh, their vendor, rather, they devised a novel method of seeking a fresh General Power of Attorney dated 20.12.1978 in favour of Shamsher Singh son of Sewa Singh who is a beneficiary under the earlier sale deed and that even this document is evidently not executed before the Competent Authority which is later sought to be ratified by the document executed on 28.09.1982. The mode and manner of execution of the said documents and the background necessitating such execution of these General Power of Attorneys having not been explained and even the advanced age of Sunder Singh coupled with the fact that the Expert evidence led by the plaintiffs-appellants in RSA No.1886 of 1987 clearly established that the signatures affixed on the sale deed dated 23.05.1909 and on the General Power of Attorney executed on 28.09.1982 are not by the same person and are in different handwriting.

I am of the view that the General Power of Attorney propagated by the plaintiffs-appellants in RSA No.1379 of 1987 is surrounded by suspicious circumstances and is liable to be discredited. I am further fortified in my opinion also for the reasons that notwithstanding that the reliance of the plaintiffs-appellants in RSA No.1379 of 1987 was on the abovesaid document dated 28.09.1982, however, despite the same document being sought to be produced by them in evidence in RSA No.1886 of 1987, no attempt was made to rectify the stand, as per the written statement filed in the

above suit. Invariably, the said document is beyond the pleaded case of the appellants, Bharpur Singh and others in RSA No.1379 of 1987 (respondents in RSA No.1886 of 1987). It is trite law that a document which travels beyond pleadings cannot be taken into consideration as a part of evidence and cannot be relied upon at all. It is also significant to note that the relationship of Mukhtiar and others with Sunder Singh had not been disputed and stand duly established. Further, it was also not the case of any person/witness appearing on behalf of appellant in RSA-1379-1987 that they had ever seen, met or heard of Sunder Singh. In the said circumstances, the claim of Mukhtiar Singh and other (appellants in RSA-1886-1987) ought to have been deemed. The sole document relied by the Courts to assume that Sunder Singh is alive is the Doc. Ex.DX/A dated 02.04.1984, however, the certificate was never proved and was merely tendered on 12.09.1984.

The appellant Mukhtiar Singh (RSA-1886-1989) duly proved the pedigree table as Ex.P-1; the judgment and decree dated 28.10.1982 (Ex. P-2 and Ex.P-3 respectively) impugned in RSA No. 1379 of 1987 arising out of civil suit No. 52 of 1981 filed by Bharpur Singh wherein it was expressed that Sunder Singh may not be alive at the time of execution of GPA dated 20.12.1998. A succession certificate of 01.03.1980 was proved as Ex.P-6 passed in petition No. 12 of 27.08.1979 titled as Mukhtiar Singh versus General Public, in favour of Mukhtiar was also led. Compensation of Rs. 14365/- was granted in his favour by presuming Sunder Singh to be civilly dead.

Besides, even though Shamsher Singh and prior to him his father Sewa Singh claimed GPA in their favour along with sale deed as well as consent decree, however, in the civil suit for permanent injunction filed by Mukhtiar Singh, Shamsher Singh admitted the statement of his counsel to not take possession of land except in due process of law. Hence, possession of Mukhtiar Singh was admitted by Shamsher Singh even till 28.11.1978. The Jamabandi's and Girdawari's in support thereof were also proved. Additionally respectable members of Panchayat and village appeared and supported claim of Mukhtiar Singh.

To dispel the same, the entire case is founded on the GPA Ex.D1 dated 28.09.1982, which is not pleaded and was merely tendered in evidence. Power to sell given for no specific reason. Moreover Sunder would be nearly 103 years of age as on 28.09.1982, which is a highly suspicious event into itself coupled with mismatch of signatures and even due or proper receipt of said Ex.D1 not being proved.

Further, the depositions of DW-1, Khushdial Singh and DW-2, Shamsher Singh in RSA No.1886 of 1987 are an admission of a fact that they have not seen or met Sunder Singh since 1965 and know no other member of family. Even he was about 12 years of age when he met Sunder and hence, even as per his version, he had not seen Sunder for more than 7 years. Similar has been the testimony of Shamsher Singh, who was rather only 7 years of age. Even these two witnesses have not furnished any passport number or details to establish that they ever visited Burma. The testimony is thus lacking in basic corroborating evidence. Under the given circumstances, the

proponent himself is not aware about the status of the executant of the General Power of Attorney in question.

The said document having been executed in Burma and outside the territories of India, the obligation/responsibility lay heavily on the proponent of the said document to establish its due execution and dispel the suspicious circumstances more so in circumstances when a Succession Certificate had already been issued in favour of the appellants-plaintiffs in RSA No.1886 of 1987 vide judgment and decree dated 20.02.1980 (Ex.D5 and D6 in RSA No.1379 of 1987). Hence, by virtue of the said judgment and decree, Sunder Singh had already been presumed to be civil dead as on the date of propagation of the subsequent General Power of Attorney executed on 28.09.1982.

For the foregoing reasons, I am the view that the Court failed to appreciate the evidence in its true meaning and content leading to an erroneous conclusion in RSA-1886-1987.

For the foregoing reasons, the RSA No.1379 of 1987 is accordingly dismissed while RSA No.1886 of 1987 is allowed. The suit of the appellants-plaintiffs in RSA No.1886 of 1987 is decreed and the appellant/plaintiffs are declared to be the owners in possession of the land measuring 147 Kanals 16 Marlas situated in the revenue limits of village Longowal, as depicted in the Head note and the Sunder Singh is declared as civilly dead, having not been heard of for more than 7 years as on the date of execution of civil suit.

All other misc. application(s), if any, also stand(s) disposed of accordingly. Decree sheet be drawn accordingly.

Photocopy of this order be placed on the file of another connected appeal.

MARCH 11, 2024

rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No