

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1623 of 1994 (O&M)

Hardeep Singh
... Appellant(s)

Versus

Kesar Singh and Others
... Respondent(s)

AND

2. Regular Second Appeal No. 2722 of 1994

Kesar Singh and Others
... Appellant(s)

Versus

Hardeep Singh and Others
... Respondent(s)

RESERVED ON: 30.01.2024
PRONOUNCED ON: 27.02.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Abhay Gupta, Advocate
for the appellant(s) (In RSA-2722-1994) and
for the respondent No.1 to 5 (In RSA-1623-1994).

Mr. Rajvinder Singh Jolly, Advocate
for the respondent No.2 to 6 (In RSA-2722-1994).

Mr. Raj Bahadur Singh Jain, Advocate
for the Legal Representative of respondent No.3
(In RSA-2722-1994).

Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties,

two connected cross-appeals, separately filed by the plaintiff as well as the

defendants against the common judgment passed by the First Appellate

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

2

Court, shall stand disposed of through this common judgment.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. In order to bring clarity, the parties shall be referred to by their names.

3. Smt. Shanti, widow of Sh. Kaur Singh, filed a suit for possession against Smt.Gej Kaur and others, which was dismissed on 05.03.1985. In the aforesaid suit, Puran Singh son of Lehna Singh was attending the Court on behalf of Smt. Shanti on the basis of an power of attorney executed by her. Against the judgment passed by the Trial Court, an appeal was filed in the First Appellate Court. During the pendency of the suit, Smt.Shanti sold her rights through Puran Singh in favour of Jagtar Singh, Lal Singh and Hardeep Singh, who became co-plaintiffs with Smt.Shanti before the First Appellate Court. Ultimately, the appeal was allowed and Smt.Shanti was declared owner and entitled to possession of the suit property. The correctness of the judgment passed by the First Appellate Court was upheld by the High Court. In order to get possession, execution petition was filed by Jagtar Singh, Lal Singh and Hardeep Singh. The aforesaid three persons, namely Jagtar Singh and Others executed three separate registered general power of attorneys on 26.11.987 in favour of Puran Singh son of Lehna Singh. All the three power of attorneys are identically worded. One of the general power of attorney executed by Jagtar Singh has been translated by the learned counsel representing the appellant in Regular Second Appeal No. 2722 of 1994. The correctness whereof is not disputed by the learned counsel representing the respondents. The same is

"General Power of Attorney Wasika No. 104/4 dated 26.11.1987
Office of Sub-Registrar, Amloh

General Power of Attorney			
Stamp	Kitte	Levels	Words
15-00	2	28	250

I, Jagtar Singh, aged about 45 years son of Sh. Gajjan Singh, am the resident of village Noorpura, Tehsil Amloh, District Patiala.

That I have my business situated in Amloh while my land is situated in village Rampur Sainewal, Tehsil Nabha and it is difficult for me to take care of my property. Therefore, I am appointing Sh. Puran Singh son of Sh. Lehna Singh as my General Power of Attorney who can sell or mortgage my property in any manner, obtain loan from government, execute agreement to sell, receive sale consideration, get the registration done before the Sub-Registrar or get endorsement done from the Registrar, receive either the sale amount or the earnest money. He can appoint any person as his attorney. I will have no objection. He can file any civil suit or file any criminal complaint. He can prosecute cases from the trial court till the appellate court. He can lease the land and issue receipts for the rent. He can enter into compromise and execute affidavit. All the rights which I have got can now be exercised by him. He can defend the cases filed against me. I have heard

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

the contents which are found to be correct. Thus, the General

Power of Attorney is hereby recorded. Dated 26.11.1987.

Sd/-

S.Balwant Singh Sarpanch

Witness

Sd/-

Jagtar Singh Sarpanch

Puran Singh (T.I.)

Sd/-

Kirpal Singh

Wasika Navis

Sd/-

Nathu Ram Dalla No. 1265,

Amlah, Patiala (Seal)

Attested to be True Copy

Sd/-

Joint Sub Registrar Amlah”

4. On the strength of the aforesaid three power of attorneys, Puran Singh executed as many as six sale deeds in favour of defendant No.2 to 5 (his wife and three sons, namely Kesar Singh, Hakam Singh and Nirmal Singh).

5. At that time, Civil Suit No. 479 dated 11.12.1987, filed by Joginder Singh and Harbans Singh against Jagtar Singh, Lal Singh, Hardeep Singh and Smt.Shanti was pending.

6. On 28.10.1988, Jagtar Singh and Hardeep Singh filed a suit for the grant of decree of declaration that all the six sale deeds executed by Puran Singh as attorney of the plaintiffs as well as Lal Singh are illegal, unauthorized, null and void. It was claimed that Puran Singh was never authorized to alienate the suit land on behalf of the plaintiffs and the sale is in gross violation of the power of attorney and Puran Singh has usurped the property without paying them the sale consideration. It was alleged that Lal

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994****5**

Singh (defendant No.7) has not joined with the plaintiffs to file a suit and he has been impleaded as proforma defendant No.7. During the pendency of the suit, in execution petition of the previous decree, Kesar Singh, Hakam Singh and Nirmal Singh were delivered possession of the suit land on 05.11.1988 and 02.11.1988, respectively. Kesar Singh, Hakam Singh and Nirmal Singh, sons of Puran Singh deposited the compensation for the standing crop and took over the possession pursuant to the warrants of possession issued by the Executing Court.

7. The defendants claim that Puran Singh (defendant No.1) was authorized to alienate the property and the sale deed has been executed in accordance with three separate power of attorneys, which were registered as per the wishes of the plaintiffs. It was asserted that Jagtar Singh and another have filed a suit in collusion with Joginder Singh, who has filed Civil Suit No. 479 dated 11.12.1987. It needs specific mention here that Smt.Shanti was impleaded as defendant No.6 and she filed a joint written statement with defendant No.1 to 5. Civil Suit No. 479 dated 11.1.1987 filed by Joginder Singh and Harbans Singh was dismissed on 08.11.1988.

8. From the pleadings of the parties, the following issues were identified by the Trial Court for adjudication:-

“(1) Whether the sale deeds No.3211 to 3213 dated 14.12.87 and No.3406, 3408 and 3409 dated 30.12.87 executed by defendant No. 1 as attorney of plaintiffs in favour of defendants No.2 to 5 are illegal, null and void, without consideration, unauthorised as alleged in the plaint?

OPP.

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

- (2) *Whether the plaintiffs are entitled to the injunction prayed for? OPP.*
- (3) *Whether the plaintiffs are entitled to the declaration prayed for? OPP.*
- (4) *Whether the suit for mere declaration is not maintainable? OPD*
- (5) *Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPD*
- (6) *Whether the plaintiffs have no cause of action and locus standi? OPD.*
- (7) *Whether the suit is bad for mis-joinder of the parties? OPD.*
- (8) *Relief.*

The following additional issue was also framed in this case on 2.6.90:-

- (7-A) *Whether the suit is barred by the principle of resjudicate and S.47 CPC? OPD.”*

9. In order to prove their case, the plaintiffs examined PW.1 Prem Parkash Sharma, Scribe of the six sale deeds, PW.2 Avtar Singh, PW.3 Jagtar Singh (one of the plaintiffs), PW.4 Kirpal Singh, Numbardar and PW.5 Karam Singh, Numbardar. The plaintiffs also produced their documentary evidence.

10. Per contra, the defendants examined DW.1 Puran Singh, DW.2 Manmohan Singh Walia, DW.3 Balbir Singh, Naib Tehsildar and DW.4 Ram

Partap, Kanungo. The defendants have also produced various documents on

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

7

the file.

11. The Trial Court primarily decreed the suit on the ground that three general power of attorneys were given primarily for taking care of the litigation and Puran Singh has misused the same. The Courts also held that the sale deeds were executed without payment of consideration. Thus, all the six sale deeds, executed by the plaintiffs through Puran Singh, were set aside. Kesar Singh, Hakam Singh, Nirmal Singh, sons and Harbans Kaur, wife of Puran Singh filed the First Appeal which was partly allowed. Two sale deeds executed by Jagtar Singh through Puran Singh in favour of Kesar Singh and Harbans Kaur on 14.12.1987 and 30.12.1987, respectively, have been set aside, whereas the suit qua the remaining four sale deeds was dismissed. The First Appellate Court has recorded the following reasons to pass the judgment:-

- i) Although Jagtar Singh, while executing the power of attorney who authorized Puran Singh to sell the property, but it could never mean that Puran Singh would alienate the property in favour of his wife and three sons.
- ii) The payment of ₹20,000/- in the presence of the Registrar does not mean that actual payment was made.
- iii) Puran Singh executed the sale deeds on 14.12.1987 and 31.12.1987 i.e. within a period of one month from the date of execution of the power of attorney i.e. 26.11.1987. Hence, it is not a bonafide step on the part of Puran Singh.
- iv) Jagtar Singh cancelled the power of attorney vide notice

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

8

dated 20.11.1989.

12. Thus, two separate appeals have been filed. Regular Second Appeal No. 1623 of 1994 has been filed by Hardeep Singh, plaintiff No.2 in Civil Suit No. 503 dated 29.10.1988, whereas, Regular Second Appeal No. 2722 of 1994 has been filed by Kesar Singh, Hakam Singh, Nirmal Singh and Smt. Harbans Kaur.

13. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the requisitioned lower Court record.

14. The learned counsel representing Kesar Singh and others, apart from his oral submissions, has also submitted his written arguments in both the appeals, which read as under:-

“a) That three equal co-owners namely Jagtar Singh, Hardeep Singh and Lal Singh of the suit land measuring 90 Bighas in total had executed three registered general power of attorneys in favour of Sh. Puran Singh, who then on the basis of these GPAs, executed six sale deeds in favour of defendants for a sale consideration of the Rs. 40,000/- each.

b) Sh. Jagtar Singh, who was owner to the extent of one-third share of land, had executed a registered General Power of Attorney dated 26.11.1987 in favour of Sh. Puran Singh who on the basis of the said power of attorney executed two sale deeds bearing No. 3211(Ex. P-1) dated 14.12.87 and 3406 (Ex. P-2) dated 30.12.1987 for one-third share of the total suit land in favour of the defendants who were sons and wife of Sh. Puran

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

9

Singh. The vernacular of the said GPA (Ex. D-1) dated 26.11.1987 is annexed herewith as Annexure A-1.

c) That as can be observed from the recitals in the GPA, Sh. Jagtar Singh had clearly given the power to Sh. Puran Singh to execute sale deed, receive sale consideration, register sale-deed before the Registrar. Sh. Puran Singh was even given the power to sub-delegate the same powers to any third person.

d) That the said registered GPA dated 26.11.1987 (Ex. D1) was purportedly cancelled by Sh. Jagtar Singh vide legal notice dated 20.11.1989 sent to Sh. Puran Singh. The said legal notice was sent even after filing of the civil suit. Notwithstanding the legal notice, the GPA was admittedly a registered power of attorney, the same could have been cancelled by a registered deed. Thus, the GPA remained valid and effective till the death of Sh. Jagtar Singh.

e) That the other co-owner Sh. Hardeep Singh, though a co-plaintiff in the suit, did not enter the witness box and did not deny the validity of any sale deeds executed by Sh. Puran Singh. The third co-owner Sh. Lal Singh did not even file any suit against the defendants although the sale deeds of his share were also challenged by the plaintiffs. In fact Lal Singh filed an affidavit before the Ld. Appellate Court admitting the fact of execution of sale-deeds in favour of defendants by his attorney Puran Singh. (Para 10 of Ld. Appellate Court Judgment).

f) That, thus, the judgement and decree of the Ld. Appellate

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

10

Court Patiala decreeing suit of the plaintiffs to the extent of 1/3rd share of Sh. Jagtar Singh is unwarranted and illegal.”

15. In Regular Second Appeal No. 2722 of 1994, the learned counsel has submitted the written arguments on behalf of the respondents, which read as under:-

“a) That the appellant Sh. Hardeep Singh (plaintiff) did not enter the witness box and did not deny the validity of any sale deeds executed by Sh. Puran Singh.

b) The power of attorney executed by Sh. Hardeep Singh in favour of Sh. Puran Singh were never attempted to be cancelled by Sh. Hardeep Singh.

c) That the registered GPA (Ex. D3) executed by Sh. Hardeep Singh (Appellant) also contained clear recital to the effect that unambiguous power of alienate property has been given to Sh. Puran Singh. (Para No. 9, Page 10 of Trial Court Judgment).

d) The third co-owner Sh. Lal Singh did not even file any suit against the defendants although the sale deeds of his share were also challenged by the plaintiffs. In fact Lal Singh filed an affidavit before the Ld. Appellate Court admitting the fact of execution of sale-deeds in favour of defendants by his attorney Puran Singh. (Para 10 of Ld. Appellate Court Judgment).”

16. The learned counsel representing the plaintiffs have submitted that the First Appellate Court has erred in partially setting aside the judgment and decree passed

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

11

property in favour of his wife and three sons without paying any amount to the plaintiffs.

Therefore, Regular Second Appeal No. 1623 of 1994 deserves acceptance.

17. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

18. On careful reading of three general power of attorneys, which are identically worded, it is evident that the plaintiffs, while executing three power of attorneys, had authorized their attorney Puran Singh to perform the following:-

- a) To execute the agreement to sell.
- b) To execute the sale deed.
- c) To obtain loan by mortgaging their property.
- d) To appoint special attorney.
- e) To file any civil or criminal case.
- f) To enter into compromise/settlement and execute affidavit.
- g) The attorney will have all the rights which are available to the Executor.

19. Thus, it is evident that Puran Singh was authorized to execute the sale deed. From the reading of the power of attorney, it is evident that through the power of attorney Puran Singh was not only authorized to take care of the litigation, but also sell, mortgage or transfer the property in any manner. Hence, the trial Court erred in observing that the power of attorneys were given only for defending the litigation. Similarly, the First Appellate Court has also erred in observing that Puran Singh was, though, authorized to execute the sale deed, but it was never intended to authorize him to execute the sale deed in favour of his wife and children. On reading of the power of attorney, it is evident that there is no such litigation. In fact, both the Courts below have erred in overlooking the facts which have come on

record. Jagtar Singh, while appearing as PW.3, has stated that Puran Singh is

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994****12**

not his relative. Various cases were filed with respect to the suit property which were pending. Puran Singh as attorney of Smt. Shanti executed the sale deeds in favour of Jagtar Singh, Hardeep Singh and Lal Singh. Subsequently, three registered power of attorneys were executed by the aforesaid Jagtar Singh and others in favour of Puran Singh on 26.11.1987. Furthermore, it is evident from the reading of the orders passed in the execution petition as well as the judgment passed in the suit filed by Joginder Singh and Harbans Lal that it was Puran Singh who was defending the litigation on behalf of the plaintiffs. On a suggestion given in cross-examination by the learned counsel representing Puran Singh, Sh.Jagtar Singh admitted that he and Puran Singh used to spend money on litigation. On further questioning, he stated that he has paid ₹1,100/- as fee to the counsel. He was asked about the details of the amount spent on the litigation, however, he failed to disclose. Thus, it is safe to conclude that Puran Singh was not the same attorney. He was deeply involved in the litigation. Jagtar Singh is an educated businessman. He is living in suburban area i.e. Amloh, whereas the suit property is situated in village Rampur Sahiwal, Tehsil Nabha. Puran Singh and his family members are residing in the same village, where the suit land is located. The children of Puran Singh have taken over the possession of the property in execution of the decree. Puran Singh was involved in the litigation from the time when Smt. Shanti was embroiled in litigation against Smt.Gej Kaur and others. Thus, the first reason assigned by the First Appellate Court was not correct.

It shall be noted here that even if the amount of sale consideration has not

been paid by Puran Singh to Jagtar Singh and others, still, the validity of the

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

13

sale deeds will remain unaffected.

20. Moreover, the First Appellate court has erred in observing that the amount of ₹20,000/- each recorded as paid before the Sub Registrar by Kesar Singh and others to their father is not proved. Puran Singh admits the receipt of the amount. It is so recorded by the Sub Registrar. In these circumstances, the First Appellate Court has erred in observing that the payment of ₹20,000/- is not proved.

21. With reference to third reason, it shall be noted that vide power of attorney dated 26.11.1987, Jagtar Singh did authorize Puran Singh to sell his property. Even if the sale deed was executed merely after a month from the date of execution of the power of attorney that itself would not be sufficient to style the same as arbitrary trial when various litigations were pending.

22. With reference to fourth reason, the finding of the First Appellate Court is also incorrect because the power of attorney was allegedly cancelled by Jagtar Singh by sending notice on 20.11.1989 much after the execution of the sale deeds on 14.12.1987 and 31.12.1987. Hence, the cancellation of power of attorney would not invalidate the steps which have already been taken by Puran Singh pursuant to the power of attorney.

23. With reference to the arguments of the learned counsel representing Hardeep Singh and others, it shall be noted here that in the facts and circumstances of this case, Puran Singh was not given power of attorney only to prosecute or defend the pending litigations. Therefore, attorney Puran Singh was authorized to take various steps. He was given all the

**Regular Second Appeal No. 1623 of 1994 (O&M) AND
Regular Second Appeal No. 2722 of 1994**

Lal Singh.

24. Moreover, it is evident that the original sale deed executed by Smt. Shanti in favour of Jagtar Singh, Hardeep Singh and Lal Singh was produced in evidence by Puran Singh. Additionally, in the First Appellate Court, Lal Singh filed an affidavit to the effect that he has not filed any suit and the sale deed executed by Puran Singh in favour of his children are incorrect.

25. Keeping in view the aforesaid facts and discussion, the judgments passed by the Trial Court as well as the First Appellate Court are set aside. Resultantly, the suit filed by Jagtar Singh and Others shall stand dismissed.

26. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

February 27, 2024
“DK”

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