



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

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**RSA-2305-1995 (O&M)
Date of Decision : 29.07.2024**

MAJOR SINGH Appellant

VERSUS

NAURANG SINGH AND ANR. Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Peeush Gagneja, Advocate for the appellant.

Mr. V.K. Sandhir, Advocate for respondent No.1.

Respondent No.2 proceeded against *ex parte*
vide order dated 07.12.1995.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by defendant No.1-appellant against the judgment and decree dated 30.08.1995 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for declaration and in the alternative for possession and further in the alternative for recovery of ₹42,000. It was averred by the plaintiff-respondent No.1 in his plaint that he is owner in possession of the suit land as described in the heading of the plaint. It was further stated that on 21.04.1986 the defendant No.1-appellant and defendant No.2 (respondent No.2 herein) took him to the Tehsil Compound Khadoor Sahib and asked him to affix his thumb impression on a blank paper for getting the tubewell electricity connection and he thumb marked on blank

papers on 3-4 places. Later on the defendants prepared a false power of attorney authorizing defendant No.2, namely, Jarnail Singh (respondent No.2 herein) to deal with the suit land including to sell the same. Subsequently on the basis of the said general power of attorney executed in favour of defendant No.2 (respondent No.2 herein), the sale deed was executed in favour of the defendant No.1-appellant on 10.07.1986. It was averred by the plaintiff-respondent No.1 that the said document was the result of fraud and that he had neither executed any power of attorney nor had he sold his property nor he received any amount.

3. Written statement was filed by defendant No.1-appellant who contested the suit on the ground that the plaintiff-respondent No.1 was not in possession of the suit land and that he had not valued the suit properly for the purposes of court fee and jurisdiction. On merits it was denied that the plaintiff-respondent No.1 was the owner in possession of the suit land. As per the case set up by the defendant No.1-appellant, he had purchased the suit land on the basis of a sale deed dated 10.07.1986 executed by defendant No.2 (respondent No.2 herein) in his favour as a power of attorney holder of the plaintiff-respondent No.1. Defendant No.2 (respondent No.2) also filed his written statement contesting the suit on the ground that particulars of fraud and misrepresentation have not been mentioned in the plaint and that valuation was not correct. On merits it was denied that the plaintiff-respondent No.1 was the owner in possession of the suit land. As per the case set up by defendant No.2 (respondent No.2) he sold the suit land vide registered sale deed dated 10.07.1986 to defendant No.1-appellant for a total

consideration of ₹42,000 on the basis of the general power of attorney dated 21.04.1986. It was denied that the said power of attorney or the sale deed was a result of fraud.

4. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether the power of attorney dated 21.04.1986 in favour of defendant No.2 is the result of fraud, misrepresentation and is liable to be set aside ?
OPP
- 2) Whether sale deed dated 10.07.1986 is the result of fraud, misrepresentation and confers no title on defendant No.1 ? OPP
- 3) Whether the sale consideration was paid to the plaintiff through receipt dated 15.07.1986 ? OPD-2
- 4) Whether the plaintiff is entitled to declaration or in the alternative injunction or recovery prayed for ?
OPP
- 5) Relief.

5. The Trial Court vide judgment and decree dated 27.04.1991 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-respondent No.1. Vide judgment and decree dated 30.08.1995 the appeal was allowed and the suit was accordingly decreed holding the plaintiff-respondent No.1 to being owner in possession of the suit land.

Aggrieved by the same the present regular second appeal has been preferred by the defendant No.1-appellant.

6. Learned counsel for the defendant No.1-appellant would contend that the First Appellate Court erred in decreeing the suit of the plaintiff-respondent No.1. It is argued that the sale deed dated 10.07.1986 was not the result of fraud but was a validly executed sale deed on the basis of power of attorney dated 21.04.1986 which was executed by plaintiff-respondent No.1 himself in favour of defendant No.2, namely, Jarnail Singh (respondent No.2 herein). It is further the contention that the sale consideration was also paid to the plaintiff-respondent No.1. It is further the contention of the learned counsel for defendant No.1-appellant that no criminal complaint was filed by the plaintiff-respondent No.1 and that the onus to prove that the general power of attorney and the sale deed were the result of fraud was on the plaintiff-respondent No.1 who failed to discharge the same.

7. *Per contra*, learned counsel for the plaintiff-respondent No.1 would contend that fraud in the present case is writ large inasmuch as the plaintiff-respondent No.1 was an illiterate person and the person in whose favour the general power of attorney dated 21.04.1986 is stated to have been executed was the brother-in-law of the son of the plaintiff-respondent No.1 and maternal uncle of the defendant No.1-appellant. Learned counsel would further contend that there was no reason for the plaintiff-respondent No.1 to have given the general power of attorney in favour of defendant No.2, namely, Jarnail Singh (respondent No.2 herein) who was not even related to

the plaintiff-respondent No.1. Further still, learned counsel would contend that though the power of attorney was said to have been executed in the court compound, however, the same was got registered after a month i.e. on 12.05.1986. It is further the contention of the learned counsel that defendant No.2 - Jarnail Singh - had stepped into the witness box as DW-3 (in whose favour the general power of attorney is alleged to have been executed). He stated in his cross-examination that he did not know whether the power of attorney was scribed. According to him, he was taken to Village Kalle at the time of the registration of the power of attorney and he did not appear before the Sub-Registrar. It is further submitted by him that Major Singh i.e. the grandson of the plaintiff-respondent No.1 in whose favour the sale deed dated 10.07.1986 has been executed, never lived with his grandfather i.e. the plaintiff-respondent No.1 at Village Khadoor Sahib.

8. Heard.

9. In the present case the plaintiff-respondent No.1 had approached the Court challenging the general power of attorney dated 21.04.1986 and the subsequent sale deed dated 10.07.1986 on the ground of fraud. The First Appellate Court after detailed discussion and after referring to the evidence on the record especially the statement of Jarnail Singh, DW-3, and the statement of Major Singh, DW-5, found innumerable inconsistencies in the statements of both the witnesses. It was observed by the First Appellate Court that Jarnail Singh, DW-3, in whose favour the alleged power of attorney dated 21.04.1986 was stated to have been registered, in his cross-examination stated that he was not aware as to

whether the power of attorney was scribed and that he did not appear before the Sub-Registrar's office. His relationship with Major Singh (defendant No.1-appellant) was also not denied. He further stated that Major Singh (defendant No.1-appellant) did not ever stay with his grandfather i.e. the plaintiff-respondent No.1. Major Singh (defendant No.1-appellant), DW-5, in his cross-examination stated that he had purchased the suit land and house, though there was no mention of the house in the sale deed. He though admitted his relationship with plaintiff-respondent No.1, however, stated that his father was not traceable for the last many years. He also admitted that he had not withdrawn the amount for the sale consideration from any bank, however, he stated that he had taken a loan from some person and had sold gold to collect the sale consideration however no evidence was produced in the said regard. He further stated that he was not aware of the market value and that he had purchased the suit land for ₹14,000 - ₹15,000, however, the sale consideration as mentioned in the sale deed was ₹42,000. There is no explanation coming forth as to why the plaintiff-respondent No.1 would have executed a general power of attorney in favour of defendant No.2 Jarnail Singh (respondent No.2 herein), who was the brother-in-law of his son and who shared no special relationship with the plaintiff-respondent No.1. If at all the plaintiff-respondent No.1 had to execute a sale deed in favour of his grandson, he could have done so directly rather than first executing a power of attorney in favour of a person who was not even related to him. Further still, there is no explanation coming forward as to why the power of attorney was registered after a month. Coupled with the

fact that there are major discrepancies in the statements of the witnesses i.e. the defendant No.1-appellant and defendant No.2 (respondent No.2 herein), no fault can be found with the judgment and decree passed by the First Appellant Court.

10. In view of the above, I do not find any merit in the present appeal. No question of law much less substantial question of law arises, for determination in the present case. Accordingly, the appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed off.

29.07.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No