

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-3803-2019 (O&M)****Date of decision: 24.07.2025****Teekam (since deceased) through
his LRs and another****...Appellant(s)****Vs.****Mehar Chand Saini and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. B.S. Tewatia, Advocate for the appellants.***********NIDHI GUPTA, J.**

The defendants No. 1 and 3 are in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the plaintiffs/respondents No. 1 and 2 herein, for declaration with consequential relief of permanent injunction, has been decreed by both the Courts below.

2. At the very outset, it is pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same, as the matter has been adjourned since 2020 either at the repeated requests, or due to non-appearance of learned counsel for the appellants.

3. The brief facts are that the plaintiff had filed the present suit seeking a decree of declaration that the sale deed no.6504 dated 27.8.2008 executed by defendant no.1 in favour of the defendant no.2 registered in office of the sub registrar Ballabgarh, null and void and



further declare all the entries in the revenue record on the basis of said deed including mutation no.12872 dated 25.3.2010 null and void. Further to declare the sale deed no.5922 dated 13.8.2008 registered in the office of Sub Registrar Ballabgarh null and void and declare all the entries in the revenue record on the basis of said deed including mutation no.11539 dated 26.8.2003 null and void. Furthermore, restrain the defendants from selling the plots in dispute or creating, transferring any right title or interest in favour of any person/third party and restrain the defendants from taking any forcible possession of the plots in dispute by adopting illegal means.

4. The case put forth in the plaint was that the plaintiffs are husband and wife. Defendant No.1 is the real brother of plaintiff No.1. Defendant No.2 is the daughter in law of defendant No.1; and defendant No.3 is the wife of defendant No.1. It was the case of the plaintiffs that they are owners in equal share of 2 plots measuring 450 Sq. Yds. and 272 Sq.Yds, and they are in physical possession of the said plots. On the plot measuring 450 Sq.Yds, the plaintiffs were running Deep Dharam Kanta and the School; and on the plot of 272 Sq.Yds, plaintiffs were co-owners in equal shares. It was alleged that the defendants in connivance with each other, were playing fraud upon the plaintiffs and were trying to grab the suit properties. It was pleaded that the defendant No.1 had executed a Sale Deed No. 6504 dated 27.08.2008 in favour of defendant No.2 on the basis of a fraudulent Power of Attorney of plaintiff No.1.



5. It was further alleged that defendant No.1 had executed another Sale Deed No. 5922 dated 13.08.2008 with regard to the suit property measuring 272 Sq.Yds. in favour of defendant No.2 on the basis of a fraudulent GPA of plaintiff No.1. The said Power of Attorney was stated to have been executed by plaintiff No.1 alongwith his two brothers and one sister in favour of defendant No.1 when the land was in joint possession. Defendant No.1 was their eldest brother. However, the said Power of Attorney was cancelled by plaintiff No.1 on 23.06.1986 vide Cancellation Deed No. 4/90 registered in the office of Sub-Registrar Ballabgarh. Plaintiff had also informed defendant No.1 about the said cancellation. It was further pleaded that a Family Partition had taken place vide Agreement dated 08.12.1992 upon which all brothers had affixed their signatures and thumb impressions. All the brothers mutually agreed that they will not interfere in each other's property, and they all were entitled to sell their property to anyone. Despite that defendant No.1 had fraudulently and illegally executed the aforesaid Sale Deed dated 27.08.2008 in favour of defendant No.2 pertaining to plot measuring 450 Sq. Yds. for a sale consideration of Rs.9 lacs. Even a mutation No. 11539 was recorded in favour of the defendants. It was the pleaded case of the plaintiffs that no consideration was given to the plaintiffs or to defendant No. 1 by defendants No.2 and 3; that plaintiffs had been cheated and fraud had been played upon them. With these pleadings, suit was filed by the plaintiffs on dated 12.09.2012.



6. Upon notice, defendants had appeared and filed joint written statement and counter claim stating therein that plaintiff No.1, his brothers Ram Singh and Khushali and their sister Hetu had got executed and registered a GPA No. 4/48 dated 03.03.1986 in favour of defendant No.1 thereby appointing and authorizing/empowering the defendant No.1 to sell, transfer, alienate, lease out the land of share of plaintiff No.1 and his two brothers and sisters. Accordingly, defendant No.1 exercising his power had sold the suit properties to defendants No. 2 and 3 vide registered Sale Deeds No. 6504 and 5922 in respect of properties No. 1 and 2 respectively. It was contended that plaintiff was having full knowledge of the said two Sale Deeds and the Mutations. It was further alleged that plaintiff No.1 in furtherance of mala fide intention had suffered a collusive decree and got the impugned pattanama registered in respect of the land on which Lok Deep Society Ballabgarh was being run. Thereafter defendant No.1 had instituted a suit for partition in respect of the land measuring 109 K and 3 M. Plaintiffs in furtherance of mala fide intention had got GPA dated 30.3.1986 cancelled vide Cancellation Deed dated 16.05.2012; and also sent a legal notice to the defendant No.1 to this effect on 16.05.2012. It was therefore pleaded that the suit of the plaintiff is hopelessly time barred as he has challenged the lawfully executed Sale Deed dated 27.08.2008 and its mutation dated 25.03.2008; and Sale Deed dated 13.08.2008 and its mutation dated 26.08.2008. Accordingly, dismissal of the suit was prayed for. No replication was filed.



7. On the basis of the pleadings of the parties, following issues were framed on 02.04.2014: -

- “1. Whether the plaintiff is entitled to a decree for declaration as prayed for?OPP*
- 2. Whether plaintiff is entitle! to decree o permanent injunction as prayed for?OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 4. Whether plaintiff has no cause of action to file the present suit? OPD*
- 5. Whether the plaintiff has knowledge regarding sale deed dated 13.8.2008 and 27.8.2008?OPD*
- 6. Relief.”*

8. The Id. trial Court vide judgment and decree dated 24.12.2015 had decided issues No.1 and 2 in favour of the plaintiffs and against the defendants; issues No. 3 to 5 were decided in favour of the plaintiffs and against the defendants; and accordingly, suit was decreed as follows:-

“42. In the totality of circumstances and afore-stated discussion, suit of plaintiff succeeds and is hereby decreed with costs to the effect that impugned sale deeds bearing no.6504 dated 27.8.2008 and 5922 dated 13.8.2008 and consequent mutations are hereby set aside and declared null and void and defendants are restrained from interfering into the peaceful possession of the plaintiff over the suit property.”

9. Appeal filed by defendant No.1 before the learned Additional District Judge, Faridabad was dismissed vide judgment and decree dated



20.08.2018; thereby upholding the judgment of learned trial Court. Hence the present Second Appeal by defendants No.1 and 3.

10. It is submitted by learned counsel for the appellants that the courts below have not considered the fact that the plaintiff and his brother and sister had given a power of attorney to defendant No.1 on 03.03.1986; and the defendant No.1 sold out the property within the period of GPA; and the GPA was cancelled on 16.05.2012 and a notice was sent to defendant No. 1 through his counsel on 16.05.2012. But the plaintiff claims that he has cancelled the GPA on 30.03.1986 and notice had been sent to the defendant No. 1 but no notice was received by defendant No. 1. It is not considered by the Ld. Courts below that if the plaintiff cancelled his GPA on 30.03.1986 then whey he again cancelled his GPA on 16.05.2012 and sent a notice to the defendant No. 1 through counsel. Therefore, defendant No.1 has no knowledge about the cancellation, and he executed the sale deed.

11. It is submitted that the Ld. Courts below have not considered the fact that in the reply, defendant No. 1 specially mentioned that he has not received any notice regarding the cancellation of GPA. No service was effected and nor he has received in registered post or dasti. But the courts without considering this fact dismissed the appeal of the defendants. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

12. No other argument is raised on behalf of the appellants.



13. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellants.

14. First and foremost, learned counsel for the appellants is unable to meet the query of this Court that as per established position in law, this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. In this regard, reference can be made to the judgment ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc Id # 2034559***

15. The Hon'ble Supreme Court, in the case of ***Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71, Law Finder Doc Id 1544818*** after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:

"16. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

16. The counsel for the appellant has not been able to make out any error in law or procedure in the present case. As such, the present Appeal deserves to be dismissed on this short ground itself.



17. Further, no doubt, on 03.03.1986 plaintiff No.1 alongwith his brothers and sisters had executed a Power of Attorney in favour of defendant No.1. However, vide Cancellation Deed No. 4/90 dated 23.06.1986 (Ex. PW3/3), plaintiff No.1 had cancelled the said POA. A perusal of the cancellation deed shows that it has been duly mentioned therein that he had informed defendant No.1 regarding the cancellation. It is to be noted that Defendant No.3/DW1 in his entire examination-in-chief has nowhere mentioned specifically that defendant No.1 was never given information qua cancellation of Power of Attorney. On the other hand, the plaintiff has specifically pleaded and proved by way of his testimony that he has informed defendant No.1 qua the cancellation of Power of Attorney on 23.06.1986. Whereas except pleadings, there is no testimony of defendant to this effect. Thus, it stood proven on record that plaintiff No.1 had duly imparted oral information to defendant No.1 regarding cancellation of Power of Attorney. Thus, it is established from the evidence on record that defendant no.1 had received intimation regarding cancellation of Power of Attorney dated 03.03.1986 vide Cancellation Deed No. 4/90 dated 23.06.1986. As such, defendant No.1 had no authority to execute the Sale Deed by representing himself as Power of Attorney Holder of plaintiff No.1. It is for this reason impugned Sale Deed No. 6504 dated 27.08.2008 and Sale Deed No. 5922 dated 13.08.2008 and consequent mutations were declared null and void.

18. The plaintiff further proved Partition Deed dated 08.12.1992 Ex.P4 executed between the parties from which it becomes clear that



defendant No.1 did not remain Power of Attorney Holder of plaintiff No.1 as there is specific mention of restraint from interference in share of other parties in Ex.P4.

19. Moreover, defendants were unable to rebut the Cancellation Deed dated 23.06.1986 Ex.PW3/3 nor were they able to convince that they had no information regarding the cancellation of GPA. Even there is no record to show that defendants No.2 and 3 had paid sale consideration of Rs. 80 lacs to the plaintiff or defendant No1. Relevant findings of the learned lower appellate Court are contained para 16, 17 and 20 of the judgment and decree dated 20.08.2018, which read as under: -

“16. On the other hand, DW1 is Vivek son of Teekam, defendant no.3. In cross-examination, he stated that defendant no.2 was his wife, who did not have any income. Teekam and Mehar Chand were not on talking terms for the last 10 years. He admitted that plaintiff no. 1 was in possession of entire disputed land measuring 722 Sq.yards. Ex.PW3/2 is the copy of SPA dated 3.3.1986 which shows that Ram Singh, Mehar Chand, Khushal, Smt. Heto and all children of Shri Khillu had appointed defendant Teekam Singh as their GPA holder with respect to their properties inherited by them from Shri Khillu. Ex.PW3/3 is the copy of cancellation deed of said GPA, which is dated 23.6.1986 as per which plaintiff did not have any faith in defendant no.1 and therefore, he was cancelling the GPA executed by him in favour of defendant no. 1. Sanctity of this document is being proved by act and conduct of parties. Ex.P4 is the agreement of partition/settlement reached between the children of Shri Khillu. This partition is dated 8.12.1992. Further Ex.P3 is the



sale deed dated 16.7.1986 bearing No.1531 which shows that plaintiff and other children of Shri Khillu had sold 7 marlas land in favour of one Kishan Chand. In this manner, this sale deed was not executed by plaintiff through any GPA holder. Had Teekam Singh been GPA holder of plaintiff, then this sale deed would have had been executed by him in the same capacity. But it was executed by plaintiff hir self and this shows that defendant no.1 was no more the GPA holler of plaintiff. While executing this sale deed, defendant no.1 would have also, obviously, come within the knowledge of cancellation of his GPA. Therefore, it is clear that GPA of defendant no.1 was cancelled by plaintiff no.1 and that defendant no.1 had knowledge of said cancellation. The plea of defendant taken in the written statement is strange. It has been pleaded in para no.2 (iii) that plaintiff had full knowledge of two sale deeds dated 13.8.2008 and 27.8.2008 but that he has illegally and unlawfully sold the land measuring 174.75 Sq.yards vide registered sale deed dated 19.2.1992, without getting the suit land partitioned. It is not clear as to how would have plaintiff no.1 come to know about sale deeds dated 13.8.2008 and 27.8.2008 in the year 1992 itself. Moreover, there is a history of litigation between the parties. Many cases were decided between the two brothers, plaintiff no.1 and defendant no.1. Ex.PW5/2 is the copy of plaint of civil suit no.455 of 2008 titled 'Teekam Vs. Mehar Chand'. Said suit is for declaration and permanent injunction. Ex.PW5/1 is its judgment dated 31.1.2015. Ex.PW6/1 is the copy of judgment dated 5.4.1999 in civil suit titled 'Teekam Vs. Mehar Chand and others'. After passing of this judgment, an appeal was also filed by defendant no.1 on 3.5.1999 which was decided on 22.9.2001 by Ld. ADJ, Faridabad. Copy of said



judgment is Ex.PW5/26. With such strain relations, why would have plaintiff no.1 continued with defendant no. 1 as his GPA holder for his entire property.

17. My attention has also been invited to the cross examination of DWI Vivek son of Teekam. He is husband of Smt. Veena, defendant no.2 in whose favour impugned sale deed dated 13.8.2008 and 27.8.2008 were executed. This witness specifically deposed that relations between plaintiff no.1 and defendant no.1 were strained for the last 10 years. They were not on visiting terms. The plea of plaintiff no.1 is that these sale deeds are null and void because no sale consideration was ever paid. However, DW1 stated that he had purchased entire land of 722 Sq.yards (450 Sq.yards of land which is subject matter of sale deed dated 27.8.2008 and 272 Sq.yards of land which is subject matter of sale deed dated 13.8.2008), for a sum of Rs.80 lacs. He claimed that he had paid this money to plaintiff no. 1 and defendant no.1 and the payment was made in the house of plaintiff no. 1. Thus, on one hand, this witness claimed that parties were not on visiting or talking terms and on the other hand, he claimed that he had paid sale consideration amount of Rs.80 lacs to plaintiff no.1 in his house. He further claimed that he had received an amount of Rs.80 lacs from his father in the year 1999 and some money was received by him in his dowry. He also claimed that on the date of execution of sale deed, plaintiff no.1 accompanied them but his photograph was not taken. On the face of it, the version of this witness is not believable. There was no reason for the plaintiff no.1 to accompany this witness for execution of sale deed because as per his own version, they were not on talking or visiting terms.

20. I am of the opinion that neither defendants were able to rebut the said cancellation deed dated 23.6.1986 nor they were able to convince the court that they have no information regarding cancellation of GPA. Further, there is no evidence, whatsoever, which could prove that defendants no.2 and 3 had paid sale consideration amount of Rs.80 lacs to plaintiff or defendant no.1 in furtherance of execution of impugned sale deeds.”

20. Ld. Counsel for the appellant is unable to controvert or dispute the above said findings. Thus, no ground is made out to interfere in the concurrent findings of the learned Courts below.

21. The present Regular Second Appeal is hereby **dismissed**.

22. Pending applications, if any, stand disposed of.

24.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No