



SAO-33-2024(O&M)

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

SAO-33-2024(O&M)

Date of decision:25.03.2025

Sukhdev Singh through LR

..Appellant

Versus

Jitto Parsin Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gagandeep Singh Virk, Advocate
Mr. Aajeshwar S Grewal, Advocate for the appellant

ANIL KSHETARPAL, J. (Oral)

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for a fresh decision.
2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.
3. The plaintiff filed a suit for the joint possession of land measuring 16 kanals 10 marlas 5 sirsai by way of specific performance of the agreement to sell dated 24.08.2011 allegedly executed by defendant no.1 and 2 through their attorney Darshan Singh- defendant no.3. The suit was decreed as defendant contested the case on behalf of defendant no.1 and 2. Smt. Jeeto Parsin Kaur, (mother of Swaran Singh and Harmeet Kaur) wife of Gurbachan Singh filed an appeal alongwith a prayer to grant leave to file the appeal. The First Appellate Court recorded the following findings:-



“8. In the present case, plaintiff Sukhdev Singh filed a suit for joint possession by way of specific performance of the sale agreement dated 24.08.2011 and in the suit Swaran Singh son of Gurbachan Singh and Harmeet Kaur daughter of Gurbachan Singh arrayed as defendants through their attorney Darshan Singh and Darshan Singh himself arrayed as defendant no.3. According to the head note of the plaint, Swaran Singh and Harmeet Kaur children of Gurbachan Singh are shown as residents of Village Akhara and present address was given as 93150 Kuching Sarawalk Malaysia and Darshan Singh son of Sham Singh attorney of defendants no.1 and 2 who is resident of Village Himmatpura, Tehsil Nihal Singh Wala, District Moga. According to the pleadings, Darshan Singh being attorney of defendants no.1 and 2 entered into agreement to sell dated 24.08.2011 and received total sale consideration of Rs.16,81,000/- in cash but later on the sale deed was not executed and the suit for specific performance of joint possession was filed on 08.03.2013. In the said civil suit, defendant no.3 appeared through counsel Sh. Parminder Pal Singh Advocate and filed written statement on behalf of defendants no.1 and 2. Said written statement is also signed by only Darshan Singh not by other defendants.

9. From perusal of the file, it is transpired that agreement to sell Ex.P1 is signed by Darshan Singh son of Rattan Singh, resident of Village Akhara, Tehsil Jagraon. Darshan Singh attorney of Swaran Singh and Harmeet Kaur. Sukhdev Singh and Harmail Singh are resident of Village Akhara. The agreement is not scribed on stamp paper. The same is converted to stamp paper after affixing the revenue stamps on the same. From perusal of the file, it also shows that original power of attorney is not brought on record. One document at page



no.104 of the file shows that Jito Parsin Kaur appointed that Darshan Singh son of Sham Singh as attorney on 17.05.2006 and Jaswinder Suraj Singh also appointed Darshan Singh as attorney on 17.05.2006, Harmeet Kaur also appointed Darshan Singh as attorney on 17.05.2006 and Surjit Kaur also appointed Darshan Singh as attorney on 17.05.2006.

10. From perusal of these documents which are attached with the file from page no. 104 to 108 are scribed only one page which is also not embossed at the office of Commissioner in Punjab. From perusal of the file itself shows that written statement was filed by Darshan Singh attorney as a formality and only four suggestions were given to plaintiff/ respondent in cross examination. Similarly Darshan Singh witness was given four suggestions and Harmail Singh was also given four suggestions. Darshan Singh defendant no.3 was cross examined by the learned counsel for the plaintiff. Defendant no.3 nowhere stated that he paid the amount to the defendants no.1 and 2 after receiving it from the plaintiff. Moreover, the plaintiff also did not produce any record that on the day of execution of agreement to sell such huge amount of Rs.16,81,000/- was available with him and paid to the attorney. It is very strange that the trial court without seeing the documents i.e. power of attorney executed by defendants no.1 and 2 allowed defendant no.3 to file written statement on their behalf and pass the decree in haste.

11. Even at this stage, appellant and ld. counsel for the respondent did not produce the original power of attorney executed by defendants no.1 and 2 in favour of defendant no.3. Swaran Singh is son of Gurbachan Singh and according to the connected case and arguments in the appeal he was missing since 1998



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and if he is died or civilly dead, then his legal heirs i.e. mother Jito Parsin Kaur was required to be impleaded who had filed the present appeal against the judgment.

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So, formal permission is granted to the appellant Jito Parsin Kaur. There are serious allegations against the plaintiff/ respondent and defendant Darshan Singh that they played a fraud with the Court and forged document is placed on record. In such like cases where fraud is committed with the party and fraud played with the Court, it is required to be investigated properly and the fact is required to be proved by both the parties regarding the presence of Swaran Singh on the day of execution of alleged power of attorney, on the basis of which, defendant no.3 filed written statement and also entered into an agreement to sell with the plaintiff and on the other hand appellants are required to prove the fact that Swaran Singh was missing since 1998 and there is no question of executing the power of attorney by him on 17.05.2006.

12. So, unless and until the opportunity is given to the appellants to prove these facts, the truth cannot come out. The connected appeal in which Swaran Singh was declared civilly dead by the Court, the case is remanded back on the appeal filed by Sukhdev Singh to ascertain these facts. So, the judgment passed by the ld. Trial Court is not sustainable in the eyes of law and no power of attorney is placed on record and proved. Darshan Singh defendant no.3 filed a written statement in a casual manner and the witnesses of plaintiff and plaintiff himself was not cross examined properly which creates a doubt about the conduct of the parties. So, the present appeal is allowed and the case is remanded back with the direction to the ld. trial Court to allow the



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appellant Jito Parsin Kaur and Harmeet Kaur to file the written statement and to contest the suit and ld. trial Court is directed to frame fresh issues and after adducing the evidence by both the parties to pass afresh judgment on facts. It is further directed to decide the cases i.e. Civil Suit No. 56 dated 08.03.2023 and Civil Suit No. 219 dated 04.12.2012 on the same day without clubbing it. Parties are directed to appear before Trial Court on 16.04.2024. Trial Court is directed to revive the case at its original number. Decree sheet be prepared accordingly. Record of Lower Court be returned along with copy of judgment. Appeal file be consigned to record room.”

4. Learned counsel representing the appellant contends that the decree passed by the trial court has not been set aside on merits and the court has not formed opinion that the re-trial of the case is necessary.

5. This Court has considered the submissions made by the learned counsel representing the appellant.

6. In fact, the First Appellate Court has observed that Darshan Singh may not even have authority to contest the case on behalf of Swaran Singh, whose whereabouts are not known. Moreover, the appellate court has found that prima facie the decree has been obtained by fraud. In such circumstances, opportunity to contest the case is required to be granted to heirs of Swaran Singh. Moreover, Harmeet Kaur-defendant no.2, who is residing in Malaysia, is also disputing execution of attorney in favour of Darshan Singh. The First Appellate Court has found that the attorney in favour of Darshan Singh is doubtful. Moreover, Darshan Singh did not seriously contest the case.



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- 7. Keeping in view the aforesaid facts, no ground to interfere is made out.
- 8. Hence, dismissed.
- 9. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

25.03.2025

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