

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-1154-2018 (O&M)****Date of decision: 20.03.2025****Sushil Kumar and others****...Appellant(s)****Vs.****Sudesh Rani and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Parvez Chugh, Advocate and
Mr. Himanshu Setia, Advocate for the appellants.

NIDHI GUPTA, J.**CM-2853-C-2018**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 78 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is
allowed and the delay of 78 days in refiling the accompanying appeal is
condoned.

RSA-1154-2018 (O&M)

The defendants No. 1 to 3 are in second appeal against the
concurrent judgments and decrees of the learned Courts below, whereby
the suit filed by the respondent/plaintiff seeking declaration that the
plaintiff is owner in possession of suit house measuring 0 Kanal 6 marlas 7
Sarsahies situated in Makhu, Tehsil Zira, District Ferozpur; and the Sale
Deed dated 10.04.2012 Vasika No.31 alleged to be executed by defendant
No.1 (being alleged General Power of Attorney of plaintiff) in favour of



defendant No.2; and Sale Deed dated 10.04.2012 vasika No.30 executed by defendant No.1 being alleged General Power of Attorney of plaintiff in favour of defendant No.3 are illegal, null and void without consideration beyond the power of Power of Attorney, result of fraud, having no adverse effects on the rights of plaintiff and are liable to be set aside; with a consequential relief of permanent injunction restraining the defendants No.2 and 3 from forcibly, illegally dispossessing the plaintiff from the suit property as mentioned in heading (a) and (b) of the headnote of plaint and to alienate the same to anybody else by way of sale, mortgage, gift, exchange lease of in any other manner, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants No. 1 to 3'; and respondent No. 1 is the 'plaintiff'.

3. Brief facts of the case as set out in the plaint are that the plaintiff had purchased the suit house as mentioned in the head note of the plaint vide registered Sale Deed No. 2175 dated 15.06.1979. After purchase of the said property, it became self acquired property of the plaintiff. The plaintiff is residing in this property. After the death of husband of the plaintiff namely, Amrit Lal, some property was inherited by the plaintiff, defendant No.1 her son, and her three daughters namely Parveen Rani, Rajni and Renu Bala. On 26.07.1996, the plaintiff and her three daughters executed a General Power of Attorney in favour of defendant No.1 regarding the arrangement of property which was inherited by the plaintiff, defendant



No.1 and her daughters after the death of Amrit Lal. From the said Power of Attorney dated 26.07.1996, the defendant No.1 had sold the property of the plaintiff and her daughters by various Sale Deeds being Sale Deed No. 48 dated 25.07.1997; Sale Deed No. 697 dated 06.08.1998; Sale Deed No. 375 dated 19.06.1997; and Sale Deed No. 793 dated 22.08.1996. As the properties sold by way of the above said Sale Deeds formed part of the property inherited by the plaintiff and her daughters upon the death of Amrit Lal and were included in the Power of Attorney dated 26.07.1996, the plaintiff and her daughters did not challenge the said Sale Deeds. However, the said Power of Attorney in no manner included the suit house. Thereafter, defendant No.1 misused the General Power of Attorney dated 26.07.1996 and got two Sale Deeds executed, one in favour of his son defendant No.2 Sumit Kumar, and the second in favour of his wife Indu defendant No.3 in respect of the suit property without any consideration. It was pleaded by the plaintiff that the suit property being the self acquired property of the plaintiff, she had never given any authority to the defendant No.1 to sell the same, even through General Power of Attorney dated 26.07.1996. As such, declaration was sought that Sale Deeds No. 30 and 31 both dated 10.04.2012 executed by defendant No.1 in favour of defendants No. 2 and 3 are illegal, null and void.

4. It was further contended that the plaintiff is owner in possession of the suit property since the purchase. It was further contended that defendant No.4/Joint Sub Registrar Makhu, Tehsil Zira, District Ferozepur colluded with defendants No.1 to 3 and helped them to



grab the property of the plaintiff. The plaintiff got knowledge of the above two Sale Deeds dated 10.04.2012 on 17.07.2013; whereafter the present suit was filed. The plaintiff also filed criminal complaint against the defendants before SSP, Ferozepur two days before filing the suit when defendants No. 2 and 3 came to the spot alongwith some unknown persons and tried to forcibly and illegally dispossess the plaintiff from the suit property. The plaintiff requested the defendants many times to admit her claim, but they refused to do so. Hence, the present suit.

5. Upon notice, defendant No.1 appeared and filed written statement resisting the suit. Besides formal objections, it was pleaded in the written statement that the plaintiff Sudesh Rani and her two daughters Parveen Rani and Rajni had given Power of Attorney dated 30.07.1996 in favour of the defendant No.1 regarding the whole property. It was further averred in the written statement that Saneh Lata daughter of plaintiff and Amritpal had given another Power of Attorney dated 25.02.1997 and they all had authorized defendant No.1 to deal with the property of the plaintiff and her daughter in any manner and also authorized to sell, mortgage or disposed of the property in any manner. It was also contended in the written statement that the suit house was sold by defendant No.1 to defendants No. 2 and 3 for sale consideration which was handed over by defendant No.1 to the plaintiff.

6. Defendants No. 2 to 4 also appeared and filed their separate written statements. Besides formal objections, defendants No. 2 and 3 took



a plea that they are the bonafide purchasers of the suit property for consideration. It was averred that the plaintiff is not actually in possession of the suit property and that the suit property was sold at the instance and with the consent of the plaintiff by defendant No.1. Hence, dismissal of the suit was prayed for.

7. Plaintiff filed replication denying the averments made in the written statements and reiterated those in the plaint.

8. On the basis of pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled for declaration as prayed for? OPP.

2. Whether Sale Deeds Vasika No.30 and 31 alleged to be executed by defendant No.1 being general power of attorney of plaintiff in favour of defendant?OPP.

3. Whether plaintiff is entitled for permanent injunction as prayed for? OPP.

4. Whether the suit is not maintainable in its present form? OPD.

5. Whether the suit of the plaintiff is false and frivolous?OPD.

6. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD.

7. Whether the suit is not properly valued for the purpose of the Court fee and jurisdiction?OPD.

8. Whether answering defendants No.2 and 3 are bonafide purchaser of the suit property for consideration?OPD.

9. Relief.”

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 8 in favour of the plaintiff



and against the defendants; and accordingly, vide judgment and decree dated 09.01.2017, the learned trial Court decreed the suit of the plaintiff declaring her to be the owner in possession of the suit property as described in the head note; and both the Sale Deeds dated 10.04.2012 vasika Nos. 30 and 31 were set aside being without consideration and also declared them as illegal, null and void; defendants No.2 and 3 were further ordered to be restrained from forcibly, illegally, dispossessing the plaintiff from the suit property; and also restraining the defendants from alienating the suit property to any one or any way or any manner. The appeal filed by defendants No.1 to 3 was dismissed by Id. Additional District Judge, Ferozpur vide judgment and decree dated 06.04.2017, thereby affirming the judgment and decree of the trial Court. Hence, the present second appeal.

10. Learned counsel for the appellants *inter alia* submits that the learned Courts below are in patent error in decreeing the suit of the respondent/plaintiff as the same has been done without considering the cogent evidence led by the appellants. It is submitted that the whole controversy in the dispute between the parties hinges on the interpretation of the wording of the Power of Attorney (Ex.P3). Both the Courts below have not interpreted the Power of Attorney in correct perspective. The Power of Attorney executed by the plaintiff/respondent No. 1 in favour of appellant No.1 gave him the authority to sell the property in dispute, whereas both the Courts below have given a wrong finding that the power to sell the property in question was not given in the said Power of Attorney.



11. It is further submitted that the learned Courts below further failed to appreciate that the suit of the plaintiff was time barred. Even no issue was even framed in this regard.

12. No other argument is raised on behalf of the appellants/defendants No.1 to 3.

13. I have heard learned counsel for the appellants/defendants No.1 to 3 and perused the case file in great detail.

14. I find no merit in the contentions raised on behalf of the appellants. Perusal of the record shows that it is undisputed on record that the plaintiff had got ownership in possession of the suit house by way of Sale Deed dated 15.06.1979 (Ex.P1). As such, undisputedly, the suit property was acquired by the plaintiff.

15. It has been contended on behalf of the appellants that the General Power of Attorney dated 26.07.1996 (Ex.P3) authorized the defendant No.1 to sell the “*whole property*” of the plaintiff. To resolve the controversy, the learned trial Court in para 9 of judgment dated 09.01.2017 has reproduced the entire Power of Attorney, which reads as follows:-

“We are Sudesh Rani widow and Parveen Rani daughter of Sh. Amrit Lal son of Ram Nath resident of Makhu Tehsil Zira and Renu Bala daughter of Sh.Amrit Lal son of Ram Nath (blind) resident of Makhu, Tehsil Zira. We have the property in village Makhu, Vinkoke, Buleka, at District Ferozepur which are received from the inheritance of their father's inheritance. They cannot look after the same, so today on behalf of them they appoint Sh.Sushil Kumar son of Amrit Lal son of Ram Nath



resident of Makhu, Tehsil Zira as their power of attorney holder".

16. A bare reading of the above shows that by way of the above said Power of Attorney, the defendant No.1 was authorized to deal with the property of the plaintiff and her daughter situated in "*village Makhu, Vinkoke, Buleka, at District Ferozepur which are received from the inheritance of their father's inheritance.*" Admittedly, the suit house has been purchased by the plaintiff and has not been received by her in inheritance from Amritlal. As such, in no manner was the defendant no.1 authorised to deal with the suit house by way of the Power of Attorney dated 26.07.1996 (Ex.P3). It was for this reason that the plaintiff had not raised any dispute with regard to other sale transactions executed by defendant No.1 in respect of other properties owned by legal heirs of Amrit Lal; but had raised dispute only in respect of the suit house. It has also come on record that the plaintiff, her daughters and the defendants are residing in the suit house. It has therefore unequivocally come on record that Power of Attorney (Ex.P3) was executed by the plaintiff and her daughters in respect of the property inherited by them from Amrit Lal; and did not cover the self acquired property of the plaintiff.

17. Moreover, defendant No.2 Sumit Kumar DW1 in his cross-examination has himself admitted that the Sale Deed dated 15.06.1979 (Ex.P1) in respect of the suit property was in the name of the plaintiff; and that the Power of Attorney dated 26.07.1996 (Ex.P3) only pertained to the inheritance of Amrit Lal. DW1 has further admitted that upon death of Amrit Lal, other properties which were inherited by plaintiff, her daughters,



and defendant No.1, mutation of inheritance was entered in equal shares in their names.

18. It is also relevant to note that defendant No.1 was detained under NDPS case from 2007 to 2014. The Sale Deeds in question in favour of defendants No. 2 and 3 were executed by defendant No.1 when he was out on parole. Moreover, during trial Defendant No.1 did not even step into witness box. As such, best evidence was lost to the defendants. The suit property is shown to have been purchased by defendants No. 2 and 3 for an amount of Rs.12 to 13 lacs. However, there is no evidence on record to show that defendants No. 2 and 3 had the paying capacity to purchase the property from defendant No.1. In fact, defendant No.2 has admitted in his cross-examination that he is earning only Rs.1,600/- p.m. and that he is 10+2 pass. Even no evidence was produced by the defendants to show that any sale consideration passed hands from defendants No. 2 and 3 in favour of defendant No.1.

19. Learned counsel for the appellants/defendants No. 1 to 3 is unable to dispute or controvert the above said facts and findings.

20. In view of the above, no ground to interfere in the impugned judgments and decrees of the learned Courts below is made out. The present regular second appeal is hereby **dismissed**.

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

20.03.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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

