



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
215

RSA-1514-2021(O&M)
Date of decision: 17.04.2026

Dhan Singh (since deceased) through LRs

...Appellant(s)

Vs.

Lajjawati & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arpandeeep Narula, Advocate
Mr. Piyush Mittal, Advocate
for the appellant.

Mr. Jagdish Manchanda, Senior Advocate with
Mr. Nischal Chetanya Manchanda, Advocate
Mr. Devyansh, Advocate
Mr. Saksham Kaushik, Advocate
Ms. Marvi Singh, Advocate
for the respondents.

NIDHI GUPTA, J.
CM-6041-C-2021

This is an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence in the shape of Special Power of Attorney dated 15.05.2018 as Annexure A1, in the interest of justice.

It is submitted by learned counsel for the applicant/appellant that the said document is very necessary to adjudicate the dispute at hand; and therefore, the applicant be permitted to place on record the said Special Power of Attorney for the proper and just decision of the present appeal.



Heard.

On a Court query as to why the said Special Power of Attorney was not produced by the applicant before the learned District Courts, learned counsel for the applicant/appellant has no reply. Even a perusal of the instant application shows that no reason whatsoever has been given by the applicant for failure to produce the said document before the District Courts.

For leading additional evidence before the Appellate Court, Order 41 Rule 27 (1) CPC, mandates as follows:

“27. Production of additional evidence in Appellate Court.- (1)

The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court.

But if—

*(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed,*

or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.



(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.”

A perusal of the above provision shows that the scope of Order 41 Rule 27(1) of the CPC is very clear. No doubt, the provision enables the party to file additional evidence at the first and second appellate stages. However, Rule 27(1)(aa) stipulates that such additional evidence can be permitted only if the party requesting it must be able to prove that, despite their best efforts, they were unable to introduce the additional evidence in the initial proceeding. Thus, the basic principle for admitting additional evidence is that the party appealing is able to establish that there was a valid reason for not submitting such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties to the lis. As noted above, in the present case, learned counsel for the applicant is unable to give any reason whatsoever as to why the said document was not produced by the applicant before the District Courts.

Hon’ble Supreme Court in **CA 16899 of 1996 “Karnataka Board of Wakf Vs. Government of India”** has categorically held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence.

Reference may also be made to judgment of the Hon’ble Supreme Court in **C.A. No.10195 of 2013 titled as “Govt. of Karnataka and Another Vs. K.C. Subramanya & Others”** wherein Their Lordships have held as follows: -



“6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.”

It is established legal position that provision of Order 41 Rule 27 CPC cannot be used to fill up lacuna in case. In this regard, reference may be made to pronouncement of Hon’ble Supreme Court in ***N. Kamalam (dead) and another Vs. Ayyasamy and Another (2001) 7 SCC 503***, wherein it is held that:

“The provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the Court of Appeal – It does not authorize any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the Appellate Court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

It is thus, clear that intent of the said provision is not to permit party/applicant to patch up weak parts of his case and to fill up omissions in



appeal. In the present case, it is a clear attempt of applicant to fill up gaps and lacunae in his evidence. As per law, applicant cannot be permitted to do so.

From the above facts, it is clear that applicant has not exercised due diligence and cannot be permitted at this stage to improve his case or fill up lacunae in his case by leading additional evidence. It has been held to be against the spirit of the Code to allow a party to adduce additional evidence without the fulfillment of either of the three conditions contained in Rule 27.

Accordingly, the present application stands **dismissed**.

MAIN CASE

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned District Courts whereby suit filed by the appellant for declaration and permanent injunction, has been dismissed by both the District Courts.

2. Brief facts of the case are that the appellant had filed instant Civil Suit seeking declaration to the effect that plaintiff is owner in possession of suit land detailed in Para 1 of the plaint; **And** declaration that Sale Deed No.4644 dated 20.09.2017 and its Mutation if any are illegal, null and void, and has been obtained by the defendants by playing fraud upon the plaintiff; **And** for permanent injunction restraining defendants from entering and sanctioning Mutation on the basis of impugned Sale Deed dated 20.09.2017.

3. It was the pleaded case of the appellant before the District Courts that plaintiff is owner in possession of agricultural land total measuring 12



kanal 14 marla to the extent of 1/3rd share i.e. 4 kanal 4.5 marla as per Jamabandi for the year 2003-04. It was alleged that on 20.09.2017 at about 9 am, defendant No.2, who is also a co-sharer in the agricultural land, had come to the house of the plaintiff and had stated that he has to make correction in the Girdawar for which he needs a witness in the Tehsil Office for evidence and had requested the plaintiff to go with him. It was stated that on his request, the plaintiff had reached the Tehsil Office along with defendants where the defendants took thumb impression of the plaintiff on some papers by misrepresenting that these papers were for evidence. It was alleged that thereafter, the defendants had taken plaintiff to the first floor of the Tehsil Office where some photographs were taken in front of Computer; and when plaintiff had asked the defendants as to why these photographs are being taken, he was told that these are also for evidence. It was further averred that on 25.09.2017, defendant No.2 came to the house of the plaintiff and stated that he has purchased the land measuring 4 kanal 4 marla detailed in Para 1 of the plaint from the plaintiff in the name of his wife/defendant No.1. It was alleged that defendant No.2 demanded possession of the suit land from plaintiff and further stated that if plaintiff would not deliver possession then defendants will take forcible possession. It was averred that on hearing this, plaintiff along with his son went to the office of Sub-Registrar and upon enquiry came to know that defendants in collusion with officials of Sub-Registrar succeeded in obtaining impugned Sale Deed No.4644 dated



20.09.2017 by illegally playing fraud upon the plaintiff. It was contended that defendants are bent upon to enter and sanction Mutation and alienate the suit land and dispossess the plaintiff. Accordingly, plaintiff moved an application dated 26.09.2017 before the Superintendent of Police, Palwal against the defendants and other persons for taking legal action against them. However, no action was taken. The plaintiff had requested defendants many times to accept his claim but to no avail. Hence, present suit was filed on 28.09.2017.

4. Upon notice, the defendants had put in appearance and filed joint written statement resisting the suit of the plaintiff.

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

“1. Whether the plaintiff is entitled to decree for Declaration as prayed for? OPP

2. Whether the plaintiff is entitled to decree for Permanent injunction as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable? OPD

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

5. Whether the plaintiff is estopped from filing the present suit by her own acts, conduct and acquiescence? OPD

6. Whether the plaintiff has not come with clean hands before this Hon'ble Court and has concealed the true and material facts? OPD

7. Whether the plaintiff has not paid proper advalorem court fees? OPD



8. Whether the suit of the plaintiff is false, frivolous and vexatious and is liable to be dismissed with a special cost under Section 35-A of CPC? OPD

9. Relief.”

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Civil Judge (Junior Division), Palwal had dismissed the suit of the plaintiff vide judgment and decree dated 28.03.2019.

7. The Civil Appeal filed by the plaintiff was dismissed with costs by the learned Additional District Judge, Palwal vide judgment and decree dated 20.09.2021. Hence, present second appeal by the plaintiff.

8. It is inter alia submitted by learned counsel for the appellant that the alleged sale transaction is a result of fraud and misrepresentation. The alleged Sale Deed dated 20.09.2017 was never executed by the plaintiff out of his free will and consent. Even no sale consideration whatsoever was paid by the defendants to the plaintiff for the alleged sale. Even possession was not delivered to the defendants. It is submitted that at the time of execution of alleged Sale Deed, plaintiff was 85 years old and was of unsound mind due to which he was fraudulently taken to the Tehsil by defendant No.2 by misrepresenting that plaintiff was required only to give evidence for correction of Girdawari of defendant No.1. However, by playing fraud, defendants succeeded in getting Sale Deed dated 20.09.2017 executed in their favour.

9. It is further submitted that the learned District Courts while deciding the issues No.1 and 2 overlooked the fact that the appellant/plaintiff



was an old aged person and the defendant/respondent No.2 is his brother and thus, the defendants were in collusion with each other and have committed fraud upon him and procured the impugned Sale Deed dated 20.09.2017. The learned District Courts based their observation on the registered document and also wrongly observed that the Special Power of Attorney (hereinafter referred to as the "SPA") dated 15.05.2018 of the appellant remained unproved despite the fact that the same was duly mentioned in the affidavit of the appellant and was also produced at that time. However, inadvertently, the same could not be exhibited. Further, even the defendants nowhere raised any objection to the same or even disputed the same in any manner.

10. It is further contended that the learned District Courts arrived at the wrong conclusion that non-examination of the plaintiff would result in adverse inference against the plaintiff. As the basic question involved in the suit is that whether the defendants being near relative of the plaintiff got procured the alleged Sale Deed without payment of any consideration or with consideration and if the sale Deed is without consideration then it certainly turned the impugned Sale Deed as void ab initio and in the present case, the material on record clearly established the fact that the sale deed was an outcome of fraud and without passing of any actual consideration. Ld. District Courts reached to a wrong conclusion that the factum of issuance of NOC shows that plaintiff entered into the sale transaction with the defendants, however, a close perusal of the NOC would show that it nowhere reflects that



plaintiff was the one who obtained the same or got the same issued. Surprisingly, it does not bear signatures/thumb impression of the plaintiff and in this manner, the District Courts based their findings arbitrarily.

11. Learned counsel further argues that the District Courts failed to appreciate the evidence of the SPA who appeared on behalf of the appellant being the Power of Attorney Holder. In the peculiar case where the appellant crossed the age of 85 years, it is the son of the appellant who is the Power of Attorney Holder who would obviously have the personal knowledge of the facts of the case by supporting his old aged father all the while as in that old age a person in ordinary prudence cannot be believed to move out alone, especially when he has a big family living together.

12. Learned counsel further submits that the learned District Courts could not have drawn an adverse inference against the appellant only on account of the fact that the appellant did not step into the witness box. It is submitted that Suresh Kumar, SPA holder of the appellant had duly appeared as PW1 and categorically deposed to the effect that he had been granted Power of Attorney by his father/the appellant, who was unable to appear due to his old age. It is accordingly prayed that the judgments of both the District Courts are based on material error of facts, and conjectures and surmises; and therefore, deserve to be set aside.

13. Per contra, learned Senior Counsel for the respondents/defendants vehemently opposes the submissions made on



behalf of the appellant and submits that there are concurrent findings of fact against the appellant to the effect that Sale Deed stands proven in accordance with law. Moreover, admittedly plaintiff himself has not stepped into the witness box. Even no evidence whatsoever has been led by the plaintiff to prove the alleged fraud. Photo of the plaintiff is borne on the Sale Deed in question. It is contended that therefore, in view of the afore-noted facts and findings, the present appeal be dismissed.

14. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.

15. It is admitted case of the parties on record that Sale Deed (Ex.P1) is a registered document bearing the thumb impression of the plaintiff along with his photographs. Needless to say, presumption of truth is attached to a registered document. It is established position in law that a registered document would prima facie be valid in law. Contention of the appellant is that the thumb, impression and photograph of the appellant have been fraudulently obtained. However, no evidence has been led by the appellant to prove the said contention.

16. The story put forth by the plaintiff that the said Sale Deed was fraudulently executed by the defendant No.2 by misleading the appellant remains utterly unsubstantiated in view of the fact that plaintiff himself had



failed to step into the witness box. No reason whatsoever is available on record as to why the plaintiff failed to do so.

17. It has been contended on behalf of the appellant that in place of the plaintiff, his son and Special Power of Attorney Holder Suresh had been produced; and therefore, case had been contested by the said Suresh on behalf of the plaintiff. However, the said submission is misconceived as firstly, admittedly the Special Power of Attorney dated 15.05.2018 allegedly executed by the appellant in favour of Suresh, was not exhibited by the appellant before the learned District Courts in evidence. No reason whatsoever has been given as to why the said Special Power of Attorney was not exhibited by the appellant. It is only before this Court that the said Special Power of Attorney dated 15.05.2018 has been sought to be produced by way of additional evidence vide the above-noted application bearing CM-6041-C-2021. However, the same has already been dismissed in view of the factual and legal position noted above. Consequentially, the said SPA remains unproved. As a result, the entire case as set up by the plaintiff in the plaint was not proved and supported by evidence.

18. Even otherwise, any evidence led by Suresh cannot be of Help to the appellant as, it is established position in law that SPA can only pursue the case on behalf of the principal/plaintiff but he cannot depose on behalf of the plaintiff because it is the plaintiff who has personal knowledge about the facts and circumstances of his case. I am supported in my above view by landmark



judgment of the Hon'ble Supreme Court in **Man Kaur v. Hartar Singh Sangha**

(SC) : Law Finder Doc Id # 224670, wherein it is held as under: -

“11. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross examination on that issue. A plaintiff cannot obviously examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned.

12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit but has no personal knowledge of the transaction can only



give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to



what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

13. In this case, the matter has been handled by different persons at different points of time on behalf of the plaintiff - (a) the negotiations and execution of agreement on 20.10.1978 were handled by plaintiff's attorney holder Paramjit Singh; (b) on 7.6.1979, the plaintiff was personally present and dealt with the matter himself; and (c) from 1.3.1980, the matter was dealt with by plaintiff's new attorney holder Jagtar Singh Sangha. The plaintiff neither signed the agreement of sale nor signed the plaint nor gave evidence, in particular, about his readiness and willingness. The agreement of sale was executed by plaintiff's



attorney holder Paramjit Singh who was not examined. The plaint was signed by plaintiff's attorney holder Jagtar Singh Sangha (PW1) in whose favour plaintiff had executed the power of attorney on 1.3.1980 and who had no personal knowledge of the transaction. The said attorney holder (PW1) was not aware of the execution of the agreement, nor what happened till the last date fixed for performance had elapsed, nor what transpired on 7.6.1979. The said attorney holder (PW1) clearly stated in his evidence that he was not aware of anything that transpired prior to 1.3.1980 when the power of attorney was executed in his favour. Nothing of relevance transpired after 1.3.1980 except the issue of the suit notice dated 5.3.1980. He did not know whether defendant committed breach nor did he know about the readiness and willingness of the plaintiff. He admitted in his evidence :

"I do not know the detailed terms and conditions of the transaction.... I do not know the facts of this transaction before my appointment in the year 1980..... I do not know whether plaintiff wrote any letter that he is ready to purchase this plot.... I do not know if anybody else also did any bargain in the transaction or not. I do not know who has been in correspondence on behalf of the plaintiff till June 1979".

The evidence of PW1 is therefore of no assistance in a suit for specific performance except to prove that he was authorised by the plaintiff to file a suit for specific performance.

14. The plaintiff who ought to have given evidence never appeared and gave evidence. As his attorney holder PW1 had no knowledge of the transaction, the plaintiff solely relied on the evidence of the property dealer Balraj Singh (PW2) to prove the execution of the agreement, the terms of the agreement, his readiness and willingness to perform the agreement and the



alleged breach by the defendant. But Balraj Singh cannot become a substitute for the plaintiff to give evidence about the finances or intentions or the readiness and willingness of plaintiff which were within the personal knowledge of the plaintiff. Balraj Singh was a property dealer engaged by plaintiff and supporting the plaintiff. He was not an attorney holder acting on behalf of plaintiff. Therefore, neither the evidence of Jagtar Singh (PW 1) nor the evidence of Balraj Singh (PW2) can be relied upon to prove that plaintiff was always ready and willing to perform his obligations under the contract, in terms of the contract. Therefore, it has to be held that though there were necessary averments in the plaint about the readiness and willingness of the plaintiff, and though PW1 and PW2 gave evidence about his readiness and willingness, the suit has to fail for failure to comply with Section [16\(c\)](#) of the Specific Relief Act, as there was no acceptable or valid evidence of such readiness and willingness of plaintiff to perform his part of the obligations in terms of the contract.”

(Emphasis added)

19. In this regard, reference may also be made to another judgment rendered by the Hon’ble Supreme Court in **Appeal (Civil) No. 6790 of 2003** titled as **Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. And others, decided on 06.12.2004**, wherein it is held that: –

*“..... **Vidhyadhar vs. Manikrao and Another, (1999) 3 SCC 573** observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. **Shambhu Dutt Shastri Vs. State of***



Rajasthan, 1986 2WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

The aforesaid judgment was quoted with the approval in the case of **Ram Prasad Vs. Hari Narain & Ors. AIR 1998 Raj. 185**. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri (supra) followed and reiterated in the case of Ram Prasad (supra) is the correct view.”

(Emphasis added)

20. The judgment of the Hon’ble Supreme Court in **Rajesh Kumar v. Anand Kumar, (SC) : Law Finder Doc Id # 2582158**, is also pertinent, relevant paras of which read as under:-



*“12. Having noticed the three judgments of this Court in **Janki Vashdeo Bhojwani (supra), Man Kaur (supra) & A.C. Narayanan (supra)**, we are of the view that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some ‘acts’ in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. The term ‘readiness and willingness’ refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness.*



13. In the light of above settled legal position, we are of the view that in the instant case, the plaintiff/appellant has failed to enter into the witness box and subject himself to cross-examination, he has not been able to prove the prerequisites of Section [12](#) of the Specific Relief Act, 1963 and more so, when the original agreement contained a definite time for registration of sale deed which was later on extended but the suit was filed on the last date of limitation calculated on the basis of the last extended time.”

(Emphasis added)

21. Clearly therefore, the SPA of plaintiff was not sufficient to prove the case of the plaintiff. The plaintiff has not even bothered to produce let alone prove the SPA given in favour of his son PW1. Even as per Order 3 Rules 1 and 2 CPC, Power of Attorney Holder is not supposed to depose about those facts which are or were in the personal knowledge of the principal. But in the present case, there is not one whit of evidence to show that PW1 had any personal knowledge of the Sale Deed.

22. On the contrary, PW1 has admitted in his cross-examination that he did not even know the date of execution of the Sale Deed. Thus, evidence of Suresh Kumar does not further the case of the appellant as Suresh Kumar while appearing as PW1 has admitted in his cross-examination that he does not know the date of execution of the Sale Deed. Clearly therefore, SPA of the plaintiff was not present at the time of execution of Sale Deed (Ex.P1); and can therefore not attest to the fact as to whether it was fraudulently obtained or not. From the above, it automatically follows that plaintiff has failed to prove



the alleged fraud. Only the evidence led by SPA of plaintiff is not sufficient to prove the alleged fraud. No other witness has been examined by the plaintiff. As such, plaintiff has miserably failed to prove his case.

23. On the contrary, the case of the plaintiff is further denuded from the document (Mark Z) produced by the defendants from which it is evident that plaintiff had applied for No Objection Certificate to sell his land to defendant No.1 and he was granted permission by the said Authority. In this regard, reference is made to Memo dated 18.09.2017 (Mark Z) produced by the defendants which reads as follows:-

*"To,
The Sub Registrar,
Palwal.*

Memo no. Date:

Sub: Issuance of NOC for the land falling within urban area notified for the purpose of section 7-A of Haryana Development and Regulation of Urban Areas Act 1975.

Ref.: Applicant letter dated 14.09.2017.

1. This office does not have any objection for registration of sale of total land of area measuring 4 Kanal – 4 ½ Marla falling in Khasra No. 10//23, 22, 22//2, in the revenue estate of village Ratipur, Tehsil-Palwal, District-Palwal by Sh. Dhan Singh S/o Sh. Shibban R/o Vill-Ratipur Tehsil & Distt. Palwal to Smt.Lajjabati W/o Sh. Raghuvir R/o Vill-Ratipur Tehsil & Distt. Palwa.

2. This NOC has been issued on the basis of draft sale deed submitted by the seller in the office of undersigned. It may be ensured that there is no variation in the contents of sale deed



being registered from the draft sale deed on the basis of which this NOC has been issued.

3. Buyer shall not raise any construction over the aforesaid land without prior permission of competent authority.

4. This NOC shall not provide immunity from any other Act or rules applicable on the plot/land.

*District Town Planner,
Palwal*

Endst.No.1882 Dated: 18/9/17

A copy is forwarded to the following for information:-

1. Sh. Dhan Singh S/o Sh. Shibban R/o Vill-Ratipur Tehsil & Distt. Palwal. (Seller).

2. Smt. Lajjabati w/o Sh. Raghuvir R/o Vill-Ratipur Tehsil & Distt. Palwal. (Buyer)

*District Town Planner,
Palwal"*

24. A perusal thereof shows that the appellant had made an application dated 14.09.2017 for issuance of NOC for sale of land measuring 4 kanal 4.5 marla to defendant No.1. It is but trite that if Sale Deed (Ex.P1) is a result of fraud then why did plaintiff apply for NOC to sell his land to defendant No.1. It is also trite that if the plaintiff could approach the Sub-Registrar for issuance of NOC then there is no reason as to why he could not appear in the Court to prove his case. Thus, the reason given by the plaintiff for not appearing in the Court due to old age is not tenable.

25. At the risk of repetition, it is reiterated that there is no satisfactory explanation whatsoever coming forth from the plaintiff side for non-



examination of the plaintiff. Therefore, adverse inference has been rightly drawn against the plaintiff. The only reason given for non-appearance of the plaintiff is that he is old and infirm and therefore unable to appear. However, there is nothing whatsoever on record to remotely indicate that plaintiff was physically indisposed or incapable to depose in the Court.

26. Moreover, the said contention of the appellant is falsified from the fact that it is the own case of the appellant that the SPA was executed by the plaintiff on 15.05.2018. Therefore, for execution of the same, plaintiff would have had to appear in the Court on 15.05.2018. It is but trite that if plaintiff could go to the Court for execution of SPA on 15.05.2018 then he could just as well come to the Court for his evidence. There is no reply forthcoming from the appellant side in this regard.

27. It has next been argued on behalf of the appellant that the Sale Deed (Ex.P1) has been executed without passing of any sale consideration. However, in the said Sale Deed itself, it has been specifically mentioned that the payment has been received in advance by the plaintiff. Again, it is but trite that if there is any variation in sale consideration mentioned in the Sale Deed or as stated by the defendants, then it will not prove that Sale Deed is result of fraud. The plaintiff is therefore taking mutually destructive pleas at one and the same time as, he can either take the plea that he has received no sale consideration; but then at the same time he cannot take the plea that entire sale consideration was not given.



28. To sum up, the appellant does not deny that his thumb impression and his photograph is borne on the impugned Sale Deed. It is also not denied by the appellant that the said document is a registered document. In this situation, the plaintiff cannot seek to wriggle out of the rigor of the registered Sale Deed merely by concocting the allegations of fraud; which allegation remained utterly unsubstantiated as plaintiff himself has not bothered to step into the witness box; and his SPA PW1 has admitted ignorance of even the date of execution of Sale Deed. Thus, case of the plaintiff remained totally unproved. Even no evidence has been led by the plaintiff to prove his possession over the suit land. On the other hand, defendants had led sufficient evidence to prove that from time to time, defendant No.2 has been paying money to the plaintiff and his son vide Agreement to Sell dated 17.06.2013 (Ex.D3) and Agreement to Sell dated 29.06.2015 (Ex.D5) vide which substantial amounts were paid to the plaintiff and his son.

29. Last but not the least, it is no longer res Integra that this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, wherein it is held as under:-

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, 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:

"15. 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."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

30. Reliance may be placed upon judgment of Hon'ble Supreme Court in **Randhir Kaur v. Prithvi Pal Singh (SC) : Law Finder Doc ID # 1544810**, wherein it is held that:-

"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.”

31. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts, findings, and legal position.

32. In view of the above discussion, present Regular Second Appeal stands **dismissed**.

33. Pending application(s) if any also stand(s) disposed of.

17.04.2026

Sunena

(Nidhi Gupta)
Judge

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