

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-1903-2018 (O&M)****Date of decision: 04.09.2025****Gurdeep Singh (now deceased) through
his LRs and another****...Appellant(s)****Vs.****Jameet Singh (now deceased) through
his LRs and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. C.M.Munjaj, Advocate for the appellants.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiffs No. 1 and 2 against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiffs for declaration and injunction, has been dismissed by both the Courts below.

2. The case of the plaintiffs is that Harbaksh Singh was a common ancestor of the plaintiffs and defendants No.1 and 2. Harbaksh Singh had died around 1960 leaving behind 4 sons and 4 daughters. Thereafter, entire property was divided equally amongst all 9 heirs. Then his wife Harnam Kaur had also expired. Harjit Kaur, daughter of Harbaksh Singh died on 03.06.1994. Plaintiffs No. 6 to 13 are the heirs of Harjit Kaur also known as Surjit Kaur. It was alleged that Defendant No.1 stating himself to be General Power of Attorney of plaintiffs No. 1 to 5 and of



Surjit Kaur and of defendant No. 2, had executed 6 Sale Deeds in favour of his sons/defendants No. 3 to 5 with regard to the suit land. Accordingly, plaintiffs filed the present seeking declaration that the said Sale Deeds are illegal, null and void as the plaintiffs had never appointed defendant No.1 as their General Power of Attorney. It was further pleaded that as there was dispute of land with the owner of adjacent land, defendant No. 1 had approached plaintiffs No. 1 to 5 and Surjit Kaur to authorize him to contest the matter. Therefore, limited Power of Attorney to the above effect was given to the defendant No. 1 as they believed defendant No. 1, being real brother; and had given their thumb impressions on the blank paper. However, defendant No.1 had fraudulently converted the same into General Power of Attorney and executed 6 Sale Deeds Ex.P3 to Ex.P8 without consideration and delivered the possession of the aforesaid property to defendants No. 3 to 6. With these pleadings, suit was filed on 31.08.1994.

3. Upon notice, the suit was resisted by defendant No. 1 and 3 by filing their respective written statements. The remaining defendants did not put in appearance and were proceeded against ex parte. During pendency of the suit, defendant No. 3 was also exparte. Defendant No.1 and 3 resisted the claim of the plaintiffs by taking a plea that suit was time barred under Order 2 Rule 2 CPC; the defendant alone was owner of suit property; the General Power of Attorney dated 19.07.1960 is legal, valid and genuine document, and dismissal of the suit was prayed for.



4. Plaintiffs filed replication to the written statement of defendant No.1 re-asserting the averments made in the plaint and denying those made in the written statement.

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

“1. Whether the suit is not maintainable in the present form?

OPD

2. Whether the suit is barred under order 2 rule 2 C.P.C?OPD

3. Whether the plaintiff is entitled to declaration and injunction prayed for ?OPP

3-A. Whether suit is within limitation ?OPP

4. Whether suit has been valued properly for the purpose of court fee and jurisdiction?OPP

5. Relief.”

6. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Additional Civil Judge (Senior Division), Abohar vide judgment and decree dated 22.01.2015, had dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs No. 1 and 2 was also dismissed by learned Additional District Judge, Fazilka vide judgment and decree dated 19.01.2017. Hence, the present second appeal by the plaintiffs no.1 and 2.

7. Learned counsel for the appellants submits that amongst the 4 brothers and 4 sisters, 3 brothers and 4 sisters are on one side and one brother who is defendant No.1 is on the other side. It is submitted that learned Courts below were in patent error in dismissing the suit of the



plaintiffs as they failed to consider that the original of the General Power of Attorney dated 19.07.1960 was never brought on record by the plaintiffs. Even no witness was examined in relation to the said General Power of Attorney. The said General Power of Attorney was even not proved in accordance with law as no handwriting expert was examined. It is contended that accordingly, the submissions of the plaintiffs that they had never executed any General Power of Attorney in favour of defendant No.1 stood proved. It is contended that learned Courts below also failed to appreciate the malafide intention on the part of defendant No.1 that all Sale Deeds were executed by him in favour of his close relatives which in itself creates sufficient doubt in mind of prudent person regarding the said Sale Deeds.

8. It is further submitted by learned counsel for the appellants that the learned courts below did not appreciate that the defendants failed to place on the file the original Power of Attorney despite a specific application of the plaintiffs. The defendants have not explained the reasons for non-production of the original Power of Attorney on the file. The learned lower Court did not appreciate that a registered document was required to be proved as per requirement of the law, if there is specific denial.

9. It is further submitted that as the said Power of Attorney was propounded by the defendants, the onus was upon them to prove by positive evidence that the said General Power of Attorney was actually



executed. It is argued that at most, the plaintiffs could deny the said General Power of Attorney, which they have, and therefore, onus to prove the same was upon the defendants. Plaintiffs could not have been called upon to prove the genuineness of the said document by way of negative evidence. It is submitted that learned Courts below did not appreciate that the defendants have failed to prove the validity of the General Power of Attorney. The defendants have failed to even examine any attesting witness or Scribe of the General Power of Attorney. It is accordingly prayed that the present Regular Second Appeal be allowed; and the judgments and decrees of the learned Courts below be set aside.

10. No other argument is made on behalf of the appellant. I have heard Id. counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellants.

11. It is firstly to be noticed that the General Power of Attorney dated 19.07.1960 Ex.D-5 is a registered document bearing Vasika No. 108, which was registered in the office of Sub Registrar, Padampur. Needless to say, it requires no proof of procedure that the GPA could not have been registered in the absence of the plaintiffs. It has also been proven on record that the plaintiffs appeared before the Sub Registrar to get the GPA registered, which is a necessary ingredient in the registration process of a document. Presence of the plaintiffs is proven from the evidence of DW2 Chhattar Singh, LDC office of Sub Registrar, Sri Ganga Nagar who had brought the record pertaining to Vasika No. 108 Ex.D5/GPA in question.



DW2 duly proved General Power of Attorney dated 19.07.1960. He further stated that General Power of Attorney could not have been registered unless party had appeared before the office of Sub Registrar and affixed either through thumb impressions or signatures upon the said document. DW2 had further brought the register No. 8 where thumb impressions were affixed by the parties. Moreover, except plaintiff No.1 Gurdeep Singh, none of the plaintiffs have stepped into witness box to depose that they did not execute any Power of attorney of defendant No.1.

12. Further, it has come on record that the plaintiffs never placed a copy of the said General Power of Attorney on record. However, General Power of Attorney Ex.D5 being a registered document, presumption of truth is attached to the same. Moreover, Plaintiff has admitted that he did not even apply to get the certified copy of the said General Power of Attorney. In this circumstance, the above-noted arguments of the plaintiffs regarding non-production of the GPA by the defendant, are not tenable.

13. Furthermore, Plaintiff no.1 who had appeared as PW1 had deposed that one Principal Gurcharan Singh had appended thumb impression of plaintiff No.1. In his cross-examination, Plaintiff no.1 had stated that he had taken the opinion of a handwriting expert to whom he had admitted having paid Rs.3500; and that Handwriting expert had given a report that thumb impressions borne on the General Power of Attorney are not that of plaintiff and are result of fraud. However, Plaintiff was not even



able to give the name of the handwriting expert nor produce the said report.

14. It has come on record that the plaintiff had also initiated criminal proceedings against defendant no.1 alleging that the GPA was obtained by fraudulent means. However, the defendant placed on record a certified copy of judgment of acquittal dated 26.08.2000 Ex.D7 passed in the criminal complaint filed by the plaintiff No.1 against the defendants. Thus, plaintiffs had failed to prove that the GPA was a forged document as alleged.

15. It may be pointed out that in the said criminal proceedings, the plaintiff had pleaded that he had cancelled the General Power of Attorney by giving notice to the defendant on 17.03.1977. The only conclusion that can be drawn from the said statement is that plaintiff is admitting having executed the said General Power of Attorney; as question of cancellation of GPA would arise only if the same is executed.

16. It may also be pointed out that the plaintiffs had initially averred that they were dispossessed by the defendants on 15.05.1995. However, subsequently, plaintiffs clarified the same to be a mistake and admitted that they never remained in possession over any part of suit property after the death of Harbaksh Singh and it is the defendant No.1; and after Sale Deeds, respective defendants who are in possession of suit property. In this view of the matter, Sale Deeds emanating from the said General Power of Attorney cannot be held to be illegal, null and void.



17. Even the argument of the plaintiff that Sale Deeds have been executed without consideration, is proved to be wrong as perusal of the Sale Deeds Ex. P3 to Ex.P8 reveals that Sale Deeds have been executed for consideration. Except present appellants/plaintiffs No.1 and 2, other plaintiffs have not filed any appeal against the judgments and decrees passed by learned Courts below.

18. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

04.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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