

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1550 of 2024 (O&M)
Date of Decision: 28.04.2025

Balwant Singh ...Appellant

V/s

Darbara Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Lalit Pathak, Advocate, for the appellant.

VIKRAM AGGARWAL, J.

This is plaintiff's appeal filed against the judgment and decree dated 16.03.2024 passed by the Court of learned District Judge, Kapurthala, dismissing the appeal filed against the judgment and decree dated 25.02.2020 passed by the Court of learned Addl. Civil Judge (Sr. Divn), Kapurthala, vide which the suit for joint possession and for permanent injunction filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Balwant Singh) is the real brother of defendant No.1 (Darbara Singh), both being sons of Teja Singh. Defendant No.2 (Gurdip Singh) is the son of defendant No.1 (Darbara Singh) and nephew of the plaintiff. On the basis of a power of attorney dated 22.12.2010 allegedly executed by the plaintiff in favour of defendant No.1, defendant No.1 sold the suit property in favour of his son (defendant No.2) vide two sale deeds dated 26.07.2011 and 01.01.2013. The plaintiff filed a suit for joint possession to the extent that he was owner in possession of 16 parcels of

land, as per the share of the plaintiff (fully described in the plaint), situated in Village Saidowal, Tehsil and District Kapurthala (hereinafter referred to as the "suit property"). After declaring the sale deeds dated 26.07.2011 and 01.01.2013 as illegal, null and void, consequential relief of permanent injunction restraining the defendants from alienating, transferring or creating any charge over the suit property was also sought.

4. The case set up by the plaintiff was that the plaintiff along with his family was intending to settle abroad. For the said purpose, he was in need of financial help as a result of which he approached defendant No.1. Defendant No.1 gave loans from time to time which ultimately came to Rs.12 lakhs. On account of the close relationship, no document had been executed. However, defendant No.1 persuaded the plaintiff to execute a power of attorney in his favour for the management of the suit property. Not being able to foresee any fraud, the plaintiff agreed. Defendant No.1 took the plaintiff to the Tehsil office in Kapurthala and obtained his thumb impressions and signatures on several documents and registers. The plaintiff was also taken to the Sub-Registrar office for taking photographs etc. but no document was read over or explained to the plaintiff either by the scribe or by the Sub-Registrar. The plaintiff was made to believe that the documents had been executed giving only an authority to defendant No.1 to act on behalf of the plaintiff during his absence. However, it later came to the notice of the plaintiff that a false/forged and fictitious power of attorney dated 22.12.2010 was got prepared by defendant No.1 which included a right to sell the suit property. When the plaintiff came to know about the intentions of defendant No.1, the said power of attorney was cancelled on 26.07.2016. It also came to the notice of the plaintiff that defendant No.1 had also prepared some documents as regards Rs.12 lakhs being due from

the plaintiff and had converted it into an agreement to sell dated 22.12.2010. After the son of the plaintiff namely Sukhwinder Singh met with an accident on 31.08.2011, defendant No.1 again prevailed upon the plaintiff to execute a special power of attorney in favour of defendant No.1 to pursue the compensation case. Accordingly, a power of attorney dated 10.03.2012 was executed and defendant No.1 succeeded in obtaining the signatures and thumb impressions of another son of the plaintiff namely Parwinder Singh and wife of the plaintiff namely Balbir Kaur as regards Rs.12 lakhs which the plaintiff owed. Defendant No.1 was also not paying any lease money of the suit property to the plaintiff and when the plaintiff confronted him, defendant No.1 stated that the suit property had been transferred in favour of defendant No.2 by registered sale deeds dated 26.07.2011 and 01.01.2013. Accordingly, the suit was filed.

6. The suit was resisted by the defendants. In the written statement, certain preliminary objections as regards maintainability, concealment, *locus standi*, cause of action, the suit being barred by limitation and the requisite Court fee not having been affixed etc. were raised. On merits, the relationship was admitted. It was averred that the son and wife of the plaintiff had executed two affidavits in favour of defendant No.1, stating that Rs.12 lakhs had been taken as loan from defendant No.1 for business of the plaintiff. Registered sale deed dated 22.12.2010 along with an agreement to sell were also executed. Affidavits were also executed by the wife of the plaintiff and his son that they would have no objection if the sale deed was executed. Factum of the cancellation of the power of attorney was denied for want of knowledge. Other averments were denied.

7. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

8. From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to the relief of declaration, as claimed for?OPP*
- 2. Whether the plaintiff is entitled to the relief of perpetual injunction, as claimed for ?OPP*
- 3. Whether the suit filed by the plaintiff is not maintainable?OPD*
- 4. Whether the plaintiff has got no locus standi and cause of action to file the present suit?OPD*
- 5. Whether the plaintiff has not approached the Court with clean hands and has suppressed the material facts from the Court?OPD*
- 6. Whether the suit is not within time limitation?OPD*
- 7. Whether the suit is bad for valuation of Court fee and jurisdiction?OPD*
- 8. Relief.”*

9. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff and the appeal against the judgment and decree of the trial Court was also dismissed by the first Appellate Court, leading to the filing of the present second appeal by the defendant.

10. I have heard learned counsel for the appellant.

11. Learned counsel for the appellant has strenuously urged that both the Courts erred in non-suiting the plaintiff. Learned counsel has referred to the oral and documentary evidence led on the record of the case and has submitted that from the evidence led by the defendants, the case of the plaintiff stands proved. On a query raised by the Court that neither the plaintiff nor his son had appeared for cross-examination after having initially appeared as witnesses, learned counsel for the appellant had no answer. Learned counsel also did not have any answer to the query of the Court as to on what basis, the suit could have been decreed once no evidence was led by the plaintiff. Learned counsel, however, referred to the judgments under challenge and has made strenuous efforts to convince the Court that it is a

case of fraud.

12. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

13. The plaintiff pleaded fraud. It was the categorical case of the plaintiff that defendant No.1 had taken the plaintiff to the office of the Sub-Registrar where he obtained the signatures and thumb impressions of the plaintiff on various papers and also took him to the office of the Sub-Registrar for photograph etc. but none of the documents were read out to him either by the Sub-Registrar or by the scribe of the documents. It is settled law that a fraud has not only to be pleaded but has to be proved beyond reasonable doubt. Reference can be made to the judgment of the Supreme Court of India in ***Union of India V/s M/s Chaturbhai M. Patel & Co.*** AIR 1976 SC 712. Instead of proving the same beyond reasonable doubt, the plaintiff practically produced no evidence to even *prima facie* prove his contention. The plaintiff initially appeared as PW1 and his son Parwinder Singh appeared as PW3. Both tendered their affidavits in examination-in-chief as Ex.PW-1/A and PW-3/A respectively. However, none of them turned up for cross-examination as a result of which, their examination-in-chief was also rightly not considered. The plaintiff clearly avoided being cross-examined. The signatures and thumb impressions having been admitted, the evidence of the plaintiff and his son or his other family members or the witnesses on the documents would have been of utmost importance. However, no one was examined. PW2 was one Jeet Singh, who only stated that the suit property was in possession of the plaintiff. His evidence was neither here nor there. He did not state any relevant fact. PW4 (Joginder Singh) was power of attorney holder of the plaintiff to whom general power of attorney Ex.P1 had been given. He

admitted that the plaintiff had borrowed Rs.12 lakhs from defendant No.1 but stated that the amount had been repaid though not in his presence. His evidence was also kind of irrelevant and he can be stated to be a witness who appeared just to depose as a witness and in fact did not depose about anything relevant.

14. On the contrary, defendant No.1 himself stepped into the witness box as DW-1 and produced sale deeds as Ex.D1, Ex.D5 and Ex.D6 respectively. The agreement to sell was produced in evidence as Ex.D2 and the affidavits sworn by Balbir Kaur and Parwinder Singh were produced as Ex.D3 and Ex.D4 respectively. Not only this, Salinder Singh, ex-Sarpanch of the Village Saidowal stepped into the witness box as DW-2, being the attesting witness of both sale deeds under challenge. One brother of the plaintiff and defendant No.1 namely Mohinder Singh also appeared as DW3, who was a witness to the general power of attorney dated 22.12.2010. He proved the execution of the same.

15. It is, therefore, clear that the plaintiff practically led no evidence to prove his case. It is settled law that the plaintiff was to prove his own case by leading cogent evidence and the weakness, if any, in the case of the defendants would not come to the aid of the plaintiff. Both the Courts rightly drew an adverse inference against the plaintiff for not having stepped into the witness box for cross-examination. The same adverse inference was drawn against the son of the plaintiff also.

16. Even if the matter is examined, without any evidence from the side of the plaintiff, it is hard to believe that someone would sign or thumb mark many documents without even reading them or without understanding the nature of the documents. It is further hard to believe that even at the time of registration, the plaintiff did not come to know as to what documents

were to be executed. The plaintiff was a human being capable of understanding and perceiving things and was a person with sound mind. No doubt, it has come on record that he was an alcoholic, however, this alone would not be sufficient to prove fraud by the defendants.

17. Both Courts, therefore, rightly non-suited the plaintiff and accepted the version given by the defendants. Though the present appeal was based purely upon appreciation of evidence, this Court still ventured into the same, lest non-examination of the evidence may cause prejudice to the plaintiff. After delving deep into the matter, this Court finds absolutely no merit in the present appeal and no illegality in the findings returned by both the Courts.

18. In view of the above, finding no merit in the appeal, the same is dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

April 28, 2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No