

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA No. 977 of 1988 (O&M)****Reserved on : 01.09.2025****Date of Pronouncement :- 11.09.2025****Partap Singh (Through LRs)****...Appellant****Versus****Roshan Lal and others****...Respondents****CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL****Present:-** Mr. Kamaljeet Singh, Senior Advocate with
Ms. Muskan Sharma, Advocate for appellant No. 1(b).Mr. P.S. Ahluwalia, Advocate withdraw
Mr. Vipul Dharmani, Advocate for appellant No. 1(a)(i).Mr. Shailendra Jain, Senior Advocate with
Mr. Rahul, Advocate and Mr. Munish Kumar, Advocate
for respondents No. 11 and 12.

VIRINDER AGGARWAL, J.

1. Appellant-plaintiff filed a suit for declaration claiming himself to be owner of the suit property and that sale deed dated 11.02.1970 executed on his behalf by defendant No. 1 in favour of defendant No. 2 regarding suit property as illegal, null and void and ineffective against the rights of plaintiff and further for declaration that subsequent sale deeds effected by defendant No. 2 in favour of defendants No. 3 to 9 are also illegal, null and void and ineffective against the rights of the plaintiff and are liable to be set aside with consequential relief of possession of suit property and for restraining defendants No. 2 to 9 from alienating the property to any person.



2. Briefly stated, plaintiff executed general power of attorney in favour of defendant No. 1 on 20.12.1960 to manage his affairs and he was acting as house hold controller of the plaintiff. Defendant No. 1 misused the power of attorney and by keeping plaintiff in complete dark and without his authorization entered into various transactions including the sale deed dated 11.02.1970 executed in favour of defendant No. 2 Achhra Rani. Achhra Rani is wife of business partner of defendant No. 1. The sale deed has been assailed on the grounds that it has been executed without any right and beyond the powers conferred on defendant No. 1 and without the knowledge of the plaintiff. Plaintiff was having no necessity to sell the property. Sale consideration is inadequate. Market value of the suit land is at least five times of the sale consideration. Defendant No. 10 is shown as tenant at the monthly rent of Rs.500/- and rent is being collected by defendant No. 1 himself. No consideration has been passed to the plaintiff. Defendant No. 1 is claiming himself to be landlord of the property which clearly shows that the sale deed is a Benami transaction. All the subsequent sale deeds executed by defendant No. 2 in favour of defendants No. 3 to 9 are also assailed as illegal, null and void and suit was filed.

3. Defendants No. 2 and 3 filed written statement denying the averments of the plaint and raised legal pleas that suit is not properly valued for the purposes of Court fee and jurisdiction and suit is not maintainable in the present form. Defendants No. 7 and 9 filed written statement claiming themselves to be bonafide purchasers of consideration without any notice and also raised legal pleas of suit being bad for mis-joinder of parties and causes of actions, suit being under valued being barred by limitation. Defendant No. 10 filed written statement admitting that defendant No. 1 was



appointed attorney by the plaintiff and he was acting as house hold controller of the plaintiff. It was denied that defendant No. 1 misused the power of attorney and it was pleaded that all the transactions were entered by defendant No. 1 on behalf of the plaintiff with the full knowledge and at the instance of the plaintiff. It is denied that defendant No. 1 misused the confidence reposed in him or that he caused any loss to the plaintiff by entering into unauthorized transactions. The sale consideration was used by the plaintiff for his own personal use. It was denied that defendant No. 2 is the wife of business partner and close friend of defendant No. 1. It was alleged that sale deed is legal, valid, effective and operative and it was further pleaded that answering defendant is in possession of the suit property as tenant under defendant No. 2 upto 04.04.1977 and after that he is paying rent to defendants No. 11 and 12 as they had purchased the premises from defendant No. 2 and further pleaded that suit is barred in view of earlier suit filed by the plaintiff against defendant No. 1 for rendition of accounts which is still pending and suit is barred in view of provisions of Section 10 of CPC. It was pleaded that subsequent purchasers has built their houses on respective lands by spending lakhs of rupees even by raising loan from the Punjab Government by mortgaging their houses and lands. Plaintiff filed replication reiterating the contents of the plaint and denying the averments of the respective written statements. Remaining defendants were proceeded against ex-parte.

4. From the pleadings of the parties, the following issues were framed :-

“1. Whether the suit is properly valued for purpose of court fee and jurisdiction?OPP



2. Whether the sale deed dated 11.2.70 executed by defendant no.1 in favour of defendant no.2 regarding land measuring 14 kanals 3 marlas is illegal, unlawful, inoperative and not binding on the rights of the plaintiff?OPP
 3. Whether the subsequent sales in favour of other defendants are illegal, void, unlawful and without authority?OPP
 4. Whether the suit is not maintainable in the present form? OPD.
 5. Whether the plaint has not been presented by a duly authorised person?OPD.
 6. Whether the plaint is not properly verified?OPD.
 7. Whether the suit is bad for non-joinder of necessary parties? OPD.
 8. Whether plaintiff is estopped from filing the suit by his own act and conduct?OPD.
 9. Whether the suit is liable to be stayed under section 10 C.P.C.?OPD.
 10. Whether this court has no jurisdiction to entertain and try this suit?OPD.
 11. Whether the vendee defendants are bonafide purchasers in good faith and for valuable consideration from the ostensible owner and their sales are protected under section 41 of the T.P.Act?OPD.
 12. Whether the suit is within limitation?OPP
 13. Whether the defendants have effected improvemens? If so, to what extent and to what effect?OPD.
 14. Relief.”
5. The parties were granted opportunities to lead respective evidence and thereafter the learned Sub Judge First Class, Nabha decreed the suit of the plaintiff and plaintiff was declared owner in possession of the disputed property and sale deed executed by defendant No. 1 in favour of defendant No. 2 was declared as a sham transaction being ineffective against the rights of the plaintiff and subsequent sale deeds executed by defendant



No. 2 in favour of defendants No. 3 to 9 were also declared illegal, null and void and plaintiff was held entitled to possession of the suit property and defendants were restrained from alienating the suit property to any other person.

6. Aggrieved by the judgment and decree so passed, defendants No. 10 and 11 preferred the appeal and the findings recorded by the learned Sub Judge First Class on issues No. 2, 3 and 12 were assailed and the learned Additional District Judge allowed the appeal and set aside the judgment and decree passed by the Court of Sub Judge First Class, Nabha and dismissed the suit of the plaintiff.

7. Respondent-plaintiff aggrieved by the judgment and decree so passed filed the present appeal. Notice was served upon respondents. Respondents No. 11 and 12 contested the appeal. Lower Court record was requisitioned.

8. Learned counsel for the appellant submitted that learned Additional District Judge has erred in law as well as on facts by reversing the finding on issue no. 2. The learned District Judge failed to notice that sale consideration is grossly inadequate and sale deed is fictitious and that property has been transferred by defendant No. 1 in his own favour by taking advantage of the power of attorney as defendant No. 2 is only Benami of defendant No. 1. Learned District Judge failed to notice that defendant No. 1 was exercising the powers of owner with regard to suit property after sale of the property to defendant No. 2 as he has claimed himself to be landlord of the premises in litigation with defendant No. 10 and the learned District Judge further fail to notice that defendant No. 1 has breached the confidence of the plaintiff and has misused his authority as attorney. The



learned District Judge was wrong in observing that suit has been filed after 15 years of execution of the sale deed whereas the suit has been filed well within the period of limitation from the date of knowledge of the sale deed to the plaintiff and even otherwise the suit was filed within a period of nearly 06 years from the execution of sale deed. The learned District Judge further erred in observing that the sale consideration has been admitted by plaintiff as he has paid Court fee at the value of Rs.30,000/-. So the findings recorded by the learned District Judge be set aside and that of learned Sub Judge First Class, Nabha be restored.

9. Learned counsel for respondents No. 11 and 12 argued that there is no illegality and infirmity in the findings recorded by the learned Additional District Judge. Learned Additional District Judge has properly appreciated the evidence on record and it was for the plaintiff to prove its own case but plaintiff has not stepped into the witness box so adverse inference is to be drawn against the plaintiff. Limitation to file suit has been claimed by the plaintiff from the date of his knowledge. So this knowledge of the plaintiff with regard to execution of the sale deed regarding suit property by defendant No. 1 in favour of defendant No. 2 is personal to the plaintiff and power of attorney or any other witness cannot prove the same. Therefore, the suit was rightly held to be barred by limitation and non-appearance of the plaintiff in the witness box has caused prejudice to the defendants as they could not cross-examine the plaintiff with regard to his authorization regarding execution of the sale deed in favour of defendant No. 2 and prayed for dismissal of the appeal.

10. The learned Additional District Judge, Patiala has recorded findings that the legality and validity of power of attorney executed by



plaintiff in favour of defendant No. 1 has not been challenged in the suit and it was further observed that as per terms of the power of attorney plaintiff appointed defendant No. 1 Roshan Lal to sell any immovable property belonging to him by private negotiations or at some public auctions and signed and executed and get registered such document as may be necessary for completing any such transaction of sale and in exercise of that power defendant No. 1 executed the sale deed dated 11.2.1970 (Ex. P2) in favour of defendant No. 2 for a consideration of Rs.20,000/-. The learned Additional District Judge was factually incorrect when he observed that sale deed was being challenged after a gap of nearly 15 years as it is clear that the sale deed has been challenged within a period of just about 6 years.

11. Learned Additional District Judge further observed that plaintiff was the best witness to depose in support of the pleas raised by him and his failure to appear as a witness is certainly fatal and adverse inference should have been drawn by the trial Court against plaintiff. Non-appearance of Roshan Lal defendant could not be made use by the trial Court as defendant Roshan Lal was representing plaintiff and his non-appearance could well to be in collision with the plaintiff to defeat the rights of co-defendants.

12. He further recorded finding that inadequacy of the sale consideration by itself is not a ground to avoid the sale transaction. Further more sale consideration cannot be said to be inadequate in view of admitted position that vide sale deed Ex.D4 of the same date i.e. 11.02.1970. The same attorney Roshan Lal sold land measuring 17 kanals 09 marlas, which is 03 kanal 06 marlas more in area than the area covered by the impugned sale deed, to Kaushalya Rani wife of erstwhile ADC of the plaintiff for the same consideration. The trial Court tried to distinguish the sale deed Ex.D4 from



sale deed Ex.P2 by showing that since vendee was wife of ADC of the plaintiff so some concession might have been given to vendee but there is no evidence or plea in this regard and there is no basis for raising any such presumption of concession.

13. Learned Sub Judge First Class relied upon the testimony of PW2 with regard to price of the property at the time of execution of sale in favour of defendant No. 2 but the same does not inspire any confidence. The sale deed Ex.D4 executed on the same day and of more area has not been disputed. The sale deed under challenge cannot be held to be under value. The inadequacy of the consideration is a relevant circumstance only when the transaction is challenged on the ground of fraud or undue influence. There is no clear cut averment of fraud, undue influence or coercion. The sale deed cannot be held to be sham merely on account of the fact that after execution of the sale deed defendant No. 1 was recovering rent from defendant No. 10 whereas it is a clear cut stand of tenant that petitioner of that petition is claiming rent on behalf of landlord and Achhra Rani is the landlord and owner of the property in his occupation. Even Achhra Rani in her written statement dated 14.05.1975, copy of which is Ex. P11 has asserted her claim being owner of the property and doctor being her tenant, so the findings of defendant No. 1 being the real owner and defendant No. 2 being Benamidar are not sustainable. The learned First Appellate Court further recorded a finding that after sale deed dated 11.02.1970, another power of attorney, copy of which is Ex.D9 was executed in favour of defendant No. 1 Roshan Lal and the contents of Ex.D9 belies the claim of plaintiff that he came to know about the sale deed only on 15.02.1976. Defendant No. 1 was authorised and empowered by the plaintiff vide Ex. D9



again to sell his properties. At the time of executing this power of attorney the principal was well aware that some of the property of the Estate of 'Hira Mahal' has already been sold by Roshan Lal and in this power of attorney Ex. D9 Roshal Lal attorney was directed to finalise the transactions after consultation with Gurcharan Singh of Patiala and out of the sale considerations Ist six lakhs were to be paid to Gurcharan Singh. Plaintiff would not have executed the second power of attorney in favour of defendant No. 1 if defendant No. 1 would not have accounted for amounts already collected. So the findings of issues No. 2 were reversed.

14. As regards limitation is concerned in recording findings on issue No. 12, the learned First Appellate Court held that in the absence of plaintiff stepping into the witness box to prove that he came to know about the execution of the sale deed immediately prior to filing of the suit, the testimony of Harnek Singh is of no value and findings of issue No. 3 are based upon the findings on issue no. 2.

15. Learned counsel for the appellant argued that the sale deeds in favour of respondents No. 11 and 12, the only contesting respondents were executed during the pendency of the suit and they are bound by the decision of the suit and they cannot claim themselves to be the bonafide purchasers and relied upon the law laid down by the Apex Court in the case of ***“Chander Bhan (D) Through LR Sher Singh versus Mukhtiar Singh & Ors.”*** 2024 INSC 377. The Lordships in para No. 16 of the judgment has laid down that object of doctrine of lis pendens is for maintaining status quo. The relevant para of the judgment reads as under :-

“16. The object underlying the doctrine of lis pendens is for maintaining status quo that cannot be affected by an act of any



party in a pending litigation. The objective is also to prevent multiple proceedings by parties in different forums. The principle is based on equity and good conscience. This Court has clarified this position in a catena of cases. Reference may be made here of some, such as: Rajendra Singh v. Santa Singh, AIR 1973 SC 2537, Dev Raj Dogra v. Gyan Chand Jain, (1981) 2 SCC 675, Sunita Jugalkishore Gilda v. Ramanlal Udhoji Tanna, (2013) 10 SCC 258.”

16. No doubt the sale deed in favour of contesting respondents No. 11 and 12 was executed during the pendency of the suit and the plea of bonafide purchasers for consideration without notice is not available to them and their sale deed would be hit by the principle of lis pendens but they have right to contest the suit or appeal as decision of the suit or appeal would be binding upon them. They can assert their so right when defendant No. 2 has not come forward to contest the suit as she has assigned her ownership to defendants No. 3 to 9, 11 and 12.

17. Learned counsel for the appellant further contended that the terms and conditions of general power of attorney must be strictly construed and acts of an agent pre-judicial to the interest of the principal can be repudiated under Section 215 of Indian Contract Act, 1872 and he relied upon the law laid down by a Coordinate Bench of this Court in the case of **“Nirmal Singh Sehmbey versus Kuldip Singh and others 2025 NCPHHC 43588** wherein para No. 29 it was held as under :-

“29. In the considered opinion of this Court, this judgment squarely applies to the facts of the present case. The Privy Council and the Lahore High Court held that powers of attorney must be strictly pursued and construed as only giving such authority as they confer expressly or by necessary implication. The Full Bench of the Nagpur High Court also interpreted a



power of attorney, where power of sale was also given and it was held that the power of sale was to be exercised only if it was necessary of the purpose of management and not otherwise.”

18. He further argued that starting point of limitation in cases involving setting aside of the sale deeds is the date when the plaintiff became aware of the deed and relied upon law laid down by the Apex Court in the case of ***“Thankamma George versus Killy Thomas and Another”*** **2024 INSC 494** and contended that the findings recorded by the First Appellate Court on issues No. 2, 3 and 12 be set aside and appeal be allowed.

19. Whereas counsel for the respondents argued that the plaintiff in the suit has not challenged the genuineness and validity of the power of attorney and power of attorney in dispute as well as subsequent power of attorney, copy of which is Ex.D9 clearly shows that power to alienate the properties of the principal was granted to defendant No. 1.

20. Further more, it is proved on record that defendant No. 1 has sold number of properties of the plaintiff and plaintiff has not challenged those sale deeds rather plaintiff has filed a suit for rendition of accounts against defendant No. 1 as per plaintiff defendant No. 1 was not rendering accounts to plaintiff. He further argued that sale deed Ex. D4 which was executed on the same day when sale deed Ex. P2 was executed has not been assailed or challenged by the plaintiff and the learned First Appellate Court has rightly concluded that power of attorney has not misused his position and has not committed any breach of trust rather the sale deed was executed as per the power conferred by the plaintiff in power of attorney and the same was a genuine transaction. He relied upon the judgment of a Coordinate



Bench of this Court in the case of “*Ajmer Singh versus Sohan Lal*” passed in RSA 2105 OF 1983 decided on 21.09.1995 and a judgment passed by the Apex Court in the case of “*Iswar Bhai Patel versus Harihar Behera (1999) 3 Supreme Court Cases 457*, “*Vidhyadhar versus Manikrao and another (1993) Supreme Court Cases 573*, ‘*Janki Vashdeo Bhojwani and another versus Indusind Bank Limited and others*’ (2005)2 *Supreme Court Cases 217*, and a judgment passed by a Coordinate Bench of this Court in the case of ‘*Garg Concast Limited versus Satnam Singh and another*’ passed in RSA No. 2513 of 2016 decided on 01.03.2018 and he submitted that appeal be dismissed and well reasoned judgment of the First Appellate Court be upheld.

21. I have heard learned counsel for the parties and carefully gone through the record.

22. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of Punjab Courts Act, 1918 and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ‘*Pankajakshi (Dead) through LRs and others V/s Chandrika and others*’, (2016)6 SCC 157, followed by the judgments in the case of ‘*Kirodi (since deceased) through his LR V/s Ram Parkash and others*’ (2019) 11 SCC 317 and ‘*Satender and others V/s Saroj and others*’, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

23. In the present case, the execution of power of attorney by plaintiff in favour of defendant No. 1 Roshan Lal has not been denied rather it is admitted case of the appellant-plaintiff that he executed power of



attorney in favour of defendant No. 1 Roshan Lal and the learned First Appellate Court has rightly interpreted that power to alienate was conferred upon defendant No. 1 by plaintiff vide power of attorney. It is the case of the plaintiff that Roshan Lal has breached the confidence and has exceeded to the power conferred vide power of attorney and has kept plaintiff in dark about the transaction. Any transaction of the agent is to the detriment of the principal is bad. Ex. D8 is copy of power of attorney executed by plaintiff Partap Singh on 20.12.1960 and the first and foremost power delegated to the attorney in clause 1 read as under :-

“To sell any immovable property belonging to me by private negotiations or at some public auction and sign and execute and get registered such documents or documents as as may be necessary for completing any such transaction of sale.”

24. So this power to sell was conferred upon defendant No. 1 vide power of attorney Ex.D8. Existence of genuineness of the power of attorney and it's terms and conditions has not been disputed by the appellant-plaintiff. The only dispute is with regard to defendant No. 1 agent having exceeding power delegated to him and exercising the power to the detriment of principal. Section 215 of Indian Contract Act, 1872 is relevant for the purposes of this case as vide that provision the principal has power to repudiate any act of agent if it is proved that any material fact has been dishonestly concealed from the principal or the dealings of the agent have been disadvantageous to him. Section 215 of the Indian Contract Act, 1872 reads as under :-

"215: Right of principal when agent deals, on his own account, in business of agency without principal's consent.-



If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows. either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of G. A. on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself. b conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A. on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option."

25. It is for the principal to prove that agent has dishonestly concealed any material fact from the principal or the dealings were disadvantageous to the principal. So the concealment of material fact is certainly personal to the plaintiff and it is only the plaintiff who could have prove the fact that material facts has been concealed by defendant No. 1 from the plaintiff while entering into the sale transaction in favour of defendant No. 2.

26. Hon'ble Apex court in the case "***Iswar Bhai Patel versus Harihar Behera***" (*Supra*) in para No. 29 has held that in case the party fail to step into the witness box to make statement in support of his pleading



then adverse inference has to be drawn against the party. The relevant portion of para No. 29 of the judgment reads as under :-

“29. Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness-box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against him.”

27. In the present case, the plaintiff Partap Singh has not stepped into the witness box and the learned First Appellate Court has drawn an adverse inference with regard to the non-appearance of the plaintiff to support his case. Plaintiff has examined PW Deen Dayal as his attorney who has deposed on behalf of the plaintiff. Order 3 Rule 1 and 2 of CPC empower the holder of power of attorney to act on behalf of the principal but that power does not include the power of deposing in place of principal.

28. My above view is supported by the judgment of Hon'ble Apex Court in '***Janki Vashdeo Bhojwani and another versus Indusind Bank Limited and others***' (*supra*), wherein para No. 13 Hon'ble Apex Court held as under :-

“13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the 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 acts 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 a personal knowledge and in respect of which the principal is entitled to be cross-examined. “

29. Since the facts which were required to be deposed were personal to the plaintiff as it is only known to the plaintiff that as to if the power of attorney Roshan Lal has kept him apprised of the sale deed to be executed in favour of Achhra Rani or not. So this power of making statement by the plaintiff with regard to the facts which are in his personal knowledge cannot be delegated to the power of attorney and the learned First Appellate Court has rightly drawn an adverse inference against the plaintiff as he failed to step into the witness box to make statement in support of his plaint.

30. As regards the sale deed being disadvantageous to the plaintiff is concerned, plaintiff has no doubt examined one Jugal Kishore, a retired SDO as PW2. He is in the service of Nabha State and was an employee of the plaintiff. He made statement that he made valuation of the building and land and as per his estimation the value was Rs.1,13,000/- in the year 1970. The learned First Appellate Court has discarded his testimony as not reliable. A perusal of the cross-examination clearly shows that he has attempted to give a comparative valuation with regard to the lands sold vide sale deeds copies of which are marked A & B and he failed to withstand the test of cross-examination and has admitted that he has not seen the location and situation of those lands transferred vide these sale deeds. He has not seen the record of the Patwari. The learned First Appellate Court has rightly concluded that the sale consideration cannot be held to be inadequate as on the same day when the property was transferred in favour of defendant No. 2 by defendant No. 1 vide sale deed Ex. P2, defendant No. 1 executed another sale deed in favour of another lady of land which was more than the suit land



for the identical sale consideration. Plaintiff has not assailed that sale deed. Though the learned trial Court has tried to brush aside that sale deed by drawing an inference that since that sale deed was executed in favour of wife of ADC of plaintiff, certain concession might have been offered to ADC. It is neither in evidence nor in pleadings that the sale deed Ex.D4 executed on the same day and for identical sale consideration was made on concessional rate on account of services rendered by husband of Smt. Kaushalya Devi. Learned trial Court has drawn an inference on the basis of surmises and conjectures and the learned First Appellate Court has rightly pointed it out and has rightly differed with the trial Court.

31. Learned First Appellate Court has rightly concluded that mere inadequacy of the sale consideration is not sufficient to discard the transaction. This can be a circumstance in order to prove that the transaction is result of fraud, coercion or misrepresentation but in the present case when plaintiff has not stepped into the witness box to depose as to if the sale deed Ex.P2 is result of fraud, misrepresentation or coercion, the learned First Appellate Court has rightly held that sale deed Ex.P2 is not proved to be executed for inadequate sale consideration and further there is no proof of sale being result of fraud, coercion or misrepresentation. The findings recorded by the learned First Appellate Court are based upon correct appraisal of pleadings and evidence on record and are based upon correct interpretation of principles of law and does not call for any interference.

32. As regards sale deed Ex.P2 being benami is concerned it is proved on record that almost entire property purchased by defendant No. 2 was sold by her to defendant No. 3 to 9 and defendants No. 11 and 12. It is not in evidence that sales were made on behalf of defendant No. 1 or sale



consideration of those sale deeds has gone to defendant No. 1. So it cannot be held that defendant No. 2 was benamidar of defendant No. 1.

33. As regards issue No. 12 is concerned, plaintiff is claiming limitation from the date of knowledge of the sale deed and learned counsel for the appellant has relied upon judgment of Apex Court in ***“Thankamma George versus Killy Thomas and Another” (supra)*** wherein it was held that limitation to assail the sale deed can start either from the date of execution of the sale deed or from the date of knowledge of the sale deed.

Para No. 15.1 of the judgment reads as under :-

“15.1 The words "when the right to sue first accrues" have been interpreted and held by this Court in Smt. Neelam Kumari & Anr. v. U.P. Financial Corporation AIR 2009 Utt 5. The starting point for the limitation in the case of setting aside sale deeds has two limbs: the date of execution and the date of knowledge. There is no difficulty in applying the period of limitation expiring three years from the date of execution, provided that the Appellant had knowledge of Ex. A-5 on the date of registration and the right to sue first accrued. The Respondents, in the circumstances of the case, failed to establish the Appellant's knowledge of the execution of Ex. A-5. In the final analysis, Ex. A-5 is held as without authority and void. The applicability of limitation has a different perspective. So, the starting point is when the right to sue first accrued to the Appellant. The admitted case of the Respondents is that the Appellant is a US citizen and she stayed abroad. Therefore, unless it is clearly established as a fact that the Appellant had knowledge of Ex. A-5, it cannot be inferred that the Appellant had contemporaneous knowledge of Ex. A-5 and the limitation started running from the date of execution of Ex. A-5. That apart, another fact is whether the said exhibit is voider voidable and this depends on the implied revocation relied on by the



Appellant. From a consideration of relevant circumstances, including the filing of a grievance petition before the Legal Services Authority and the reply of the Respondents in the instant suit, we are of the view that the suit is filed within three years from the date when the right to sue first accrued to Appellant and. therefore, the suit is not barred by limitation. Even if the plea of limitation is held against the Respondents, the outcome still depends on the relationship as principal and agent between the Appellant and Respondent No. 1 and the existence and effect of implied revocation pleaded to question the validity of Ex. A-5.”

34. There is no doubt in the proposition of law that limitation to assail the sale deed commences either from the date of execution of the sale deed or from the date of knowledge. In order to avail the right to assail sale deed from the date of knowledge and fact that he was not aware of transaction when it was made, plaintiff has to prove the date of knowledge and fact that he was not aware of transaction when it was made and the learned First Appellate Court has rightly concluded that it is the personal knowledge with the plaintiff. Plaintiff by avoiding to appear in the witness box to support his case has failed to prove that he came to know about the sale deed on 15.02.1976. No doubt plaintiff has examined one Harnek Singh PW to prove that plaintiff authorized him to inspect the record of Sub Registrar with regard to the sale executed by defendant No. 1 in exercise of his powers as attorney of the plaintiff and plaintiff informed him by issuing a letter and he after inspection of the record of Sub Registrar has apprised the plaintiff about the sale deeds. Plaintiff has not produced on record the letter written by plaintiff to PW5 Harnek Singh as that letter was also a material fact and the contents of that letter could have clarified as to if the plaintiff was aware about the existence of sale deed executed by defendant No. 1 as



attorney of plaintiff in favour of defendant No. 2 but that letter has been withheld from the scrutiny of the Court for the reasons best known to the plaintiff. PW5 in cross-examination has admitted that letter is in his possession and he stated that the same has been produced in the Court but that letter was not proved in evidence on record. So plaintiff not stepped into the witness box to support his contention with regard to the knowledge of sale deed and withholding of the letter written by plaintiff to PW5 proves detrimental to the case of the plaintiff and plaintiff has withheld the best evidence so adverse inference was rightly drawn by the First Appellate Court and the First Appellate Court has rightly concluded that plaintiff has failed to prove on record that he was not having knowledge of execution of the sale deed on the date of its execution and he came to know about the execution of the sale deed only on 15.02.1976. As such findings recorded on issue No. 12 by the learned First Appellate Court are not perverse and are well reasoned. Therefore, there is no illegality or perversity in the findings recorded by the First Appellate Court. Accordingly, the appeal of the appellant fails. The same is dismissed and the judgment and decree passed by the First Appellate Court is upheld.

35. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

11.09.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No