

2025:PHHC:069837



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**123**

**RSA-3752-2018 (O&M)**

**Date of Decision : 22.05.2025**

KAMLESH DEVI AND ANR

....Appellants

VERSUS

ISHWAR SINGH

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Varinder Kumar, Advocate for the appellants.

**ALKA SARIN, J. (ORAL)**

1. The present appeal has been preferred by the defendant-appellants challenging the concurrent findings returned by the Trial Court vide judgment and decree dated 06.02.2016 and by the First Appellate Court vide judgment and decree dated 22.03.2018.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for declaration to the effect that the alleged General Power of Attorney bearing Vasika No.234/4 dated 22.06.2009 as well as the alleged gift deeds No.4232/1 and 4233/1 both dated 08.10.2009 registered with the Office of Sub-Registrar, Karnal, regarding the suit land detailed in para No.2 of the plaint and the mutation sanctioned thereupon were illegal, null and void and not binding upon the rights of the plaintiff-respondent. It was the case set up by the plaintiff-respondent that he is owner in possession of the land, as described in para No.2 of the plaint, and defendant-appellant No.1 is the daughter-in-law and defendant-appellant

No.2 is the son of the plaintiff-respondent. Plaintiff-respondent is stated to have been residing separately from the defendant-appellants. On 22.06.2009 the defendant-appellant No.2 asked the plaintiff-respondent to accompany him to the Office of Sub-Registrar, Karnal as he wanted to get the sale deed of a plot registered in the name of the plaintiff-respondent being his father. The plaintiff-respondent and defendant-appellant No.2 went to the Tehsil Office, Karnal and some documents were got prepared by defendant-appellant No.2 and the plaintiff-respondent put his thumb marks wherever he was asked to by defendant-appellant No.2. Thereafter, his photograph was taken by the revenue official and the plaintiff-respondent was brought back by defendant-appellant No.2. In June 2010 defendant-appellant No.2 under the influence of liquor ill-treated the plaintiff-respondent and stated that he had become the owner of the suit land. The plaintiff-respondent contacted the Patwari Halqa who told about the alleged gift deeds bearing Vasika Nos.4232/1 and 4233/1 dated 08.10.2009 registered in favour of defendant-appellant No.2. It was after coming to know of the contents of the alleged gift deeds that the plaintiff-respondent came to know that defendant-appellant No.1, being the general attorney of the plaintiff-respondent, had executed the alleged gift deeds in favour of defendant-appellant No.2. It was further stated that the alleged gift deeds were fake, fabricated and manipulated documents and not binding upon the rights of the plaintiff-respondent. Hence, the suit.

3. On notice, the defendant-appellants appeared and filed written statement raising various preliminary objections regarding the

maintainability, estoppel, *locus standi*, improper valuation of the suit and suppression of true and material facts. On merits it was stated that the general power of attorney was executed by the plaintiff-respondent with his free will and consent and without any pressure and that there was no fraud played by the defendant-appellants while executing the general power of attorney. It was further the case set up that the plaintiff-respondent had himself transferred the suit land in favour of defendant-appellant No.1. It was further the case that defendant-appellant No.1, as per the wish and consent of the plaintiff-respondent, had transferred the suit land in favour of defendant-appellant No.2 by way of gift deeds dated 08.10.2009 and the family members were aware about the same from the very beginning. Since the rates of land have increased manifold, the plaintiff-respondent had filed the suit under the pressure of other family members.

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

1. Whether the plaintiff is entitled to a decree for declaration to the effect that GPA bearing No.234/4 dated 22.06.2009 and gift deeds No.4232/1 and 4233/1 dated 08.10.2009 are liable to be set aside being illegal, null and void and not binding upon the rights of the plaintiff, as prayed for ? OPP
2. Whether the present suit is not maintainable in its present form ? OPD

3. Whether plaintiff is estopped by their own act and conduct from filing and maintaining the present suit ?

OPD

4. Whether the plaintiff has got no *locus standi* and cause of action to file and maintain the present suit ?

OPD

5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD

6. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court ? OPD

7. Relief.

5. The Trial Court decreed the suit with costs vide judgment and decree dated 06.02.2016. Aggrieved by the same the defendant-appellants preferred an appeal before the First Appellate Court which appeal was dismissed vide judgment and decree dated 22.03.2018. Hence, the present regular second appeal by the defendant-appellants.

6. The learned counsel for the defendant-appellants would contend that the gift deeds were executed on the basis of the general power attorney executed by the plaintiff-respondent himself in favour of his daughter-in-law i.e. defendant-appellant No.1. It is further the contention that the suit had been filed at the behest of the daughter, who had now become greedy, and wanted to usurp the property which had been gifted by the plaintiff-respondent to his son i.e. defendant-appellant No.2 herein by way of gift

deeds. Learned counsel would further contend that the plaintiff-respondent had stepped into the witness box and had showed ignorance regarding the contents of the plaint. It is still further the contention of the learned counsel that the Trial Court had held that the photograph and the signatures of defendant-appellant No.1 were not there on the general power of attorney and that there is no requirement in law for the person, in whose favour the general power of attorney has to be executed, to append his signatures on the same.

7. Heard.

8. In the present case both the Courts have concurrently found that the general power of attorney which was alleged to have been executed on 22.06.2009 in favour of defendant-appellant No.1 did not give the power to defendant-appellant No.1 to execute any gift deed. A perusal of Ex.P-1 the general power of attorney clearly reveals that there was no power to gift the said property. The gift deeds can be held to be valid only if the general power of attorney, which was executed in 2009, granted the power to defendant-appellant No.1 to execute a gift deed. In the absence of any such power, defendant-appellant No.1 was not authorized to execute the gift deeds in favour of defendant-appellant No.2.

9. Further, defendant-appellant No.1, while stepping into the witness box as DW-1, stated in her cross-examination that she was neither aware of the contents of the general power of attorney nor she had read it. She had further stated that she had acquired the knowledge about the general power of attorney in 2010. There was no explanation coming forth as to

how, when she was unaware of the general power of attorney (Ex.P-1) executed in her favour, she had executed the gift deeds (Ex.P-2 and Ex.P-3) in favour of defendant-appellant No.2 in the year 2009.

Even otherwise it fails to reason as to why a person, who could execute a power of attorney in favour of his daughter-in-law, would not execute a gift deed directly in favour of his son, if he so desired. Further still, one of the attesting witnesses of the general power of attorney (Ex.P-1) stepped into the witness box as DW-2 (Surinder Kumar). In his cross examination he stated that the plaintiff-respondent actually wanted to execute a Will in favour of defendant-appellant No.1 however he could not explain how instead of executing a Will the general power of attorney came to be executed. It appears to be a case where the witness had gone one step ahead of the case even set up by the defendant-appellants. Merely because the plaintiff-respondent, who is an illiterate person, had expressed his inability to disclose the contents of the plaint or the affidavit, would in no manner mean that the suit had not been filed by him. He had stepped into the witness box and had deposed regarding the fraud played upon him.

10. In view of the concurrent findings of the facts returned by both the Courts concerned, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

**22.05.2025**

*Aman Jain*

*NOTE:*

**(ALKA SARIN)**

**JUDGE**

*Whether speaking/non-speaking: Speaking*

*Whether reportable: Yes/No*