



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4577 of 2014 (O&M)

Reserved on : 11.03.2025

Pronounced on: 01.04.2025

Nirmal Singh Sehmbey

....Appellant

V/s

Kuldip Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Onkar Singh, Advocate, for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate, for respondent No.1.

Mr. ADS Jattana, Advocate and
Mr. Mandeep Singh Gill, Advocate,
for the applicant in CM-2673-C-2017.

VIKRAM AGGARWAL, J.

CM-2673-C-2017

This is an application filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short the “CPC”) read with Section 151 CPC for permission to implead the applicant namely Sukhmander Singh son of Sh. Bhag Singh as a party/appellant No.2.

Heard learned counsel for the applicant.

The applicant is a subsequent purchaser having purchased the land vide three registered sale deeds dated 26.12.2002, 26.05.2003 and 26.05.2003. He is neither a necessary nor a proper party for, Kuldip Singh from whom he had purchased the land was already a party to the suit and the land was sold during the pendency of the *lis*.

Accordingly, finding no merit in the application, the same is dismissed.



RSA-4577-2014

-2-

RSA No.4577 of 2014

The present appeal is directed against the judgment and decree dated 31.05.2014 passed by the Court of learned Addl. District Judge, Ludhiana, vide which the appeal filed by the respondent No.1-plaintiff against the judgment and decree dated 13.05.2004 passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Jagraon, dismissing the suit filed by respondent No.1-plaintiff, was allowed and the suit was decreed.

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

3. The plaintiff (Kuldeep Singh) is a resident of the United States of America. He was the joint owner in possession of land measuring 49 *kanals* 10 out of which 43 *kanals* (fully described in the plaint) was situated in the revenue estate of Village Bhupal, Tehsil Jagraon, District Ludhiana and 6 *kanals* 10 *marlas* in Village Jandi, Tehsil Jagraon, District Ludhiana (hereinafter referred to as the “disputed land-I and disputed land-II”). He executed a general power of attorney on 19.06.2001 in favour of defendant No.1 (Balwinder Singh), who was his brother-in-law (wife’s brother). As per the plaintiff, the said power of attorney had been executed for management of the properties owned by the plaintiff. However, defendant No.1, with the intention to cause wrongful loss to the plaintiff, alienated the disputed land-I in favour of defendant No.2 (Avtar Singh), who was none else than the brother-in-law (wife’s brother of defendant No.1) vide registered sale deed dated 02.07.2001 for a purported sale consideration of Rs.6,45,000/-. Similarly, he executed a sale deed dated 05.07.2001 qua the disputed land-II again in favour of Avtar Singh for a total sale consideration of Rs.1,18,500/-. Avtar Singh further sold the disputed land-II to defendant No.3 (Nirmal Singh) (brother of the plaintiff-Kuldeep Singh) vide registered



RSA-4577-2014

-3-

sale deed dated 22.07.2002. He also executed a sale deed dated 22.07.2002 for land measuring 14 *kanals* 8 *marlas* out of the disputed land-I again in favour of defendant No.3 (Nirmal Singh).

It is the case of the plaintiff that when his wife Amarjit Kaur came to India in July 2002, she came to know about the sale deeds having been executed by his own brother (defendant No.1). Accordingly, a suit for declaration that the plaintiff was the joint owner in possession of the disputed lands and further that the sale deeds were illegal, null and void and without consideration was filed on 24.12.2002.

4. The defendants chose not to appear despite service and were accordingly proceeded against *ex parte*.

5. In the *ex-parte* evidence, plaintiff examined three witnesses which included his wife Amarjit Kaur, who stepped into the witness box as PW3.

6. The trial Court dismissed the suit filed by the plaintiff leading to the filing of an appeal which was allowed by the Court of Addl. District Judge, Ludhiana vide judgment and decree dated 31.05.2014 leading to the filing of the present appeal by defendant No.3.

7. Learned counsel for the parties were heard.

8. Notably, the instant appeal has been filed only by (defendant No.3) Nirmal Singh, who was the purchaser of the two parcels of land out of the disputed land-II. Learned counsel representing the appellant-defendant No.3 has submitted that the well reasoned judgment passed by the learned trial court was set aside by the learned first appellate Court without considering the fact that there was a specific power to sell the land in the general power of attorney (Ex.P9). Reference was made by learned counsel to the general power of attorney and it was submitted that by no stretch of



RSA-4577-2014

-4-

imagination could it be held that the said power of attorney had been executed only for general maintenance of the disputed lands. Learned counsel also submitted that there is no requirement that some consideration should be exchanged before the Sub-Registrar/Registrar at the time of execution of the sale deed. It was further submitted that a registered sale deed has a presumption attached to it and it cannot be set aside on mere presumptions and allegations.

9. Learned counsel submitted that the plaintiff did not even bother to step into the witness box and only produced his power of attorney, whose evidence cannot be read.

10. Learned counsel also submitted that the plaintiff is in the habit of changing his power of attorney holders for, he had initially appointed defendant No.4 (Nachhatar Singh) as his power of attorney which was later on cancelled and the power of attorney was executed in favour of defendant No.2 (Avtar Singh). After cancelling the same, he executed a power of attorney in favour of defendant No.1 (Balwinder Singh) and after that he executed a power of attorney in favour of his wife Amarjit Kaur (through whom the suit was filed). He submitted that under the circumstances, no reliance can be placed upon the stand taken by the plaintiff. Learned counsel submitted that the first appellate court based its findings upon assumptions and presumptions and erroneously allowed the appeal. Learned counsel submitted that the judgment is not sustainable and, therefore, deserves to be set aside. In support of his contentions, he placed reliance upon the following judgments;

1. ***Sarabjit Kaur (Smt.) and others V/s Mohinder Singh and another, Punjab Law Reporter Vol-CLI (2008-3);***
2. ***Harmeet Kaur V/s Partap Kaur and others, Punjab Law Reporter Vol-CXXXII(2002-3);***



RSA-4577-2014

-5-

3. ***Kashi Ram and another V/s Raj Kumar and others, AIR 2000 Rajasthan 405;***
4. ***Mehnga Singh V/s Lal Chand and others, Recent Law Vol-XIV 1985.***
5. ***Janki Vashdeo Bhojwani and another V/s Indusind Bank Ltd. and others, (2005) 2 SCC 217;***
6. ***Mohinder Kaur V/s Sant Paul Singh, (Civil Appea Nos.2689-2870-2010, decided on 01.10.2019) and***
7. ***Vidhyadhar V/s Manikrao and another, (1999) 3 SCC 573.***

11. *Per contra*, Mr. Amit Jain, learned Senior Counsel representing respondent No.1 submitted with equal vehemence that there is no illegality in the findings recorded by the first appellate Court and that, in fact, substantial justice was done by the first appellate Court by decreeing the suit and setting aside the sale-deeds. Learned counsel submitted that it was rightly held by the first appellate Court that the general power of attorney conferred only a broad power upon defendant No.1 to maintain the properties of the plaintiff and there was no power to sell the same. He further submitted that the Court also rightly found that defendant No.1 had acted in a manner which was prejudicial to the interests of the plaintiff, who was the principal and defendant No.1 was the agent. Learned Senior Counsel further submitted that the Court also rightly held that if the entire facts and circumstances are considered, the plaintiff would have never consented to the execution of sale-deeds in favour of Avtar Singh. Learned counsel submitted that in fact, previously sale deed (Ex.P18) had been executed by Nachhatar Singh being the GPA holder of the plaintiff, in favour of Nirmal Singh only and it was only when the matter was settled between the parties that the sale deed was not given effect to. Learned Senior Counsel submitted that strangely defendant No.1 also alienated the



RSA-4577-2014

-6-

land to defendant No.2, who then again alienated a part of the land to defendant No.3 (Nirmal Singh). Learned Senior Counsel submitted that once the plaintiff had initially objected to the sale of the land to Nirmal Singh by Nachhatar Singh, he would not, under any circumstance, give his consent to the sale of the land once again to Nirmal Singh.

12. Learned Senior Counsel submitted that even from the circumstances, it would be evident that defendant No.1 had acted fraudulently and in a manner which was prejudicial to the interests of the plaintiff for, the sale-deeds in favour of defendant No.2 were executed just five days after the execution of the general power of attorney.

13. Learned Senior Counsel further submitted that no transaction had taken place before the Sub-Registrar, which also shows that actually no sale consideration had passed and defendant No.1 had simply alienated the disputed land in favour of his own brother-in-law.

14. As regards the plaintiff not having stepped into the witness box, it was submitted by learned Senior Counsel that his wife Amarjit Kaur duly stepped into the witness box as PW3. Reference was made to Section 120 of the Indian Evidence Act, 1872 (for short the "Evidence Act") and it was submitted that keeping in view the said provisions, Amarjit Kaur was a competent witness and, therefore, the non-examination of the plaintiff would not be detrimental to his interests.

15. Learned Senior Counsel also referred to the provisions of Section 215 of the Indian Contract Act, 1872 (for short the "Contract Act") and submitted that the agent i.e. defendant No.1 had acted in a manner which was prejudicial to the interests of the plaintiff and the plaintiff was, therefore, entitled to challenge the same.

16. Learned Senior Counsel submitted that under the circumstances,



RSA-4577-2014

-7-

the first appellate Court took a balance and pragmatic view and rightly decreed the suit. It was submitted that no interference is, therefore, called for in the said decision. In support of his contentions, learned Senior Counsel placed reliance upon the following judgments;

1. ***Mittar Singh and another V/s Bhajan Singh and others*, 2012(5) RCR (Civil) 630;**
2. ***Bibi Zubaida Khatoon V/s Nabi Hassan Saheb and another*, 2004(1) RCR (Civil) 216;**
3. ***Kewal Krishan V/s Rajesh Kumar and others*, (Civil Appeal Nos.6989-6992-2021 arising out of SLP(C)-2033-2036-2016, decided on 22.1.2021);**
4. ***Harjinder Singh and others V/s Harbhajan Singh*, 2007(2) PLJ 227;**
5. ***U. Vijaya Kumar and another V/s Smt. Malini V. Rao*, 2016 SCC Online Kar 2128 and**
6. ***Firm Mathra Das Jagan Nath V/s Firm Jiwan Mal Gian Chand*, 1928 AIR Lahore 196.**

17. I have considered the submissions made by learned counsel for the parties and have gone through the judgments passed by the learned trial Court and the first appellate Court. The record has also been perused.

18. 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 the Punjab Courts Act, 1918 and not under Section 100 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



RSA-4577-2014

-8-

aforesaid judgments, no question of law is required to be framed.

19. Having given my thoughtful consideration to the issue in hand, I find no illegality in the judgment passed by the first appellate Court and consequently the instant appeal is found to be devoid of merit. The reasons for the same are manifold.

20. Admittedly, the plaintiff (Kuldip Singh) was the owner of the suit land measuring 49 *kanals* 10 *marlas*. Out of the total land, 43 *kanals* was situated in Village Bhumal, Tehsil Jagraon, District Ludhiana and 6 *kanals* 10 *marlas* was situated in Village Jandi, Tehsil Jagraon, District Ludhiana. The plaintiff executed a general power of attorney (Ex.P9) in favour of his brother-in-law (wife's brother) (Balwinder Singh, defendant No.1) on 19.06.2001. The general power of attorney has a notice at its top informing the executant about certain important facts. The notice reads as under:-

“NOTICE: THIS IS AN IMPORTANT DOCUMENT BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM YOU DESIGNATE (YOUR “AGENT”) BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO PLEDGE, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. YOU MAY SPECIFY THAT THESE POWERS WILL EXIST EVEN AFTER YOU BECOME DISABLED, INCAPACITATED OR INCOMPETENT. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.”

21. The aforesaid notice shows that the purpose of executing the power of attorney was to give the person being designated as the agent,



RSA-4577-2014

-9-

broad powers to handle the properties of the executant, which may include powers to pledge, sell or otherwise dispose of the property without advance notice to the executant or without his approval. This notice appears to be a warning/notice to the executant that the power of attorney may include the power to sell the property as well. The document further shows that Balwinder Singh was authorized to carry out transactions as regards real estate, which was agricultural land and residential house of the plaintiff in Village Jandi and Bhumal, District Ludhiana. The general power of attorney also had a clause stating that the general power of attorney holder accepted the appointment subject to its terms and agreed to act and perform in the said fiduciary capacity consistent with the best interests of the executant and that all acts so undertaken by the attorney would be affirmed and ratified by the executant. Admittedly, this power of attorney was got attested by defendant No.1 from the Commissioner, Patiala Division on 27.06.2001. Shortly thereafter, i.e. on 02.07.2001 and 05.07.2001, defendant No.1 alienated the entire suit land in favour of defendant No.2 (Avtar Singh), who was none else but the brother-in-law (wife's brother of defendant No.1-Balwinder Singh).

22. At the first blush, it would appear that there was no illegality in the said transactions entered into by defendant No.1, being the general power of attorney holder of the plaintiff and that it would be very easy for someone to first authorize his general power of attorney holder to enter into transactions and then back out from the same. However, when one goes little deep into the issue, the ugly truth stares one in the face.

23. When the general power of attorney was executed by the plaintiff in favour of defendant No.1, there was an inherent element of trust that defendant No.1 would act in the best interests of the plaintiff, especially



RSA-4577-2014

-10-

keeping in view the sensitivity of the relation between the two. Now, the question which would arise, would be as to whether defendant No.1 acted in the best interests of the plaintiff. The simple answer is “no”. The defendants chose not to contest the suit. They were duly served but since they did not appear, they were proceeded against *ex parte*. The case of the plaintiff, therefore, went un-rebutted.

24. The question which then arises is as to whether registered sale deeds executed on the basis of a valid general power of attorney should be set aside. In the plaint, it was duly stated that in June 2001, defendant No.1, who was looking after the properties of the plaintiff, represented to him that he required a general power of attorney in his favour as he was finding it difficult to take various necessary actions pertaining to the properties of the plaintiff before various offices/institutions. It was further pleaded that the sale deeds and the consequent mutations were the result of misrepresentation, fraud, without authority, without consideration, without necessity and as such were liable to be set aside. It was also pleaded that the general power of attorney had been executed to enable defendant No.1 to look after the properties of the plaintiff in his absence and the power of alienation, if any, mentioned in the said power of attorney was the result of a routine typing work and in any case, the power was to be exercised, if it was necessary for the management and looking after the properties. It was averred that defendant No.1 had not obtained the consent of the plaintiff prior to effecting alienation of the suit properties. It was further averred that the sale deeds were the result of fraud and criminal conspiracy between the defendants since defendant No.2 was the real brother-in-law of defendant No.1. It was pleaded that the sale deeds were without consideration and the sale consideration mentioned in the sale deeds was an eye wash as the



RSA-4577-2014

-11-

market value of the said land was not less than Rs.4 lakh per acre. It was also pleaded that defendant No.1 had not paid any amount to the plaintiff out of the alleged sale consideration. It was also averred that defendant No.1 had acted in gross violation of his duties as an agent and had, therefore, caused a great loss and disadvantage to his principal i.e. the plaintiff. It was also averred that the sale deeds were without necessity and without any benefit to the estate of the plaintiff. It was further averred that defendants had colluded with each other and had executed the sale deeds to cause a wrongful loss to the plaintiff.

25. Averments as regards the dispute between the plaintiff and defendants No.3 and 4 in the United States of America were duly made in the plaint. Reference was made to the revocation of the earlier power of attorney dated 02.02.1994, on the basis of which, defendant No.3 had transferred the house of the plaintiff situated in the USA. Reference was made to the settlement arrived at between the parties before the Superior Court of the State of California, wherein defendants No.3 and 4 had undertaken that any property of the plaintiff in India would be transferred back.

26. These averments went un-rebutted for, as mentioned earlier, the defendants did not contest the suit. To prove his case, the plaintiff examined three witnesses Bakshish Singh as PW1, Malook Singh as PW2 and Amarjit Kaur as PW3, who is his wife, who was subsequently his power of attorney holder and the suit had been filed through her.

27. The defendants chose not to contest the suit and not to enter the witness-box to rebut the stand of the plaintiff. They did not produce any evidence to show that defendant No.1 had been authorized by the plaintiff to execute the sale deeds in favour of his own brother-in-law. No evidence was



RSA-4577-2014

-12-

produced to show that sale consideration had been received by defendant No.1. No evidence was produced to show that some amount or the sale consideration was transferred to the plaintiff. By not contesting the suit, the defendants in a way, admitted the case of the plaintiff. No doubt, it was for the plaintiff to prove his own case by leading cogent evidence which, in the considered opinion of this Court, the plaintiff did do.

28. The execution of the sale deeds by defendant No.1 in favour of defendant No.2 and subsequently by defendant No.2 in favour of defendants No.3 and 4 were proved to be fraudulent. It stands proved on record that the plaintiff had strained relations with defendants No.3 and 4 and litigation had ensued between the parties. The judgment dated 20.10.2001 is on record as Ex.P12. The statement given by defendants No.3 and 4 is also on record. A coordinate Bench of this Court was dealing with a similar issue in the case of *Harjinder Singh and others vs. Harbhajan Singh*, 2007(2) PLJ 227. In that case, the dispute was with regard to the estate of one Ananta, who was unmarried and had died issueless on 29.09.1993. Ananta, during his lifetime, had executed a registered Will dated 15.12.1988 bequeathing half share of his land to his nephew Tarlok Singh, who was the plaintiff and the other half share to defendants No.1 and 2, who was the nephew and son of nephew of Ananta. On the basis of the said Will, Harbhajan Singh filed a suit for joint possession. The suit was contested saying that Ananta had, during his lifetime, alienated his entire land vide three different sale deeds in favour of defendants No.3 and 4 through defendant No.1, who was his duly appointed general power of attorney holder. The plaintiff raised an issue that the sale transactions were null and void and without consideration as the general power of attorney was a forged and fabricated document. The trial Court partly decreed the suit for joint possession of half share of the land



RSA-4577-2014

-13-

which was left with Ananta after execution of the three sale deeds and the rest of the relief was declined, stating that Ananta had executed a valid and legal general power of attorney. The first appellate Court set aside the judgment and decree and decreed the suit in *toto*. One of the findings recorded by the first appellate Court was that if the general power of attorney entered was interpreted in accordance with the settled law, it would reveal that it did not authorize defendant No.1 to alienate the property of Ananta. In the regular second appeal, the coordinate Bench upheld the findings of the first appellate Court. The coordinate Bench held that though the execution of the general power of attorney was not proved but even if it was taken that the power of attorney had been validly executed, it could not be held that defendant No.1 was authorized to alienate the property of Ananta. It was held that a power of attorney is a formal instrument by which authority is conferred on an agent and that such an instrument is construed strictly and confers only authority given expressly or by necessary implication. It was held that one of the most important rules for the construction of a power of attorney was that due regard must be given to the recitals showing the scope and object of the power and all general terms in the operative part of the instrument. The coordinate Bench referred to a judgment of the Privy Council in the case of ***Adaikappa Chettiar v. Thomas Cook & Son (Bankers) Ltd.***, AIR 1933 Privy Council 78 and a judgment of the Lahore High Court in ***Mt. Jan v. Mt. FAjjan and another***, AIR 1938 Lahore 351. Reliance was also placed upon a judgment of the Full Bench of the Nagpur High Court in the case of ***Jiwibai v. Ramkuwar Shrinivas Murarka Agarwala***, AIR 1947 Nagpur 17 and a judgment of this Court also in the case of ***Smt. Nand Kaur v. Mastan Singh and others***, 1990 Civil Court Cases 501;



RSA-4577-2014

-14-

“14. Learned counsel for the appellants-defendants has put much emphasis on the alleged compromise, (Ex D.6) and submitted that in the said compromise the plaintiff had acknowledged the execution of the alleged General Power of Attorney (Ex. D1), therefore, he should be estopped from questioning the validity of the same. I do not find any force in this submission. Undisputedly, the said compromise was not acted upon, as has been admitted by Paramjit Singh DW6. The first appellate court has rightly held that on the basis of the said compromise, the plaintiff cannot be estopped from challenging the validity of the General Power of Attorney. Therefore, in my opinion, the first appellate court has rightly come to the conclusion that the conclusion that the defendants have failed to prove the valid execution of the General Power of Attorney by Ananta in favour of defendant No. 1 authorizing him to alienate the suit land After coming to the aforesaid conclusion, the first appellate court has observed that even if for the sake of arguments, it is taken that the power of attorney was validly executed, even then from the interpretation of the same, it cannot be held that defendant No. 1 was authorised to alienate the property to Ananta. In my view, the first appellate court has rightly come to this conclusion by construing the document in accordance with the settled principle of law in this regard. A Power of Attorney is a formal instrument by which authority is conferred on an agent. Such an instrument is construed strictly, and confers only authority given expressly or by necessary implication. One of the most important rules for the construction of a power of attorney is that due regard must be given to the recitals showing the scope and object of the power and all general terms in the operative part of the instrument. Another rule is that where special powers are followed by general words, the general words are to be construed as limited to what is necessary for the proper exercise of the special powers, and as enlarging those powers only when necessary for the carrying out of the purposes for which the authority is give. It is also well settled that authority however widely expressed should not be construed as authorizing the attorney to deal with the property of his principal of the attorney's own benefit. In Adaikappa Chettiar v. Thomas Cook & Son (Bankers) Ltd. AIR 1933 Privy Council 78, it was held that the general words used in the subsequent clauses of a power of attorney must be read with the special powers given in the earlier clauses and cannot be construed so as to enlarge the restricted powers there mentioned. Similarly, in Mt. Jan v. Mt. Fajjan and another, AIR 1938 Lahore 351, the Lahore High Court has observed as under :-

"Powers of attorney must be strictly pursued, and are construed as giving only such authority as they confer expressly



RSA-4577-2014

-15-

or by necessary implication. The following are the most important rules of construction: (1) The operative part of the deed is controlled by the recitals. (2) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts."

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 a 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.

30. Going back to the power of attorney (Ex.P9), the power of attorney gave broad powers to the holder to handle the property of the executant and included power to sell. It was not a power of attorney only intended for the purpose of sale. The dominant purpose was, therefore, management of the property. Under the circumstances, it was incumbent upon the defendants to appear before the Court and prove as to how the sales were necessary for the purposes of management of the property or as to how defendant No.1 was authorized to execute the sale deeds or that the sale had been consented to by the plaintiff.

31. Looking from any angle, the sales appear to be suspicious and fraudulent. Nothing else would explain the alienation of the suit land by defendant No.1 in favour of his own brother-in-law (defendant No.2), who in turn, further sold a part of the land to the brother of the plaintiff with whom the plaintiff already had a dispute. Everything, therefore, stinks with



RSA-4577-2014

-16-

deceit and fraud. Under the circumstances, it is the bounden duty of Courts to turn the clock back which, the first appellate Court rightly did.

32. Another aspect of the matter is that Balwinder Singh has not challenged even the judgment of the first appellate Court and it is only Nirmal Singh (defendant No.3), who had purchased a part of the land from defendant No.2, who has come forward to challenge the judgment and decree passed by the first appellate Court.

33. The argument that the plaintiff was in the habit of changing his power of attorney holder is devoid of merit because he initially appointed his brother Nachhatar Singh as his power of attorney holder. Since his own brother duped him, he appointed his brother-in-law as his power of attorney holder. The brother-in-law also duped him, which led to the plaintiff appointing his wife as his power of attorney holder. As regards the plaintiff not stepping into the witness box, once his wife stepped into the witness box, it cannot be said that the plaintiff was remiss in pursuing his case and that the evidence of the power of attorney holder could not be accepted. Reliance upon Section 120 of the Indian Evidence Act, 1872 has rightly been placed by learned Senior Counsel representing respondent No.1, which states as under:-

“120. Parties to civil suit and their wives or husbands - Husband or wife of person under criminal trial.

In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.”

Amarjit Kaur, wife of the plaintiff was, therefore, duly authorized and competent to depose on behalf of the plaintiff.

34. It is also clear that defendant No.1 being an agent of the



RSA-4577-2014

-17-

plaintiff, acted prejudicial to the interests of the plaintiff and the plaintiff was, therefore, duly entitled to repudiate this act keeping in view the provisions of Section 215 of the Indian Contract Act, 1872 which 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 C. 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, but 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.”

35. The cumulative result of the aforesaid discussion leads this Court to the irresistible conclusion that there is no illegality or infirmity in the judgment and decree passed by the Court of learned Addl. District Judge, Ludhiana.



RSA-4577-2014

-18-

36. As a consequence thereof, the present appeal is found to be bereft of merit and is accordingly dismissed.

Reserved on: 11.03.2025
Pronounced on: 01.04.2025
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(VIKRAM AGGARWAL)
JUDGE

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