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RSA-611-2020(O&M)

**[123] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-611-2020 (O&M)
Date of decision 22.12.2025

Hakam Singh and others ...Appellants

versus

Hazura SinghRespondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ranjit Saini, Advocate for the appellants.

Mr. Pritam Singh Saini, Advocate and
Ms. Vamika Johar, Advocate
for the respondent.

PANKAJ JAIN, J.

[1] Defendants are in appeal, aggrieved of judgment and decree passed by the Courts below, whereby the suit filed by the plaintiff seeking decree of declaration to the effect that the gift deed dated 20.03.2012 executed by defendant No.1 acting as attorney of plaintiff in favour of defendant Nos.2 & 3 with respect to land measuring 01 kanal 10 marlas is illegal stands decreed and the plaintiff has been held entitled to possession of land which is the subject-matter of the dispute.

[2] Plaintiff filed a suit, claiming that he originally belongs to Village Rupo Majra, District Ambala and is currently residing at Mumbai. Plaintiff and defendant No.1 are brothers. Out of 06 brothers, defendant No.1 is residing and settled at the native village. Plaintiff having full faith in his brother-Hakam Singh executed power of attorney in the joint name of his younger brothers. Hakam Singh and Vikram Singh in May, 1996 to manage



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the property including his share in the joint properties held by him along with his brothers. The parties enjoyed cordial relations till 2009. The brothers fell apart after defendant No.1 exercised his undue influence over father-Ram Kishan to get Will executed in his favour, in which, the plaintiff was ignored. After plaintiff protested, father cancelled the Will executed in the year 2009 and executed another Will in the year 2010, whereby all the 06 sons got equal shares.

[3] Plaintiff claims that owing to the said dispute, he executed a fresh power of attorney in favour of his cousin-Hazara Singh son of Chuni Lal in January, 2010 to manage his properties, which was in supersession of the earlier power of attorney executed by him in favour of his real brothers. He submits that there is a factum of execution of fresh power of attorney in favour of Hakam Singh which was brought to the knowledge of defendant No.1 by the plaintiff and his attorney.

[4] Defendant No.1 filed two civil suits against the plaintiff and other brothers, claiming possession over all the properties situated in Villages Rupo Majra and Sarangpur. In September, 2011, plaintiff filed civil suit seeking declaration against defendant No.1 and other brothers and also by way of separate applications filed before the Revenue Authorities sought partition of the land. Plaintiff claims that the parties being in thick of *lis* were not having cordial relations and thus there was no reason for him to execute gift deed in favour of defendant Nos.2 & 3, who are sons of defendant No.1. It is only few days prior to the institution of suit that he came to know that defendant No.1 got share of the plaintiff in the property mutated in favour of his sons, i.e. defendant Nos.2 & 3, on the strength of



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gift deed dated 20.03.2012 executed by him acting as attorney of the plaintiff. The plaintiff thus claims that the gift deed is illegal, null and void and is bad, which is not binding upon the rights of the plaintiff.

[5] Suit was contested by defendant No.1 who relied upon general power of attorney executed by plaintiff dated 23.05.1996 in his favour. Defendant No.1 claimed that Special Power of Attorney executed by the plaintiff in January, 2010 in favour of Hazara Singh is not a valid document as plaintiff was not competent to execute the same. He submits that GPA in his favour was never cancelled by the plaintiff. He was never intimated of any cancellation. After plaintiff executed GPA in favour of defendant No.1 on 23.05.1996, the share of the plaintiff was purchased by defendants for a consideration of Rs.50,000/-, which was paid by him to the plaintiff in the month of June, 1996 and is in possession over the same since then as owner. Defendant No.1 further claimed that on 20.03.2012, he gifted land to his sons on the strength of GPA dated 23.05.1996 and defendant No.1 further claimed that his possession over the suit land since June, 1996 till 20.03.2012 remained continuous, open and hostile to the knowledge of the plaintiff and thus, he has acquired ownership over the suit land by way of adverse possession.

[6] Defendant Nos.2 & 3 filed the separate written statements, taking a stand similar to the one pleaded by defendant No.1.

[7] Suit filed by the plaintiff was put to trial by the Court of First Instance, framing following issues:-

“(1) Whether the plaintiff is entitled to decree for declaration on the grounds as prayed for? OPP



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- (2) *If issue no.1 is proved, whether the plaintiff is entitled to further relief of separate possession by way of partition and consequential relief of permanent injunction as prayed for? OPP*
- (3) *Whether the suit of plaintiff is not maintainable in its present form? OPD*
- (4) *Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD*
- (5) *Whether the plaintiff has affixed proper ad valorem court fee? OPD*
- (6) *Whether the plaintiff has concealed the true and material facts from the court? OPD*
- (7) *Whether the suit of plaintiff is barred by limitation? OPD*
- (8) *Relief."*

[8] After analyzing the evidence threadbare, the Court of First Instance held that the gift deed dated 20.03.2012 executed by defendant No.1 in favour of defendant Nos.2 & 3 acting as attorney of plaintiff is illegal and the same deserves to be set aside, as it stands proved that the relation between the parties got strained in the year 2009. Defendant No.1 acted on the basis of power of attorney dated 23.05.1996. As per the Special Power of Attorney executed by plaintiff in favour of his cousin-Hazara Singh, it was specifically mentioned that the same is being executed in supersession of the power of attorney executed in past. Power of Attorney dated 23.05.1996 was executed in favour of defendant No.1 and Vikram Singh. Vikram Singh while appearing as PW2 admitted of the knowledge of execution of SPA in favour of Hazara Singh. The Court of First Instance accordingly held that on the day defendant No.1 executed power of attorney in favour of his sons, he had no authority to act as attorney of the plaintiff and decreed the suit filed by the plaintiff, holding gift deed dated 20.03.2012



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to be bad. Prayer made by the plaintiff seeking separate possession by way of partition however stands dismissed relying upon judgment and decree (Exhibit P-17), whereby earlier suit filed by the plaintiff seeking separate possession by way of partition was dismissed.

[9] Dissatisfied defendants preferred appeal. The same stands dismissed by the learned Lower Appellate Court, affirming the findings recorded by the Court of First Instance.

[10] The primary argument put forth by Mr. Saini, counsel for the appellants is that GPA dated 23.05.1996 never got superseded. No notice of cancellation/revocation thereof was ever served upon the appellant-defendant No.1. He further submits that GPA dated 23.05.1996 which is a registered document can be revoked, altered or cancelled by a registered document only. Thus SPA dated 19.01.2010 cannot have an effect of superseding the power of attorney dated 23.05.1996 executed by plaintiff in favour of defendant No.1.

[11] I have heard learned counsel for the parties and have carefully gone through record(s) of the case.

[12] In the considered opinion of this Court, appellant-defendant No.1 is still confused regarding his stand. In his written statement, he claimed power of attorney dated 23.05.1996 and also claimed to have purchased the land from plaintiff in June, 1996 by paying an amount of Rs.50,000/-. If that was not enough, he claims to have become owner by way of adverse possession. Still further he executed impugned gift deed acting as attorney of the plaintiff. On being asked as to how the power of attorney for consideration can be accepted to be sale in the light of ratio of



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law laid down by Supreme Court in the case of '**Surya Lamp and Industries Private Limited versus State of Haryana and another**', Special Leave Petition (C) No.13917 of 2009 decided on 11.10.2011, Mr. Saini, counsel for the appellants, has tried to take refuge under Para No.2 of the **Surya Lamp and Industries Private Limited's** case (*supra*), which reads as under:-

"2. The modus operandi in such SA/GPA/WILL transactions is for the vendor or person claiming to be the owner to receive the agreed consideration, deliver possession of the property to the purchaser and execute the following documents or variations thereof:

(a) An Agreement of sale by the vendor in favour of the purchaser confirming the terms of sale, delivery of possession and payment of full consideration and undertaking to execute any document as and when required in future.

Or

An agreement of sale agreeing to sell the property, with a separate affidavit confirming receipt of full price and delivery of possession and undertaking to execute sale deed whenever required.

(b) An Irrevocable General Power of Attorney by the vendor in favour of the purchaser or his nominee authorising him to manage, deal with and dispose of the property without reference to the vendor.

Or

A General Power of Attorney by the vendor in favour of the purchaser or his nominee authorising the attorney holder to sell or transfer the property and a Special Power of Attorney to manage the property.

(c) A will bequeathing the property to the purchaser (as a safeguard against the consequences of death of the vendor before transfer is effected).



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These transactions are not to be confused or equated with genuine transactions where the owner of a property grants a power of Attorney in favour of a family member or friend to manage or sell his property, as he is not able to manage the property or execute the sale, personally. These are transactions, where a purchaser pays the full price, but instead of getting a deed of conveyance gets a SA/GPA/WILL as a mode of transfer, either at the instance of the vendor or at his own instance. ”

[13] In the considered opinion of this Court, the case pleaded by defendant No.1 does not fall within those exceptions. There is no pleading to the effect that the plaintiff was not in a position to execute the sale. It is rather a case, wherein a family member who was appointed as attorney to manage the property is claiming to have purchased the same by paying full price. Defendant No.1 claims to have purchased the property by paying Rs.50,000/-. Thus, it is admitted that the worth of the property is more than Rs.99/-. The same could have been sold only by way of registered sale deed. Thus, the defence raised by defendant(s) claiming sale on the basis of GPA cannot be accepted and has been rightly rejected by the Courts below.

[14] The plea raised by defendant(s) with respect to acquisition of ownership by way of adverse possession also cannot be entertained in view of admitted fact that while executing gift deed in favour of his sons, he acted as attorney of plaintiff and never claimed himself to have become absolute owner and thus competent to execute gift deed.

[15] In terms of Section 215 of the Indian Contract Act, 1972, defendant No.1 having transacted the property on his own, was required to shoulder the burden of having acted with the explicit consent of the principal. There is no evidence. Rather defendant No.1 even in the civil suit claims his own competence to execute the gift deed denying the right of the



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plaintiff to question his action.

[16] In view of the above, this Court finds that both the Courts below have rightly rejected the defence of defendant No.1 and have correctly decreed the suit filed by the plaintiff.

[17] Accordingly, finding no merits in the present appeal, the same is ordered to be **dismissed**.

[18] All miscellaneous application(s), if any, stand **disposed off**.

(PANKAJ JAIN)
JUDGE

22.12.2025
'R. Sharma'

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