

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) RSA No.799 of 2019(O&M)
Date of Order:04.07.2022
Reserved On: 29.04.2022

Pardeep Chaudhary and another

...Appellants

Versus

Birwati and others

..Respondents

(2) RSA No.1012 of 2019(O&M)

Veena Chaudhary and others

...Appellants

Versus

Birwati Chaudhary and another

..Respondents

(3) C.R.No.406 of 2020 (O&M)

Shri Chand

..Petitioner

Versus

Birwati Chaudhary

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Mayank Aggarwal, Advocate and
Ms. Shifali Goyal, Advocate,
for the appellant(s).

Mr. V.K.Jindal, Sr. Advocate, with
Mr. Gopal Soni, Advocate,
Mr. Akshay Jindal, Advocate
for respondent no.1.

Mr. Kulbhushan Sharma, Advocate
Mr. Alok Jain, Advocate

**Mr. Amit Jhanji, Sr. Advocate with
Mr. Siddharth Bhukkal, Advocate
for the petitioner (in CR-406 of 2020)**

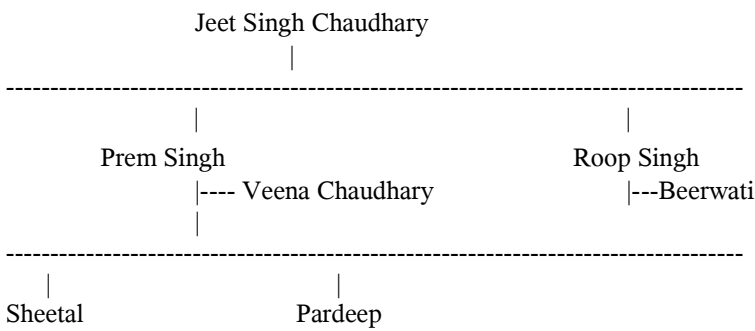
ANIL KSHETARPAL, J

1. Through this judgment, two Regular Second Appeals arising from a common judgment passed by the trial Court as well as the First Appellate Court while deciding two cross-suits and a Civil Revision petition arising from proceedings under the Haryana Urban (control of Rent and Eviction) Act, 1973, shall stand disposed of. The above Civil revision petition is an offshoot of the dispute in the Regular Second Appeals. The learned counsels representing the parties at ad-idem that all these cases can conveniently be decided together.

2. In the considered opinion of the Bench, the question which arises for consideration is:-

“If an allottee of the house, on receipt of the entire sale consideration, delivers possession to an agent while executing a registered General Power of Attorney in his favour, then whether, a subsequent sale deed executed by him in favour of agent's children after agent's death would be in continuity with the previous contract of agency so as to give superiority to the rights of the children?

3. In order to understand the inter-se relationship between the parties, it is appropriate to draw a small pedigree table:-



4. One suit was filed by Smt. Sheetal and Sh. Pardeep Chaudhary,

children of Late Sh. Prem Singh with a prayer to grant decree of declaration with consequential relief of permanent mandatory injunction. They claim to be joint owners in possession of House No.176, Sector 10, Faridabad, on the basis of a registered sale deed dated 29.09.2010, executed by Sh. J.S.Luthra (the original allottee). It is their case that on 11.06.1980, Sh. J.S.Luthra executed a General Power of Attorney in favour of their father late Sh. Prem Singh with respect to the suit property and delivered its possession. Thereafter, late Sh. Prem Singh has been depositing the installments and house tax and a conveyance deed was registered by the Housing Board in favour of Sh. J.S.Luthra on 25.09.2000 through late Sh. Prem Singh in which Sh. Roop Singh was the witness. A non-encumbrance certificate was also issued by the Housing Board (allotting agency) in favour of late Sh. Prem Singh. It is claimed that the defendants were permitted to reside on the first floor as licencees which was terminated vide notice dated 13.10.2010. Sh. J.S.Luthra wrongly executed a General Power of Attorney in favour of Sh. Roop Singh with respect to the property in question on 23.01.2001 and on that basis, Sh. Roop Singh has executed a sale deed in favour of Smt. Birwati (his wife) on 23.02.2010. They claimed that such General Power of Attorney and the sale deed are fraudulent.

5. In a joint written statement filed by Sh. Roop Singh and Smt. Birwati, the defendants claim that they have filed a previous suit. They claim that the property was allotted to Sh. J.S.Luthra on 13.05.1980 and he executed a General Power of Attorney in favour of late Sh. Prem Singh. Thereafter, a conveyance deed of the property in question was registered on 25.09.2001 in favour of Sh. J.S.Luthra through late Sh. Prem Singh.

Thereafter, Sh. J.S.Luthra executed a General Power of Attorney in favour of Sh. Roop Singh on 23.01.2001 and Sh. Roop Singh, on the strength of the aforesaid attorney, executed a registered sale deed on 23.02.2010 in favour of Smt. Birwati for a total consideration of Rs.18,00,000/-. The Power of Attorney in favour of late Sh. Prem Singh was cancelled on 23.01.2001. The defendants, thus, claim that they are owners in possession of the property and the licence in favour of the plaintiffs, namely Smt Sheetal and Sh. Pardeep Chaudhary stands terminated and thus, they are liable to be evicted. There is a cross suit filed by Smt. Birwati while impleading Smt. Veena Chaudhary (widow of late Sh. Prem Singh), Sh. Pardeep Chaudhary and Smt. Sheetal as defendants apart from Sh. J.S.Luthra. Both the suit were consolidated.

6. On the pleadings of the parties, the trial court culled out the following issues:-

1. Whether *Birwati and Roop Singh are liable to be directed to hand over the vacant possession of the 1st floor of house No.176, Sector 10, Faridabad to Pardeep Chowdhary, as alleged?OPP*

1A. Whether the plaintiffs are lawful owners in equal shares of house no.176, Sector 10, Faridabad on the basis of alleged sale dated 20.09.2010 in their favour alleged to be executed by Sh. J.S. Luthra?OPP

2. Whether GPA No.725 dated 23.01.2001 executed by Jaspal Singh in favour of Roop Singh regarding the suit property is liable to be declared illegal, null and

void?OPP

3. *If the issue no.2 is proved, whether the sale deed bearing document No.10575 dated 23.02.2010 executed by defendant Roop Singh in favour of Birwati is liable to be declared illegal, null and void, as alleged?OPP*
4. *Whether the defendants are liable to be restrained from further alienating, transferring and interfering in the possession of Pardeep Chowdhary and Sheetal Chowdhary over the suit property, as alleged?OPP*
5. *Whether Veena Chowdhary, Pardeep Chowdhary and Sheetal Chowdhary are liable to be directed to handover the vacant and peaceful possession of the portion detected in red colour of house no.176 Sector 10 to Birwati Chaudhary, as alleged?OPD*
6. *Whether the suit of plaintiffs is not maintainable?OPD*
7. *Whether the defendant (plaintiff of consolidated suit no.261) is entitled to get decree of mandatory injunction as alleged OPP*
8. *Whether the plaintiffs have no cause of action and locus and conceal the true and material facts to file the present suit?OPD*
9. *Whether the suit of plaintiffs is bad for misjoinder of necessary parties?OPD*
10. *Relief.”*

7. At this stage, it is important to note the facts of Civil Revision

No.406 of 2020. Smt. Birwati, claiming to be the owner of the suit property has filed an eviction petition against Shri Chand from Shop No.176, Housing Board Colony, Sector-10, Faridabad. She claims that she, being the landlady, is entitled to get the possession of the property on various grounds of eviction including non-payment of rent, change of user, breach of terms and conditions, nuisance etc. Shri Chand, the tenant, has denied the relationship of landlord and tenant and claimed that the owners of the premises are Sh. Pardeep Chaudhary and Smt. Sheetal. Before the learned Rent Controller, the tenant has suffered a statement that he has vacated the tenanted premises. An application filed by Sh. Pardeep Chaudhary and Smt. Sheetal under Order 1 Rule 10 of the Code of Civil Procedure, 1908, was dismissed. The eviction petition was dismissed as infructuous since the tenant had vacated the premises. Smt. Birwati filed an appeal, which has been accepted by the Appellate Authority. While declaring Smt. Birwati to be the landlord, a decree for possession has been passed against Shri Chand on the ground that he has cleverly handed over the tenanted premises to Sh. Pardeep Chaudhary and Smt. Sheetal. This is how Shri Chand has filed the present revision petition.

8. During the course of recording evidence, DW7-Sh. J.S.Luthra was examined by Smt. Birwati and Sh. Roop Singh as their witness. He stated that on receipt of Rs.25,000/- he executed a General Power of Attorney in favour of late Sh. Prem Singh. Of course, he stated that subsequently, he cancelled the General Power of Attorney on 23.01.2001 and executed a fresh Power of Attorney in favour of Sh. Roop Singh. He further stated that the widow of late Sh. Prem Singh came to his house and

explained the entire situation on which he executed a registered sale deed in favour of Sh. Pardeep Chaudhary and Smt. Sheetal. In cross-examination, he stated that he had received the amount from late Sh. Prem Singh when he executed the Power of Attorney on 11.06.1980. On being questioned, he stated that he does not know whether the notice of cancellation of Power of Attorney was given to late Sh. Prem Singh or not. Smt. Birwati Chaudhary appeared as DW8. In her cross-examination, she evaded to answer the question as to whether Sh. J.S.Luthra executed a General Power of Attorney in favour of late Sh. Prem Singh on 11.06.1980 or not? She admitted that since 1980, all the members of the family including late Sh. Prem Singh, his wife and children have been residing in the concerned house. On being further questioned, she feigned ignorance of the fact that before 2010, the house was registered in the name of late Sh. Prem Singh. On a further question, she stated that she does not know whether they have sold House No.919, Sector 9, Faridabad in the year 2010. She has further stated that they had paid Rs.18,00,000/- to Sh. J.S.Luthra in installments, however, she failed to disclose any details of the payments ever made. She repeatedly stated that her husband is dealing with the matter.

9. In substance, from the reading of the evidence and the pleadings, it is proved that originally the house in question was allotted to Sh. J.S.Luthra, of which some installments were yet to be paid. He executed a General Power of Attorney in favour of late Sh. Prem Singh on 11.01.1980 on receipt of Rs.25,000/- Thereafter, late Sh. Prem Singh, on the strength of the attorney, has been depositing the installments towards the price of the house and house tax. On 25.09.2001, a conveyance deed was

registered in favour of Sh. J.S.Luthra through late Sh. Prem Singh in which Sh. Roop Singh was a witness. Thereafter, Sh. J.S.Luthra, cancelled the Power of Attorney in favour of late Sh. Prem Singh on 23.01.2001 and on the same day, executed a new General Power of Attorney in favour of Sh. Roop Singh, who, thereafter, executed a registered sale deed in favour of his wife Smt. Birwati on 23.02.2010. Sh. J.S.Luthra, executed a registered sale deed in favour of Sh. Pardeep Chaudhary and Smt. Sheetal on 29.09.2010.

10. The General Power of Attorney dated 11.06.1980, executed by Sh. J.S.Luthra in favour of late Sh. Prem Singh is not disputed by any of the parties. Sh. J.S.Luthra admits that the aforesaid Power of Attorney was executed on receipt of Rs.25,000/-. Sh. J.S.Luthra has stated that he has not received any sale consideration from Sh. Roop Singh and/or Smt. Birwati. The sale deed executed by Sh. J.S.Luthra in favour of children of late Sh. Prem Singh, namely, Sh. Pardeep Chaudhary and Smt. Sheetal makes an important reading. He states that the aforesaid house was allotted to him in the year 1980 and the conveyance deed of the aforesaid house was registered in his favour through a power of attorney executed by late Sh. Prem Singh, who died on 11.12.2003. On account of his death, the ownership rights came back to him. He has already received the entire sale consideration of Rs.5,00,000/- from late Sh. Prem Singh. Hence, he is executing the sale deed in favour of children of late Sh. Prem Singh, namely Sh. Pardeep Chaudhary and Smt. Sheetal.

11. This Bench has heard the learned senior counsels representing the parties at length and with their able assistance perused the paper book as well as the lower courts record which was requisitioned in the Regular

Second Appeals.

12. The learned senior counsel representing Sh. Pardeep Chaudhary and Smt. Sheetal has contended that in view of Section 202 and 208 of the Indian Contract Act, 1872, the General Power of Attorney executed in favour of late Sh. Prem Singh could not be cancelled by Sh. J.S.Luthra. Sh. Roop Singh was in knowledge of the entire facts and was a witness to the conveyance deed registered on 25.09.2001. There was no notice of cancellation to late Sh. Prem Singh and execution of subsequent General Power of Attorney in favour of Sh. Roop Singh, who, in turn, executed a registered sale deed in favour of his wife is illegal and not binding on the rights of the appellants. He submits that the courts below have failed to examine the facts of the case in a proper perspective.

13. On the other hand, the learned senior counsel representing Smt. Birwati and Sh. Roop Singh contends that the ownership of the property in dispute has passed on to Smt. Birwati on the basis of sale deed dated 23.02.2010 particularly when Sh. Roop Singh had a valid General Power of Attorney executed by the owner in his favour. He submits that the subsequent sale deed by Sh. J.S.Luthra in favour of Sh. Pardeep Chaudhary and Smt. Sheetal would not confer any right, title or interest in the property. He, while relying upon the judgment passed by the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd vs. State of Haryana and another (2012) 1 SCC 656**, claims that the General Power of Attorney did not create any right in the property and Sh. Pardeep Chaudhary and Smt. Sheetal cannot claim ownership on the basis of the aforesaid General Power of Attorney or the subsequent sale deed executed by Sh. J.S.Luthra. He submits that Sh.

Pardeep Chaudhary and Smt. Sheetal have admitted that the power of attorney executed by Sh. J.S.Luthra on 11.06.1980, came to an end on 11.12.2003, the date of death of late Sh. Prem Singh. Thereafter, the sale deed has been executed in favour of Smt. Bitwati, consequently, Sh. Pardeep Chaudhary and Smt. Sheetal have no right, title or interest in the property.

14. First of all, the Bench proceeds to analyse the provisions of law.

Section 202 of the Indian Contract Act, 1872, is extracted as under:-

Section 202. *Termination of agency, where agent has an interest in subject-matter.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. —Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."*

(a) *A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death. (a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death."*

(b) *A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death. (b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."*

15. It is evident on reading Section 202 of the Indian Contract Act, 1872 that where the agent himself has an interest in the property which forms the subject matter of the agency, the same cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The

aforesaid provision has been interpreted by the various Courts including our High Court. In **Ramesh Mohan and another vs. Raj Kishan and others, 1984, Punjab Law Reporter, 211**, the Court held that the sale agreement, on receipt of the entire sale consideration, followed by Power of Attorney and delivery of possession renders the power of attorney irrevocable and in view of Section 202 of the Indian Contract Act, 1872, the power of attorney holder continues to be the agent despite cancellation of power of attorney. Furthermore, the Supreme Court, while examining the aforesaid provisions, in **Seth Loon Karan Sethiya vs. Ivan E. John and others, AIR 1969 SC 73**, held that there is hardly any doubt that the power of attorney given by the appellant in favour of the bank is a power coupled with an interest, therefore, in view of Section 202 of the Indian Contract Act, 1872, where the agent has himself an interest in the property which forms the subject matter of agency, the same, in the absence of any contract, cannot be terminated. In this case, the borrower being highly indebted to the bank, executed a power of attorney authorizing the bank to execute a decree which was passed in his favour. Subsequently, he disputed the maintainability of the execution petition by the bank. The Supreme Court rejected his objection.

16. Similarly, in **Jeet Kumari vs. Girdhari Lal 2003(3) R.C.R.(Civil) 391**, the Court held that though the title will not pass only on the basis of execution of power of attorney, without execution and registration of the sale deed, however, the vendor cannot revoke the power of attorney and the possession of the plaintiff is protected under Section 53-A of the Transfer of Property Act, 1882.

17. On a careful perusal of the judgment passed in **Suraj Lamp**

(*supra*), which has been relied upon by the learned counsel representing Smt. Birwati and Sh. Roop Singh, the Supreme Court has held that the execution of the agreement to sell coupled with delivery of possession, the execution of the power of attorney and other documents does not amount to transfer of the property. While overruling the view of the Delhi High Court in **Asha M. Jain vs. Canara Bank, (2001) 94 DLT 841**, the Court held that equation of the aforesaid document with a complete sale deed opens the doors for fraud and therefore, requirement of registered sale deed under Section 17 of the Registration Act, 1908 cannot be substituted by such documents. It was held that the execution of the agreement to sell, general power of attorney, special power of attorney and Will is not a mode of transfer and that it can never be a valid substitute for a sale deed. The observations recorded in **Asha M. Jain's case (supra)** to that extent were overruled as would be evident from reading of para 23 of the SCC. With greatest respect, the judgment passed in **Suraj Lamp (supra)** is not applicable to the present case because in the present case, the plaintiff-Sh. Pardeep Chaudhary and Smt. Sheetal are not claiming ownership on the basis of the power of attorney. In fact, they are claiming ownership on the basis of the sale deed executed in their favour, by the owner Sh. J.S.Luthra, on 29.09.2010.

18. On a careful analysis of the case law and the relevant statutory provisions, it is abundantly clear that the title transferred by Sh. J.S.Luthra in favour of Sh. Pardeep Chaudhary and Smt. Sheetal vide registered sale deed dated 29.09.2010 is in acknowledgment of the receipt of entire sale consideration from late Sh. Prem Singh and in continuation of the execution

of the General Power of Attorney dated 11.06.1980. From the reading of the sale deed as also the deposition of Sh. J.S.Luthra, the agent (late Sh. Prem Singh) had an interest in the property which formed the subject matter of the agency. Consequently, Sh. J.S.Luthra executed a General Power of Attorney in favour of late Sh. Prem Singh, the agent. The subsequent sale deed executed by Sh. J.S.Luthra is in continuation of the General Power of Attorney which was executed in the year 1980. In other words, the sale deed dated 29.09.2010 is connected to the previous contract entered into with late Sh. Prem Singh. Therefore, the matter is required to be examined in that context. The agency was created in which the agent had an interest in the property, thus, the power of attorney could not be cancelled. Therefore, the action of Sh. J.S.Luthra in cancelling the General Power of Attorney on 23.01.2001 is illegal, as the same is in violation of Section 202 of the Indian Contract Act, 1872. Similarly, execution of fresh power of attorney in favour of Sh. Roop Singh by Sh. J.S.Luthra was also incorrect. Such step would not create any right in favour of Sh. Roop Singh.

19. Now, let's examine the rights of Smt. Birwati and Sh. Roop Singh. Smt. Birwati and Sh. Roop Singh claim that a General Power of Attorney was executed by Sh. J.S.Luthra in favour of Sh. Roop Singh on 23.01.2001. In absence of evidence of payment of consideration, the power of attorney did not create any interest in the property. Smt. Birwati has failed to prove payment of any sale consideration to Sh. J.S.Luthra, who while appearing in evidence has specifically denied receipt of any such payment, although, he was examined by Smt. Birwati as a witness to prove her own case. Sh. Roop Singh has not appeared in evidence. On reading of

Smt. Birwati's cross-examination, it is evident that she tried to avoid answering the questions put to her in the cross-examination while claiming that her husband knows everything, however, Sh. Roop Singh did not appear as witness to provide information on this aspect. Sh. Roop Singh is defendant no.2 in the suit filed by Sh. Pardeep Chaudhary. Hence, Smt. Birwati and Sh. Roop Singh have withheld the best evidence forcing the Court to draw an adverse inference against them.

20. It may be noted that the interest created in favour of late Sh. Prem Singh in the year 1980, was in the knowledge of Smt. Birwati as she is not a stranger but a member of the family. When conveyance deed was executed by the Haryana Housing Board on 25.09.2000 in favour of Sh. J.S.Luthra through late Sh. Prem Singh, Sh. Roop Singh concealed the factum of cancellation of the power of attorney executed by Sh. J.S.Luthra in favour of late Sh. Prem Singh on 23.01.2001. He also concealed the fact that Sh. J.S.Luthra has executed a fresh power of attorney in his favour with respect to the house in question. In fact, the signatures of Sh. Roop Singh as witness acknowledges the correctness of the power of attorney in favour of late Sh. Prem Singh which was created along with interest in the house which continues to operate. Consequently, the rights of Smt. Birwati, if any, would be subservient to the rights of late Sh. Prem Singh or his children. Even though, the sale deed was executed in favour of late Sh. Prem Singh's children on 29.09.2010, however, this shall be considered to in continuity of the rights flowing from the power of attorney dated 11.06.1980 which was executed on receipt of the entire sale consideration particularly when the possession of the property was also delivered to late Sh. Prem Singh at that

time. Hence, the rights of late Sh. Prem Singh's children stand on a higher pedestal and are superior to that of Smt. Birwati, who cannot claim to be a bonafide purchaser for consideration, particularly when she has neither proved payment of consideration nor proved that she was not in knowledge of the aforementioned facts of the case.

21. The appellant has also filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, to lead additional evidence in order to prove the agreement to sell and the proceedings recorded by the Haryana Housing Board in its report. In the facts and circumstances of the present case, this court does not require the additional evidence. Hence, the application is disposed of while giving liberty to the appellant to revive the application in case the conclusion drawn by this Court is reversed.

22. Consequently, both the courts have erred in overlooking these material aspects of the case. In view of the aforesaid discussion, the conclusion is inevitable. Hence, while allowing the appeals, the judgments and decrees passed by the courts below are set aside. The suit filed by Sh. Pardeep Chaudhary and Smt. Sheetal shall stand decreed, whereas the suit filed by Smt. Birwati shall stand dismissed.

23. In view of the aforesaid discussion, the civil revision petition filed by Shri Chand is allowed because Smt. Birwati is neither the owner nor the landlord of the suit property.

04th July, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO