

(2014) 11 P&H CK 0149
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 451 of 2013 (O&M)

Gian Singh

APPELLANT

Vs

Avtar Singh and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2015) 1 RCR(Civil) 251

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Prateek Mahajan, Advocates for the Appellant; Damandeep Singh for J.S. Parmar, Advocates for the Respondent

Judgement

Rakesh Kumar Jain, J.—This petition is directed against the order dated 4.8.2012, allowing the application filed by the respondents under Order 9 Rule 13 of the Code of Civil Procedure, 1908 [for short "the CPC] for setting aside the ex parte judgment and decree dated 19.5.2010. In brief, the facts of the case are that Avtar Singh and Hari Singh are the residents of Malaysia, who had immovable property at Amritsar. Initially, they appointed Balwinder Kaur as their General Power of Attorney on 16.3.2004, who entered into an agreement to sell with Gian Singh (petitioner herein) on 8.4.2006 in respect of the land in dispute @ Rs. 3 lac per acre and received Rs. 25 lacs in advance. The target date was fixed as 26.4.2006 and since the power of attorney did not come present or refused to owe the commitment made in the agreement, a suit for specific performance was filed on 28.4.2006 by the present petitioner. According to the petitioner, the respondents were served but they did not appear, therefore, they were proceeded against ex parte and an ex parte decree was passed on 19.5.2010. The respondents then filed an application after 3 1/2 month of the decree passed through one Sakat-tar Singh s/o Shangara Singh, resident of Village Poohla, Tehsil Patti, District Taran Taran under Order 9 Rule 13 of the CPC for setting aside the ex parte judgment and decree dated 19.5.2010. This power of attorney in favour of Sakattar Singh was executed on 15.5.2006 and it is

alleged that the earlier power of attorney dated 16.3.2004 in favour of Balwinder Kaur was revoked on the same day. The petitioner filed reply to the application alleging that there was no power of attorney holder to initiate legal proceedings as the power given to the power of attorney holder was only to look after the immovable property. The power, if any, given to him was revoked by revocation deed dated 29.9.2009.

2. Learned counsel for the petitioner has submitted that not only there was no power with Sakattar Singh to initiate legal proceedings for setting aside the ex parte decree but also the power of attorney in his favour was revoked on 29.9.2009 much prior to the filing of the application. In support of his submission, he has relied upon two judgments of this Court in the case of Krishan Kumar Vs. Nand Lal and Others, and Pardeep Kumar Mehta Vs. Smt. Harbhajan Kaur and Others, , to contend that the special power of attorney must have power to do a specific act and in the absence thereof all acts done by him were not valid and held to be null and void.

3. On the other hand, learned counsel or the respondents has argued that Balwinder Kaur, first power of attorney holder, came to India on 13.4.2006 whereas, the agreement to sell was alleged to have been entered into on 8.4.2006, therefore, there is a fraud played by the petitioner at the time when the agreement to sell was entered into between the parties.

4. Be that as it may, the question before me at present is "whether the application filed under Order 9 Rule 13 of the CPC is duly signed by a competent person as the power of attorney dated 15.5.2006 is alleged to have given by respondent to Sakattar Singh." It is mentioned in the said power of attorney that Sakattar Singh/the donee of the power of attorney would only look after the agricultural land measuring 84 kanal 13 marla belonging to the donors and to do all acts, things, sign and execute all such documents for any purpose mentioned in the power of attorney. The purpose of filing and initiating legal proceedings is conspicuously absent in the power of attorney. Therefore, by any stretch of imagination, it cannot be presumed that the said power of attorney holder had power to sign the application for setting aside the ex parte decree.

5. I have also found from the impugned order that the argument raised by learned counsel for the petitioner in this regard has also been dealt with to hold that the application filed by the said power of attorney was in accordance with law. In view of the aforesaid discussion, the present revision petition is allowed and the impugned order is hereby set aside. Since, it is held by this Court that the application filed under Order 9 Rule 13 of the CPC was not signed by a duly authorised person, therefore, the order passed by the Court below is held to be not maintainable at its threshold and accordingly, the respondents may, if so advised, still file an application, through a duly authorised person for setting aside the ex parte decree subject to the right of the other party to raise objections, in case it is raised in regard to limitation.