AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-07-2017

Judgment delivered on 10-10-2017

FA No. 161 of 2013

(Arising out of judgment dated 22-7-2013 passed by the Fourth Additional District Judge, Raipur, in civil suit No.41-A/2011)

1. Smt. Vidyavati Singh W/o Late Budh Singh Aged About 72 Years R/o Civil Lines (Opp. Raj Bhawan), Raipur, P.S. Civil Lines, Raipur, Tah. And Distt. Raipur C.G.

---- Appellant

Versus

1. Harvinder Singh, S/o Hardayal Singh Aged About 43 Years R/o Mahavir Nagar, Puraina, P.S. Raipur, Tah. And Distt. Raipur C.G.

2. Rajkishor Singh S/o Late Budh Singh Aged About 48 (wrongly written as 43) years, R/o Civil Lines, Raipur, P.S. Civil Lines, Raipur, Tah. And Distt. Raipur C.G.

3. State Of Chhattisgarh Through Collector, Raipur, P.S. Raipur, Distt. Raipur C.G.

4. Nanesh Builder Pvt. Ltd. Thru- Director Vineet Jain S/o V.C. Jain, R/o Shailendra Nagar, Raipur, P.S. Raipur, Tah. And Distt. Raipur C.G.

5. New Raipur Development Authority Raipur, Near Tata Motors National Garage, Telibandha, P.S. Raipur, Tah. And Distt. Raipur C.G.

---- Respondents

And

FA No. 162 Of 2013

(Arising out of judgment dated 22-7-2013 passed by the Fourth Additional District Judge, Raipur, in civil suit No.5-A/2011)

1. Smt. Vidyavati Singh W/o Late Budh Singh Aged About 72 Years R/o Civil Lines, (Opp. Raj Bhawan), Raipur, P.S. Civil Lines, Raipur, Tah. And Distt. Raipur C.G.

---- Appellant

Vs

1. Smt. Shakuntala Sinha W/o Ashok Sinha Aged About 39 Years R/o Shailendra Nagar, Raipur,

   At Present R/o Beside State Bank, Sadar Bazar, Jagdalpur, P.S. Jagdalpur, Distt. Bastar C.G.

2. Rajkishor Singh S/o Late Budh Singh Aged About 48 Years R/o Civil Lines, (Opp. Raj Bhawan), Raipur, P.S. Civil Lines, Raipur, Tah. And Distt. Raipur C.G.

3. State Of Chhattisgarh Thru- Collector, Raipur, P.S. Raipur, Distt. Raipur C.G.

---- Respondents

For Appellant (in both the appeals)	Shri B.P. Gupta, Advocate with Ms. Richa Jain, Advocate
For Respondent No.1 (in both the appeals)	Ms. Prachi Agrawal, Advocate
For Respondent No.4 (in FA No.161 of 2013)	Shri Adhiraj Surana, Advocate
For Respondent/State (in both the appeals)	Shri Rajendra Tripathi, Panel Lawyer

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Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Arvind Singh Chandel

C A V Judgment

The following judgment of the Court was delivered by

Prashant Kumar Mishra, J.--

1. Present appeals were heard analogously and are decided by this common judgment for the reason that both the suits were filed by the same plaintiff Smt. Vidyavati Singh seeking cancellation of power of attorney, consequent sale deeds and for recovery of possession as also for permanent injunction against two different defendants. It is also for the reason that the power of attorney holder who has executed the sale deed is also one and the same and the materials placed before the trail Court were also similar in nature. There being some differences in the evidence of purchasers who are different in both the suits, only this part dealing with the evidence of purchaser will be dealt with separately.

<u>First Appeal No.161 of 2013 :</u>

2. The trial Court has dismissed the plaintiff's/appellant's suit for declaration of the power of attorney dated 30-7-2002 and the sale deed dated 13-8-2003 as null, void & inoperative. The power of attorney was purportedly executed by the plaintiff in favour of her son defendant No.2-Rajkishor Singh where as the sale deed was executed by the defendant No.2 in favour of the defendant No.1-Harvinder Singh. By amending the plaint,

the plaintiff also prayed that the subsequent sale deed executed by the defendant No.1 in favour of the defendant No.4-Nanesh Builder Pvt. Ltd. be also declared null, void & inoperative. It was also prayed that the land acquisition proceedings initiated by the defendant No.5-Naya Raipur Development Authority for acquisition of the suit land or part thereof be also declared null, void & inoperative. The plaintiff further prayed for recovery of possession and permanent injunction against the defendants No.1, 4 & 5.

3. For brevity, the defendant No.1-Harvinder Singh shall be hereinafter referred to as 'the first purchaser'; similarly defendant No.2-Rajkishor Singh shall be hereinafter referred to as 'the power of attorney holder'; No.4- Nanesh Builder Pvt. Ltd. shall be hereinafter referred to as 'the subsequent purchaser'; and No.5-Naya Raipur Development Authority shall be hereinafter referred as ‘the NRDA’.

4. The plaintiff averred that she owns land admeasuring 12.320 hectares at village Barauda, Patwari Halka 72/15, R.I. Circle Mandir Hasaud, Tahsil Arang, District Raipur, out of which the suit pertains to land bearing khasra No.71 (area 0.580 hectares); khasra No.403 (area 0.630 hectares); khasra No.941 (area 5.340 hectares) & khasra No.951 (area 0.040

hectares) total area 6.590 hectares, which is referred in the plaint as suit land. According to the plaintiff, she has never executed any power of attorney in favour of her son, the defendant No.2, therefore, the power of attorney dated 30-7-2002 is a fabricated and concocted document, on the basis of which the power of attorney holder has sold the suit land in favour of the first purchaser for a sum of Rs.1,22,000/- and executed the registered sale deed on 13-8-2003, for which the power of attorney holder has no authority or right to execute such sale deed. The plaintiff specifically and categorically stated that the power of attorney is not signed by the plaintiff nor she has purchased the non-judicial stamp of Rs.100/- on which the power of attorney is written. She has never appeared and singed on the power of attorney before the Notary Alok Kumar Sharma. The plaintiff further averred that mutation of the name of the first purchaser and thereafter, the subsequent purchaser and the NRDA is also illegal as no title has passed in favour of the first purchaser on the basis of forged power of attorney and illegal sale deed. According to the plaintiff, the first purchaser executed the sale deed in favour of the subsequent purchaser, despite there being an order of temporary injunction. Similarly, the NRDA has

acquired the land and paid compensation to the first purchaser or the subsequent purchaser despite the interim order of the trial Court.

5. The defendants filed their separate written statements. The substance of plea raised by the defendant No.1, first purchaser, is that the plaintiff and the power of attorney holder being mother & son, the plaintiff was aware of the power of attorney as also the sale deed and the suit is vexatious for harassing and threatening the defendants. He also stated that by different sale deeds the first purchaser has transferred the suit land in favour of the defendant No.4, subsequent purchaser, and land bearing khasra No.941/1 area 2.20 hectares has been acquired by the NRDA for expansion of the Raipur Airport. The compensation for such acquisition has already been received by him.

6. The substance of defence raised by the defendant No.2, the power of attorney holder, is that the plaintiff has executed the power of attorney in his favour pursuant to which he lawfully executed the sale deed in favour of the first purchaser.

7. The defendant No.4, subsequent purchaser, raised a plea of ignorance of any dispute between the plaintiff and the power of

attorney holder or any controversy or pending litigation in respect of the sale deed executed in favour of the first purchaser.

8. The defendant No.5, the NRDA, pleaded that area admeasuring 2.20 hectares bearing khasra No.941/1 and area admeasuring 3.14 hectares bearing khasra No.941/2 and area 0.04 hectares bearing khasra No.951 has been purchased by the NRDA through registered sale deeds executed by the defendants No.1 & 4 and the entire sale value has been paid by cheque to the said defendants.

9. The trial Court framed 3 material issues for adjudication with regard to concoction or genuineness of the power of attorney dated 30-7-2002 and the consequent validity of the sale deed dated 13-8-2003 and further as to whether the plaintiff is entitled for recovery of possession.

10. In course of recording of evidence the plaintiff examined herself as PW-1 and the handwriting Expert Dr. (Ku.) Sunanda Dhenga as PW-2. The Expert has proved the report Ex.P/6 along with its photostate copy (Ex.P/6-C) and other Exhibits in form of the admitted signature, questioned signature of the plaintiff and other relevant documents on the basis of which

she accorded opinion. According to her report, the signature available on the power of attorney is not the signature of plaintiff-Vidyavati Singh. Plaintiff has filed voluminous documentary evidence Ex.P/1 to Ex.P/37.

11. On the other hand, defendant No.1 (first purchaser) examined himself as DW-1 and the Notary Alok Sharma as DW-2. The defendant No.2 examined himself as his only witness. The NRDA has examined K.L. Verma, Manager (Land) as DW-1 and R.J. Verma as DW-2 of the defendant No.5.

12. On the basis of evidence available on record, the trial Court has dismissed the suit, mainly on the reasoning that the handwriting Expert's evidence is only an opinion; defendant No.2 has executed some other sale deeds on the basis of power of attorney, which is not objected by the plaintiff; and that the Notary has deposed in favour of the defendant No.1.

13. The issue which would decide the fate of the plaintiff's suit and the present appeal is – whether the plaintiff had executed the power of attorney dated 30-7-2002 in favour of the power of attorney holder ?

14. In order to establish that the subject power of attorney is not signed by the plaintiff, she has made specific allegation in the

plaint and has entered the witness box as PW-1 to state that she and the power of attorney holder reside separate albeit in one premise and further that the subject land was mortgaged with a Bank. When suggested that the defendant No.1 had approached her for purchase of land by showing the power of attorney, she would deny the suggestion and state on her own that she does not even know nor she has ever met the defendant No.1-Harvinder Singh. When she was specifically asked that the defendant No.1 present in Court had approached her, she again emphatically denied the suggestion. She admits that a report of forgery was lodged in the police station where she has already been examined. When suggested that the suit has been filed because the value of the property has increased, she would state that the suit has been filed because the power of attorney is forged and that her son i.e. the power of attorney holder is residing separate from 1988. In reply to further suggestion that out of three sons, Rajkishor Singh is the only son who resides with her, she would depose that Rajkishor Singh is residing separate since 1988 and she resides with her younger son who takes care of her. She denies that she had gone to the Notary for execution of the power of attorney.

15. Handwriting Expert Dr. (Ku.) Sunanda Dhenga (PW-2) has proved her report Ex.P/6 and has given details as to the basis on which she rested her opinion that the purported signature over the power of attorney is not signed by the plaintiff. Despite detailed cross-examination the defendants could not elicit from this witness to doubt or discredit her opinion.

16. On the other hand, the defendants have examined themselves and Notary Alok Kumar Sharma, who had notarized the power of attorney. Statements of the defendants themselves do not throw much light on the issue of genuineness of power of attorney because none of them were present at the time of its execution.

17. We will, therefore, discuss the statement of Alok Kumar Sharma (DW-2), the Public Notary, who notarized the power of attorney. This witness has not submitted his affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 but appeared straightway in the Court, however, in his examination-in-chief he has not stated that the plaintiff herself had visited his office or Court or that he had gone to the residence of the plaintiff for obtaining her signature over the power of attorney. He admits that the persons who had come to get the documents notarized are not personally known to

him and that in the present case also he does not know either the plaintiff or the power of attorney holder. He was not able to recollect as to who had brought the power of attorney to him for notarisation. He also admits that when it was brought to him it was already typed and that he has not prepared nor typed the document. He is also not aware as to who prepared the draft of power of attorney (Ex.P/3). He also admits that signature of the plaintiff-Smt. Vidyavati Singh and the defendant No.2-Rajkishor Singh were already appended over the document when it was brought to him for notarisation. He would also admit that unless he sees the original he could not state as to who identified the executor of the power of attorney and further that the seal of identifier or his/her signature is not available on the front page of power of attorney. This witness has not been able to state as to what document of identification of Smt. Vidyavati Singh was produced before him at the time of execution of the document.

18. In his deposition, the defendant No.2, the power of attorney holder, has stated that the sale consideration was paid to his mother, however, no proof has been submitted to substantiate this statement. He speaks about one power of attorney executed by the plaintiff in his favour in the year 1992, but

when he was asked as to why another power of attorney was necessary when a power of attorney already existed, he says that the purchasers demanded new power of attorney, therefore, the subject power of attorney was prepared. He admits that he resides separate from his mother. He also admits that he has separated from 2003-04 and that his mother resides with his younger brother. It is, thus, clear that the plaintiff's statement that the power of attorney holder reside separate from 1988 is more probable. He also admits that his mother and younger brother are residing in the ancestral house. When it was specifically questioned as to why the sale deed was executed at Arang when both the parties to the sale deed are resident of Raipur where facility of registration is available, the witness had no answer to this query. It was also suggested to him that his mother has raised objection before the Sub Registrar, Raipur, therefore, the sale deed has been executed at Arang, the witness denies the suggestion. He also denies that his mother had lodged First Information Report against him on 24-6-2000 to the effect that he is threatening to kill his mother. He has no answer either to the question as to why the original *rin pustika* is not mentioned in the sale deed, however, he admits that the original

rin pustika was not presented before the Sub Registrar, but the sale deed was executed on the basis of duplicate *rin pustika*.

19. A reading of questions No.22 to 25 would reveal that on the date of execution of sale deed the defendant No.2 was not possessed of the original power of attorney or the original *rin pustika*, yet the sale deed was executed. This witness is not aware as to who prepared the power of attorney (Ex.P/3) with further admission that it was neither written nor typed in his presence. He further states that the duplicate *rin pustika* and original power of attorney have already been returned to his mother. He admits to have received a cheque from another purchaser namely; Smt. Shakuntala Sinha (respondent/ defendant No.1 in FA No.162 of 2013). He also admits that one purchaser Rajesh Tiwari has filed criminal case against him for committing forgery.

20. If we examine the sale deed (Ex.P/2), it is apparent that submission of duplicate *rin pustika* is mentioned at the place where details of the seller is provided. The sale deed does not contain either the original power of attorney or even the photocopy thereof, yet the Sub Registrar proceeded to executed the sale deed. The sale deed was executed on

13-8-2003, however, the *kist band khatoni* annexed with the sale deed is of 1998-99 and the site map was prepared on 6-7-2001.

21. It is also important to notice that the power of attorney is signed by one witness namely; Bhaskar, S/o Harishchandra of Gudhiyari, however, this witness has not been examined by the defendants.

22. The record contains another document, which is an agreement dated 5-1-2003 between the defendant No.2-Rajkishor Singh and one Rajesh Tiwari. It is probably this agreement the existence or execution of which has been admitted by the defendant No.2 in his deposition in the present case. In this agreement/ikrarnama dated 5-1-2003 the defendant No.2 has stated that his mother has executed a power of attorney in February, 1992, which is still valid, therefore, he would accept advance of Rs.5.00 lacs from Rajesh Tiwari and execute the sale agreement for several khasra numbers i.e. Khasras No.919 (new 71), 403, 941, 951, 1250 & 1259, the sale deed for which shall be registered before February, 2004. If this agreement is true and earlier power of attorney of 1992 was already in existence on 5-1-2003, it is strange as to why the defendant No.2 got prepared another power of attorney dated

30-7-2002, which, according to the present plaintiff, is a forged document. The agreement, thus, supports, corroborates and probablise the plaint allegations that the power of attorney is a forged document.

23. The entire thrust of defendants plea and the argument as well as the reasoning of the trial Court is based on the law that an expert opinion is not conclusive and binding because it is only an opinion of a handwriting expert, therefore, it cannot be relied upon to establish that the power of attorney is a forged document, therefore, we shall proceed to discuss the law as to the quality and admissibility of the handwriting expert's opinion.

24. Section 45 of the Indian Evidence Act, 1872 provides that when the Court has to form an opinion upon a point of foreign law or of science or art, or as to **identity of handwriting** or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions **are relevant facts** and such persons are called experts.

25. In **Fakhruddin v. The State of Madhya Pradesh**[1] the Supreme Court held that handwriting may be proved on

1 AIR 1967 SC 1326

admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. The Supreme Court further observes, a third method is comparison by the court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

26. The Supreme Court would further observe thus in para 11 thus :

> 11. Both Under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed ones, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics

> in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

27. The law has not withered or diluted as to the proposition that handwriting expert's opinion is only an opinion, therefore, it should be treated like any other evidence and that it could either be admitted or denied, therefore, it is for the Court to decide whether such evidence could be admitted and much weight should be given thereto, as observed by the Supreme Court in **Malay Kumar Ganguly v. Sukumar Mukherjee & Ors.**[2]

28. In **Murarilal v. State of M.P.**[3] the Supreme Court would observe that expert testimony is made relevant by Section 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion

2 AIR 2010 SC 1162
3 AIR 1980 SC 531

of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like Illustration (b) to Section 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars, which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (Section 3) tells us that 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we act on artificial standard of proof not warranted by the provisions of the Act. Further, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that Section 46 of the Evidence Act makes facts, not otherwise relevant, relevant if

they support or are inconsistent with the opinion of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of an handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

29. In **Murarilal** (supra) the Supreme Court further opined that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases

where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. It is further observed that the argument that the Court should not venture to compare writings Itself, as it would thereby assume to itself the role of an expert is entirely without force. Referring to Section 73 of the Evidence Act, the Supreme Court observes, if comparison of handwriting by the Court is hazardous, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary because there may be cases where both sides call experts and the voices of science are heard and there may be cases where neither side calls an expert, being ill able to afford them. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert.

30. Having dealt with the evidence on record and the law concerning the admissibility and weight of an opinion of the

handwriting expert, we notice in the case at hand that as against the evidence of oath against oath, the plaintiff has called the expert to prove her case that the subject power of attorney does not bear her signature or to say that her signature over the power of attorney is forged. The quality of evidence brought forth by the plaintiff appears to be more convincing and credible. Plaintiff herself has entered the witness box to tender primary evidence to depose that the power of attorney does not bear her signature. The attending circumstances, by way of corroboration, is that the plaintiff (mother) and the attorney holder (son) are residing separate since 1988 and there is suggestion put to the defendant No.2 that the plaintiff had lodged an FIR against him alleging that he is threatening to kill his mother. The defendant No.2 admits that his mother is residing with his younger brother and that he executed an agreement with one Rajesh Tiwari on 5-1-2003 reciting that the power of attorney executed by his mother in his favour in February, 1992 is still valid. If that be so there was no necessity for the plaintiff or for the defendant No.2 to prepare or create a fresh power of attorney in July, 2002 which is the bone of dispute in the present case. If the relations between the plaintiff and the defendant No.2 were already

soured there appears no reason as to why she would execute power of attorney in favour of the defendant No.2 instead of choosing her younger son who is residing with her.

31. While summing the evidence, we cannot lose sight of the evidence of the Notary who does not recollect anything concerning execution of the power of attorney. It is strange that neither the Notary nor the defendant No.2 had prepared the power of attorney and the executor of the document i.e. plaintiff is denying her signature over the document. Thus, there is no evidence as to who prepared the power of attorney. The Notary does not recollect as to whether the plaintiff came to him to put her signature over the document. As a matter of fact, he admits that when the document was brought to him for notarization it was already signed by both the parties meaning thereby that neither of the parties has signed in his presence. In the teeth of oral evidence, which raises all possible doubt over preparation and execution of power of attorney, the expert opinion is fully corroborated, therefore, the same has to be believed and we do so.

32. In view of the above, we are of the considered opinion that the trial Court has committed gross illegality and irregularity in dismissing the suit of the plaintiff. Accordingly, the impugned

judgment and decree deserves to be and is hereby set aside.

33. Since we are of the firm opinion that the power of attorney is a forged document, the sale deed dated 30-7-2002 executed by the defendant No.2 in favour of defendant No.1 is null & void, as it was not signed by the owner/title holder i.e. plaintiff. Consequently, the subsequent sale deed dated 31-3-2005 executed by the defendant No.1 in favour of the defendant No.4 as well as the sale deed dated 28-9-2007 executed by the defendant No.1 in favour of the NRDA and the sale deed dated 1-10-2017 executed by the defendant No.4 in favour of the NRDA are also declared null & void and not binding on the plaintiff. A decree is also passed in favour of the plaintiff and against the defendants No.1 to 4 to handover possession of the entire suit land except the land possessed by the NRDA, within a period of two months from today.

34. Since the NRDA has not acquired the property under the provisions of the Land Acquisition Act, 1894, but it has purchased the property by registered sale deeds, consequent upon declaration of the sale deeds being illegal, null & void and not binding on the plaintiff, the NRDA shall cease to have any title over the land. However, since the NRDA has

purchased the property for expansion of the Raipur Airport; for a public purpose, it may purchase the property from the plaintiff upon execution of sale deed in its (NRDA's) favour on the present market value. If the NRDA fails to purchase the land from the plaintiff within a period of two months from today, the NRDA shall also handover vacant possession of the land to the plaintiff, which was purchased by it from the defendants No.1 & 4 within next two months.

35. As an upshot, the first appeal (FA No.161 of 2013) is allowed in the terms mentioned in paragraphs 33 & 34 above. The defendants shall bear the plaintiff's cost in the suit as well as in this appeal.

36. A decree be drawn accordingly.

<u>First Appeal No.162 of 2013 :</u>

37. By the judgment and decree impugned in this appeal the trial Court has dismissed the plaintiff's suit for declaration of the power of attorney dated 30-7-2002 and the subsequent sale deeds dated 27-5-2013 & 8-8-2003 executed by the power of attorney holder, the defendant No.2 in favour the purchaser Smt. Shakuntala Sinha, the defendant No. 1, as null, void and inoperative with further prayer for recovery of possession and to restrain the defendants from interfering in plaintiff's

possession. The land involved in the present suit bears khasra No.1250 (area 1.360 hectare) and khasra No.1259 (area 4.370 hectare)

38. The plaint allegation and the evidence adduced by the plaintiff by examining herself as PW-1 and her witness namely; Dr. (Ku.) Sunanda Dhenga, handwriting expert (PW-2) is similar, as discussed in the preceding paragraphs in the judgment rendered in FA No.161 of 2013, therefore, for brevity, the same has not discussed again.

39. The purchasers being different in both the appeals, we shall discuss the evidence adduced by the purchaser Smt. Shankuntala Sinha in this case. She has examined the Notary Alok Kumar Sharma as DW-1 and her attorney holder Ashok Sinha as DW-2. The evidence of Notary Alok kumar Sharma (DW-1) is again similar, as is discussed in FA No.161 of 2013. Ashok Sinha (DW-2) is the power of attorney holder of the defendant No. 1 Smt. Shakuntala Sinha, however, in para 1 of his affidavit under Order 18 Rule 4 of the CPC he has stated that he is the attorney holder of Smt. Vidhyawati Sinha. He has stated that the plaintiff had informed him about execution of power of attorney in favour of her son i.e. defendant No. 2, however, in his cross-examination he admits that prior to the

present transaction he was not known to the plaintiff. He candidly admits that the power of attorney was not signed by the plaintiff in his presence. He further admits that there is no averment in his written statement that the plaintiff had instructed him to discuss about the transaction with her attorney holder, the defendant No.2. This witness has filed the written statement under his signature without mentioning that he is the attorney holder of the defendant No.1 Smt. Shakuntala Sinha.

40. The record of the trial Court does not contain any such power of attorney executed by the defendant No.1 Smt. Shankuntala Sinha in favour of this witness (Ashok Sinha), on the basis of which he has deposed on behalf of the defendant No.1.

41. A perusal of the written statement would highlight that the written statement as well as the verification is signed by Ashok Sinha and not by Smt. Shakuntala Sinha albeit her signature is available on each page of the written statement. The written statement is supported by an affidavit sworn before Notary Dhruw Narayan Pandey, which is worded as if the affidavit itself is a power of attorney. The power of attorney is, thus, not properly stamped nor such instrument can be created by way of execution of affidavit.

42. It is settled proposition of law that evidence of power of attorney holder is not permissible in place of the plaintiff or the defendant, who is required to depose in person in support of the pleading. The attorney holder can be witness of the party to the suit, but cannot depose on behalf of a party to the suit. (See: **Janki Vashdeo Bhojwani and Another v. Indusind Bank Ltd. and Others**[4]).

43. Be that as it may, in this suit also the plaintiff's evidence being the same as in the other suit out of which FA No.161 of 2013 is arising and the defendant No.1's power of attorney having deposed that he was not present at the time of execution of power of attorney, the discussion and finding recorded on the genuineness of power of attorney in FA No.161 of 2013 would apply to this case also.

44. Accordingly, in this appeal also it is held that the power of attorney dated 30-7-2002 is forged document, resultantly the attorney holder had no authority to execute the sale deeds dated 27-5-2003 & 8-8-2003 in favour of the defendant No.1. The power of attorney dated 30-7-2002 and the sale deeds dated 27-5-2003 & 8-8-2003 are, thus, declared null, void and inoperative as against the plaintiff. The respondents/

4 (2005) 2 SCC 217

defendants are directed to handover the vacant possession of the entire suit land to the plaintiff within a period of two months from today.

45. As a sequel, the first appeal (FA No.162 of 2013) is allowed. The defendants shall bear the plaintiff's cost in the suit as well as in this appeal.

46. A decree be drawn accordingly.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel

Gowri