IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(203) **RSA no.3120-1996 (O&M)**
Reserved on: 09.02.2026
Pronounced on: 17.02.2026
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Panpauri (Since Deceased) Through LRs. ….Appellant

Versus

Nanku (Since Deceased) Through LRs. And Others ….Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by: Mr. Chetan Kapoor , Advocate
for the appellant.

Mr. Raja Sharma, Advocate and
Mr. Kamal Sharma, Advocate
for the respondent no 1 to 10.

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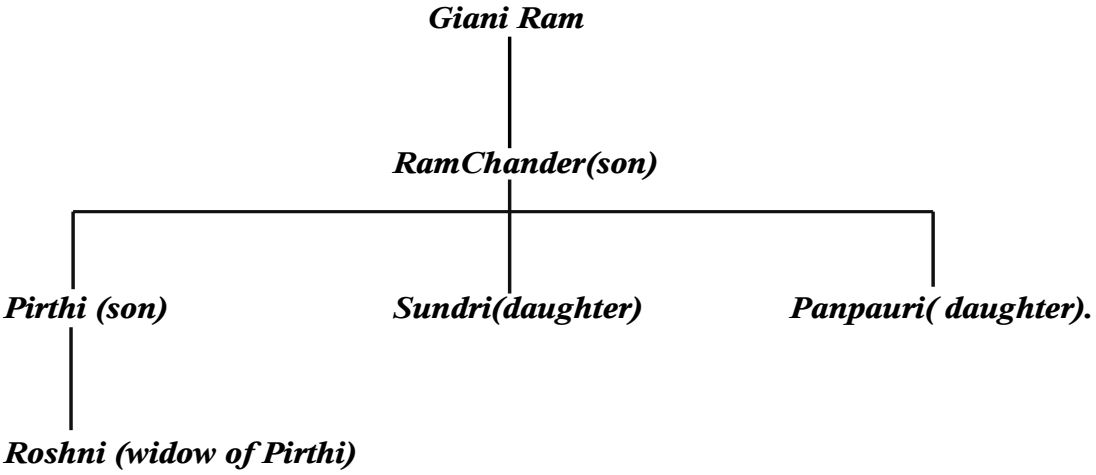
VIRINDER AGGARWAL, J.

1. The Appellant/Plaintiff (sometimes also referred as Panpauri as well to avoid confusion) aggrieved by the judgment and decree dated 10.06.1996 passed by the learned District Judge, Jind, whereby appeal of Respondents/Defendants was allowed and well reasoned judgment and decree dated 15.09.1992 of the learned Additional Senior Sub Judge ,Safidon, was set aside. Appellant respectfully invokes the appellate jurisdiction of this Court through the present Regular Second Appeal (RSA).

BACKGROUND FACTS

2. To appreciate the findings of the various courts and the contentions of the parties, the following genealogy will be useful:-



Jogi ram and Nanku (defendants set no.1) are uncles of the Panpauri. Whereas, Risala (defendants set no.2) was uncle (Fufa) of Ram Chander and not grandfather of Panpauri (as wrongly stated by district Jugde, jind).

3. Panpauri (appellant) filed a suit for Declaration that the Mukhtiarnama (General Power of Attorney) dated 13.12.1974 is null and void as it has been obtained by Fraud and Under Influence, and further that judgment and decree dated 02.05.1980 passed by ADJ, Jind in civil appeal no. 54 titled as *Nanku and Others versus Roshni and Others,* is also null and void as having obtained by fraud and collusion and with consequential relief of possession.

4. The matrix of facts giving rise to the litigation between the parties as per the averments contained in the plaint briefly stated is as follows :-

> *"Smt. Panpauri, the plaintiff, Smt. Sundri the proforma defendant and Roshni widow of Pirthi son of Ramchander inherited in equal share the agricultural land measuring 41 Kanals marlas comprising khewat*

no. 92, Khata no. 113 situate within the revenue estate of village Rattakhera, Tehsil Safidon, Smt. Roshni sold her share to Mukhtiara son of Jhandu. Mukhtiara got the khewat partitioned. Nanku etc. defendants set no. 1 filed a civil suit no. 248 of 21.8.76 titled Nanku Vs. Roshni for declaration which was dismissed by the Sub Judge Ist Class, Safidon on 8.11.78. An appeal no. ADJ-54 of 1980 was preferred. The suit was partly decreed in respect of share of the plaintiff and proforma defendant qua their 2/3rd share in the land and the suit against Roshni the vendor and vendee Mukhtiara was dismissed. The decree against the plaintiff and proforma defendant was passed on the basis of an admission written statement filed by one Risala, the defendant set no. 2, the Mukhtiararam of Panpauri the plaintiff and proforma defendant Sundri. The plaintiff have now challenged the mukhtiarnama-aam bearing registered Vasika number 106 dated 13.12.74 registered with the Sub Registrar Safidon and the judgment and decree passed in civil appeal no. ADJ-54 of 1980 decided on 2.5.80 null and void inter alia on the ground of fraud and undue influence. The plaintiff prayed for a decree of declaration that she is owner in possession of 1/2 share in khewat no. 118, khata no. 153 and 1/3rd share in khewat no. 119 khata no. 154 situate within the revenue estate of village Rattakhera, Tehsil Safidon."

5. The plaintiff-appellant challenged the registered Mukhtiarnama-Aam (Power of Attorney) No. 106 dated 13.12.1974 on the grounds of fraud and undue influence. Her case was that she was an illiterate and pardanashin lady; the document was never read over or explained to her; she merely affixed her thumb impression believing the representation made by her uncles that it was required to "file" a suit to recover family land sold by widow of their brother

namely Roshni to Mukhtiara. She asserted that she never authorised "Risala" to file an admission written statement and that the earlier decree dated 02.05.1980 was based on wrong facts. She further pleaded that there was no occasion for her to discover the fraud earlier and that the revenue record continued to show her ownership and possession up to July 1986.

6. The notice of the suit was directed to the defendants. Defendant no. 5 and 12 after having been sufficiently served in accordance with law failed to appear and were proceeded against ex parte. Defendants no. 1 to 4, 6 to 10,11 and 13 contested the suit and controverted the allegations of the plaintiff. The contesting defendants denied that the Mukhtiarnama-aam registered with the Sub Registrar Safidon was based on fraud, undue influence and was null and void. It was also denied that the judgment and decree dated 02.05.1980 passed by the learned Additional District Judge Jind was null and void and invalid. It was pleaded that the present suit of the plaintiff-appellant was hit by the Principle of res judicata. The suit was also contested on the ground of limitation. It was further pleaded that the plaintiff lacks locus-standi, has no cause of action. The other material allegations of the plaintiff were also denied. It was prayed that the suit of the plaintiff be dismissed with costs.

7. Replication was filed. The plaintiff reiterated her claim and controverted the contentions of the contesting defendants. After a careful and exhaustive review of the pleadings, documents, and submissions of both parties, the learned Trial Court framed issues for adjudication to enable a clear, accurate, and comprehensive determination of the respective claims and defenses:-

1. Whether the Mukhtiarnama-am registered no. 106 dated 13.12.74 is null and void, as alleged? OPP

2. Whether the judgment and decree in civil Appeal ADJ-54 of 5.1.80 dated 2.5.80 is null and void as alleged? OPP

3. Whether the plaintiff is owner is possession of 1/2 share in khewat no. 118 khata no. 153 and 1/3rd share in khewat no. 119 khata no. 154? OPP

4. Whether the suit is time barred? OPD

5. Whether the suit is hit by the principle of resjudicata? OPD

6. Whether the plaintiff has no cause of action?OPD

7. Whether the plaintiff has no locus-standi to file the present suit? OPD

8. Relief.

8. The plaintiff-appellant in support of her claim have examined PW-2 Lakhi Ram, PW-3, Sh. R.K. Sharma, Advocate PW-4 Suresh besides herself stepping into the witness box as PW-1. The documentary evidence of the plaintiff comprises of copy of plaint in earlier civil suit no. 248 of 21.8.1976 (Ex.P1), copy of jamabandi for the period 1982-83 (Ex.P2), copy of Khasra-girdwari (Ex.P3), copy of written statement of defendants no. 2 and 3 in civil suit no. 248 of 21.8.76 (Ex.P4). Copy of written statement on behalf of defendants no. 1 and 4 in civil suit no. 248 of 21.8.1976 (Ex.PW4/A), copy of judgment and decree sheet in civil suit no. 248 of 1976 (Ex. P5 & Ex.P6) respectively, copy of judgment and decree in civil appeal ADJ-54 of 1980 (Ex P7 and Ex. P8), copy of Mukhtiranama. (Ex.P9). The contesting defendants on the other hand have examined Nanku as DW-1 and Risala as DW-2. However, no documentary evidence was led by the contesting defendants.

9. Both parties were afforded a full and fair opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial and

after hearing the learned counsel for both sides, the learned Trial noted that the admitted facts were that Ram Chander had one son, Pirthi, and two daughters, Sundri and Panpauri. After Ram Chander's death, his estate devolved upon his children; on Pirthi's death, his share went to his wife Roshni who sold her share to Mukhtiara. The plaintiff was about 10-11 years old at the time of her father's death and was brought up by her uncles namely Nanku and Jogi Ram.

Two versions were considered by learned Trial court:-

> *(1) Plaintiff's version - she executed the Mukhtiarnama under misrepresentation to enable "filing" of a suit to recover land sold by Roshni.*
>
> *(2) Contesting defendants' version - the plaintiff and her sister executed a power of attorney in favour of Risala to facilitate transfer of land in favour of defendant set No. 1.*

The learned Trial court noted that the plaintiff admitted her thumb impression on the Mukhtiarnama, but held that "execution" requires a document to be written out, read over and understood, not merely signing or thumb marking a blank or unexplained paper. Neither the petition writer nor any witness was produced by the contesting defendants to prove due execution of the Mukhtiarnama. The Trial Court observed that fraud is a question of fact and infered from surrounding circumstances and conduct. The plaintiff was an illiterate, pardanashin woman; her land was managed by the contesting defendants; it was admitted that they were annoyed with Roshni for selling the land; and it was decided to execute a Mukhtiarnama in favour of Risala to avoid inconvenience of attending court. A suit (Civil Suit No. 248 of 1976) was instituted subsequent to the execution of the Mukhtiarnama, in which the

present defendants were arrayed as defendants. If there had been any genuine understanding for transfer, a suit against Roshni and Mukhtiara would not have been filed. Material witnesses such as the Lambardar and Sarpanch, though alive, were not produced, entitling the Court to draw an adverse inference.

10. The learned Trial court further observed that undue influence is often incapable of direct proof and may be presumed from the nature of the transaction and surrounding circumstances, especially where a fiduciary relationship exists. Abuse of such confidence to gain advantage constitutes fraud. On the totality of evidence and circumstances, the Trial court concluded that Mukhtiarnama No. 106 dated 13.12.1974 was the result of undue influence and fraud and was null and void. Issue No. 1 was accordingly decided in favour of the plaintiff and against the contesting defendants. Issue no. 2 and 3 were also held in favour of Plaintiff-Panpauri and suit was accordingly decreed.

11. Aggrieved by the judgment and decree, Respondents/Defendants filed an appeal before the learned District court, Jind, wherby the appeal was allowed and the judgment and Decree of Trial court was set aside. The District court reversed the lower court's findings, concluding that the Mukhtiarnama (Power of Attorney) was validly executed and not a product of fraud. The District Judge noted significant contradictions in the plaintiff’s testimony-she admitted to her thumb-impression and the document’s registration, while her sister, Sundri, filed a written statement confirming the document was valid. Crucially, the District court found the Trial court's observation that no witness was produced to be "factually incorrect," as PW-2 Lakhi Ram had indeed testified. The court held that the registration by a Sub-Registrar carries a legal presumption of regularity, meaning the contents are presumed to have been read

over and understood.

12. Regarding the burden of proof, the District court emphasized that the responsibility lies strictly with the plaintiff to prove ingredients of fraud, misrepresentation, or undue influence. Citing established case law, the court held that fraud must be established "beyond reasonable doubt" with "cogent evidence," much like a criminal charge, and cannot be based on mere suspicion or conjecture. The District court rejected the lower court's presumption of undue influence based on the women being pardanashin, ruling that the plaintiff's "self-serving statement" without independent corroboration was insufficient.

13. Disputing the determinations of the learned First Appellate Court, the Panpauri filed the present appeal. Upon its admission, notices were issued, following which the respondents, through their counsel, appeared and opposed the appeal. The records of the courts below are accessible on DMS for thorough examination and adjudication.

CONTENTIONS

14. Learned counsel appearing for the Panpauri/plaintiff submitted that the learned Trial court, on a detailed appreciation of oral and documentary evidence, rightly held that Mukhtiarnama No. 106 dated 13.12.1974 was not duly executed and was the result of fraud and undue influence. The plaintiff, an illiterate and Pardanashin lady, whose land was admittedly managed by the contesting defendants, only admitted her thumb impression but not conscious and informed execution. The defendants failed to examine the petition writer or any attesting witness to prove that the document was read over, explained, and

understood. In law, mere thumb marking does not amount to valid execution. In cases involving illiterate or pardanashin women, the burden lies heavily on the beneficiary to prove free, informed, and voluntary consent - a burden which the defendants wholly failed to discharge.

15. Learned counsel further argued that the Trial court further drew legitimate inferences from surrounding circumstances: the fiduciary and dominant position of the defendants, their admitted annoyance over the prior sale by Roshni, the institution of a suit inconsistent with their alleged version of transfer, and the withholding of material village witnesses, justifying adverse inference. Fraud and undue influence being matters inferred from conduct and circumstances, the Trial court correctly concluded that the power of attorney was null and void. The reversal by the learned District court overlooks these foundational defects in proof and fails to dislodge the trial court's reasoned findings based on burden of proof, fiduciary presumption, and evidentiary principles.

16. Learned counsel for the respondents/defendants submitted that the judgment of District Judge, Jind doesnot suffer from any perversity, illegality. He argues that the presumption of validity is attached to a registered document and the plaintiff's total failure to meet the high standard burden of proof required for proving allegations of fraud. Since the plaintiff admitted her thumb-impression and the document was duly registered before a Sub-Registrar-an official act presumed to be performed regularly and in due course of it is legally sound. This is further reinforced by the testimony of the witness, PW-2 Lakhi Ram, and the admission(written statement) by the co-executant, Sundri, which directly contradicts the plaintiff's claims. Furthermore, the

defense argues that fraud must be proved beyond reasonable doubt with "cogent evidence" rather than mere suspicion; because the plaintiff provided only a "self-serving statement" and failed to prove any actual "undue influence" or a fiduciary relationship, her challenge to the Mukhtiarnama must fail as a matter of law.

OBSERVATIONS AND FINDINGS

17. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been meticulously analyzed to determine whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court.

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

BURDEN OF PROOF

19. Panpauri filed the suit for declaration wherein it was specifically pleaded that “the plaintiff is an illiterate and pardanasheen lady.” This fact has also been admitted by Nanku (one of the defendants), and the same has been

noticed by the courts below. Counsel for Panpauri contends that this plea was specifically pleaded in the plaint and urged before the courts below. He relies upon ***Mst. Kharbuja Kuer v. Jangbahadur Rai & Ors., 1963 (1) SCR 456***, and submits that it is settled law that in the case of a pardanasheen lady, the burden lies upon the person relying on the document to establish that it was executed after the executant fully understood its contents. He argues that the burden was on the defendants to prove that Panpauri executed the Mukhtiarnama after knowing its contents and impact. However, neither the petition writer nor any witness was produced by the contesting defendants to prove due execution. Another witness, Ramchander Sarpanch, though alive, was also not produced, entitling the Court to draw an adverse inference.

20. It is further pertinent to note that indeed one witness, Lambardar Lakhi Ram (PW-2), was produced by Panpauri/plaintiff and not by the defendants. He stated that the Mukhtiarnama had already been scribed before he reached. The defendants examined only Nanku as DW-1 and Risala as DW-2, and no documentary evidence was led by them. In law, the burden of proof that Panpauri had knowledge of the contents and legal consequences of the Mukhtiarnama was squarely upon the defendants. They were required to establish not merely her thumb impression, but conscious and informed execution. This burden has not been discharged by defendants.

21. Additionally, once it was specifically pleaded and admitted that the plaintiff was an illiterate and pardanasheen lady, the settled position of law required the burden to shift upon the defendants, who relied upon the Mukhtiarnama, to establish that it was executed after full understanding of its contents. The First Appellate Court, however, wrongly proceeded on the

premise that the entire onus lay upon the plaintiff, thereby overlooking the special rule governing transactions by pardanasheen women. This misapplication of the burden of proof strikes at the root of the impugned judgment and materially vitiates its conclusions.

Execution of Mukhtiarnama prior to filling of Civil Suit no. 248

22. For the proper and effective adjudication of the present case, a **chronological statement of relevant dates and events** of the previous litigation is set out hereunder for ready reference and clarity.

Sr. No	Description of document	Date of document
1.	Alleged Mukhtiarna executed by Panpauri and Sundri in favour of Risala (Ex.P.9)	13.12.1974
2.	Date of plaint in C.S. No. 248	26.12.1974
3.	Date of joint written statement (admission) filled by Risala(Mukhtiarnama holder) on behalf of Defendant no. 2(Sundri) and 3 (Panpauri)	20.02.1975
4.	Date of written statement of defendant no. 1(Roshni) and 4(Mukhtiara)	10.03.1975
5.	Date of decision of C.S. No. 248	08.11.1978

23. The case of the Plaintiff-Panpauri is that the Mukhtiarnama was got executed for “filling” suit against Roshni for getting back land of the family. The pleading in the plaint of present suit by Panpauri is reproduced as under:

> *"The plaintiff was told by the defendants no. 1 to 3 and defendant no. 12 Rissala that they would **file a suit** against Smt. Roshni and Mukhtiara fer **getting back the land** sold by Roshni to Mukhtiara so that the land remains in the family."*

24. The case of defendants no. 1 to 4, 6 to 11 and 13, as stated in their written statement in reply to that portion of the plaint in the present suit is reproduced herein:-

> *"That para no.3a of the plaint is totally wrong and denied. The mukhtar nama was **given to appear and conduct the suit** on behalf of plaintiff and proforma defendants (both defendants in the previous suit) by the plaintiff and proforma defendants by their own free will, Risala Mukhtiar was acting on their advice and directions. It is **wrong that Mukhtiar-nama was got for filing a suit**, the whole story is concocted one."*

25. The admitted chronology itself demolishes the defence version. The Mukhtiarnama was executed on 13.12.1974, whereas Civil Suit No. 248 was instituted on 26.12.1974, i.e., 13 days later. The defendants' specific case is that the Mukhtiarnama was executed to "appear and conduct the suit." However, on the date of execution of Mukhtiarnama, no suit was in existence. Panpauri and Sundri could not have consciously authorised appearance or conduct in a proceeding that had not yet been filed. Defendant has specifically denied that it was not executed to file the suit. This inherent contradiction renders the defence plea improbable and supports the plaintiff's version that the Mukhtiarnama was obtained on the representation that a suit would be filed against Roshni and Mukhtiara for recovery of family land. The sequence of dates thus materially

corroborates misrepresentation and undermines the plea of voluntary and informed execution of Mukhtiarnama.

26. It is further observed that even assuming, arguendo, that the Mukhtiarnama was voluntarily executed, there is no rational explanation as to why the executants would authorise the Mukhtiar to file a written statement admitting the entire claim of the plaintiffs in the previous suit. If Panpauri had genuinely intended to transfer the land in favour of the defendants, the normal and lawful course would have been the registration of a sale deed or other conveyance directly in their favour. There was no necessity to route the transaction through litigation or to suffer a decree on admission. The device of admitting the whole claim in court proceedings, instead of effecting a direct registered transfer, is inherently unnatural and raises serious doubt about the bona fides of the defence version. The absence of any plausible explanation for adopting such an indirect and legally precarious course further strengthens the inference that the Mukhtiarnama was misused and not acted upon in accordance with any informed or voluntary intention of the executant.

27. The combined effect of the above circumstances is clear and material. The Mukhtiarnama was executed on 13.12.1974, when no suit was pending, yet the defence claims it was given to “appear and conduct the suit” and was not given to file a suit. Authority to conduct a suit normally relates to an existing or clearly contemplated case. Further, the filing of a written statement admitting the entire claim in Civil Suit No. 248 is inconsistent with any genuine intention of the executant. If Panpauri intended to transfer the land to the defendants, the proper and lawful course was to register a sale deed directly in their favour. There was no need to go through litigation or suffer a decree on admission. The

execution of the Mukhtiarnama before the suit and the subsequent complete admission of the claim, when read together, strongly indicate that the document was not acted upon in good faith but was used to obtain a decree through an arranged process, supporting the plaintiff's case of fraud and undue influence.

28. The Jamabandi for the year 1982–83 records the plaintiff, along with the proforma defendant, as owner in possession of ½ share in Khewat No. 118, Khata No. 153 and ⅓ share in Khewat No. 119, Khata No. 154, situated in village Rattakhera. These revenue entries carry a rebuttable presumption of correctness under Section 44 of the Punjab Land Revenue Act. Except for the judgment and decree in Civil Appeal No. ADJ-54 dated 2.5.1990, no contrary evidence has been produced. Since the decree was founded upon a power of attorney which is held to be vitiated by fraud and undue influence and therefore null and void, it cannot displace the presumption attached to the revenue record. A conjoint reading of the Jamabandi and Khasra Girdawari establishes the plaintiff (panpauri) and proforma defendant (sundri) as owners in joint possession to the extent recorded. Accordingly, the issue was decided in favour of the plaintiff and against the contesting defendants by the learned Trial court warrants no interference by this court and learned District judge has committed a wrong to overturn the well reasoned findings by misinterpreting evidence, by wrongly placing onus on plaintiffs after ignoring the settled legal position. Findings of the learned first appellate court are not sustainable and are set aside.

Effect of Alleged Admission of Proforma defendant - Sundri

29. Proforma defendant-Sundri did not enter the witness box and did not depose on oath. In the absence of her testimony, any alleged admission

attributed to her cannot be treated as substantive evidence. Under Section 19 of the Bharatiya Sakshya Adhiniyam, 2023, an admission is relevant and may be proved only against the person who makes it, unless it falls within a recognised statutory exception. An admission of one co-executant does not bind or operate against another co-executant in the absence of proof of authority, agency, or joint representation. Accordingly, any alleged admission of Sundri cannot be read in evidence against the co-executants/Panpauri.

CONCLUSION

30. In view of the foregoing discussion, this Court finds that the learned First Appellate Court erred both in law and on facts in reversing the well-reasoned judgment of the learned Trial Court. The learned Trial Court correctly appreciated the evidence, applied the settled principles governing transactions by pardanasheen women, and rightly concluded that the Mukhtiarnama dated 13.12.1974 was vitiated by fraud and undue influence.

31. Consequently, the present Regular Second Appeal is **allowed**. The judgment and decree dated 10.06.1996 passed by the learned District Judge, Jind are hereby set aside. The judgment and decree dated 15.09.1992 passed by the learned Additional Senior Sub Judge, Safidon are restored.

32. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

(VIRINDER AGGARWAL)
JUDGE

17.02.2026
Poonam

(i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No