

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN
ON THE 23rd OF JANUARY, 2026

FIRST APPEAL No. 175 of 2002

JABBAR KHAN

Vs.

RAJENDRA KUMAR JAISWAL

Appearance:

Shri Aditya Ahiwasi – Advocate for appellant.

Shri Arvind Kumar Pathak – Advocate for respondent.

Reserved on : 12/11/2025

Delivered on: 23/01/2026

JUDGMENT

With the consent of learned counsel appearing for the parties, appeal is heard finally at motion stage.

2. This first appeal has been preferred by the appellant/plaintiff challenging judgment and decree dated 05.01.2002 passed by Second Additional District Judge (Fast Track Court), Harda in Civil Suit No.24-A/2001, whereby the trial Court has dismissed the suit of appellant/plaintiff.

3.Learned counsel for appellant/plaintiff submitted that respondent/defendant is in possession of ground floor of the suit house. Sona Bai was the mother of the respondent/defendant and Mahendra Kumar is the brother of the respondent/defendant. The appellant/plaintiff has acquired the newly constructed ground and first floor constructed in the back side of the existing house from 20.02.1997. The mother of the respondent/defendant has died on 07.03.1998. At the time of execution of the sale deed the mother of respondent was living with her other son Mahendra Kumar at Durg. It is further submitted that appellant/plaintiff had purchased the suit house, which was in ownership of Late Sona Bai by a sale deed dated 20.02.1997 from Mahendra Kumar, who was the Power of Attorney holder of Late Sona Bai. Respondent/defendant was residing in the suit premises on the oral consent of his mother and it is also mentioned that appellant/plaintiff immediately after execution of the sale deed asked the respondent/defendant to vacate the portion in his possession. It is also submitted by counsel for appellant/plaintiff that the said property had come to Late Sona Bai from her father Shankar Lal according to his last Will dated 15.05.1966. The appellant/plaintiff has duly entered his name in Nagar Palika Harda as owner of the same and the respondent/defendant had not taken any objection for the same nor put up his own claim of any kind neither he challenged the ownership of late Sona Bai. The appellant/plaintiff therefore disputed structure valued at Rs.85,000/- and has paid appropriate court fee and filed a suit for ejection of the respondent/defendant from the suit property. In the said suit the appellant/plaintiff had also prayed for the interim mesne profit at

Rs.20/- per day till the decision of the suit from the respondent/defendant.

4. Learned counsel for the appellant/plaintiff further submitted that respondent/defendant denied the claim of the appellant/plaintiff. Trial Court failed to see that the appellant has duly proved by the evidence of the witnesses of the sale deed and also the power of attorney that the said power of attorney was issued by Late Sona Bai to Mahendra Kumar and therefore, the same is valid one and therefore the further sale deed on the strength of the said power of attorney is legal and valid. Learned trial Court has also accepted the proper valuation in para 13 of the judgment. In these circumstances, this first appeal filed by appellant/plaintiff may be allowed and judgment/decree passed by the trial Court be set aside.
5. Counsel appearing for respondent/defendant supported the judgment and decree passed by the trial Court. It is submitted that the pleadings of the parties and evidence was also considered in right perspective and no error has been committed by the trial Court in decreeing the suit.
6. The trial Court framed the issue and taking evidence of both the parties, passed the impugned judgment and decree on 05.01.2002 and suit filed by the appellant/plaintiff has been dismissed.
7. Heard the learned counsel for the parties.
8. Sahabuddin (P.W.-1) has given evidence on behalf of the plaintiff Jabbar Khan, because the plaintiff Jabbar Khan executed a special power of attorney (Mukhtyarnama Khas) in favour of Sahabuddin, authorizing him to give evidence in this case. The special power of attorney has been exhibited as Ex.P-1. Thus, in this case, the plaintiff Jabbar Khan himself has not been examined. In such a situation, the respondent/defendant did

not get any opportunity to cross-examine the plaintiff Jabbar Khan regarding the execution of the sale deed (Ex.P-2).

9. As far as the evidence of Sahbuddin (P.W.-1) is concerned, it appears that the transaction is said to have taken place between Sonabai and the plaintiff Jabbar Khan. However, on examining the sale deed (Ex.P-2), it is clear that it was not executed by Sonabai herself, but the same was signed by Mahendra Kumar Lal as Sonabai's general power of attorney holder. In other words, Sonabai did not personally execute the sale deed (Ex.P-2).
10. In this case, the appellant/plaintiff had not presented the special power of attorney executed by Sonabai in favour of Mahendra Lal, so the court cannot consider whether Sonabai indeed authorized Mahendra Lal through a special power of attorney to execute the disputed sale deed regarding the land and the house built upon it. Without producing the special power of attorney in court, it is not possible for the Court to determine whether the sale deed could have been executed on the basis of that alleged power of attorney, especially because in cases involving immovable property, it is mandatory that such a special power of attorney must be registered. Furthermore, Mahendra Kumar himself has also not been examined in this case.
11. Sahbuddin (P.W.-1) in his statement stated that during the documentation process, Mahendra Lal, Farid Khan, and Sattar Khan were present. The property was purchased for ₹2,02,000. In para-6 of his cross-examination, he stated that he did not know how many sons or daughters Sonabai had. In paragraph 7, he stated that he had no knowledge whether Sonabai had given the back portion of the house to Rajendra. He also

admitted that the discussions regarding the purchase of the house did not take place in Rajendra's presence or to his knowledge. Thus, after considering the entire testimony of this witness, it is clear that he is not an attesting witness to the sale deed.

12. Farid Mohammad (P.W.-2) in his examination-in-chief stated that regarding the disputed property, a will and a power of attorney document were brought for selling the house. The sale deed was written in his presence. At that time, besides him, Sattar Bhai was also present. The sale deed was written at the instance of Jabbar and it was prepared by Mahendra Kumar. He stated that he signed it in the capacity of a witness. In his cross-examination, he stated that he did not previously know Mahendra Kumar Lal and he did not know what Mahendra Kumar did for a living or where he was staying.
13. Sattar Khan (P.W.-3) in his statement said that Jabbar Khan had purchased the house from Mahendra Kumar and the documentation thereof was carried out in his presence. The sale deed is Exhibit P-2. This document was written at the instance of Mahendra. In his cross-examination, this witness stated that Jabbar is his brother's son. He had seen Mahendra a couple of times and knew him, but had no opportunity to converse with him.
14. Thus, upon considering the evidence presented by the plaintiff, it is evident that the plaintiff Jabbar did not get himself examined, but instead of the evidence was given on his behalf by the special power of attorney holder Sahabuddin. Likewise, the disputed property was not sold by its owner Sonabai, but the sale deed was executed by Mahendra Kumar. The appellant/plaintiff claimed that Sonabai had authorized Mahendra Kumar

Lal to sell the disputed property through a power of attorney. However, the plaintiff did not produce that power of attorney in court. It was primarily the plaintiff's responsibility to prove that Sonabai had authorized Mahendra Lal through a power of attorney to sell the disputed property, but this fact has not been proved by the plaintiff. The plaintiff should also have proved that the said power of attorney was registered. Since the sale of immovable property through a power of attorney was said to have been executed and the property value exceeded ₹2,00,000. In such a situation, without a registered power of attorney, the sale of immovable property cannot legally take place. Therefore, the power of attorney or its certified copy ought to have been produced in court.

15. It is also necessary to mention here that Mahendra Kumar Lal himself was not examined in this case, due to which, it could not be established whether he had in fact been authorized by Sonabai to sell the disputed property. In these circumstances, it appears that the trial court has not committed any error in passing the impugned judgment/decree and no interference is required in it.
16. In view of aforesaid discussion, this first appeal is **dismissed** and the judgment/decree dated 05.01.2002 passed by the trial Court in Civil Suit No.24-A/2001 is hereby affirmed.
17. Record of the trial Court be sent back immediately.

(RATNESH CHANDRA SINGH BISEN)

JUDGE

sp/-