

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.5019 of 2010 (O&M)
Date of decision: 14.12.2015**

Amrik Singh Jeji alias Amrik Jeji & another ... Appellants

Vs.

Surinderjit Kaur and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. R.B.S.Chahal, Advocate, for the appellants.

Mr. K.S.Boparai, Advocate, for respondent No.1.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby, the suit filed by the respondent-plaintiffs, has been decreed by declaring owners to the extent of 2/3rd share vis-a-vis share of Mohinder Kaur (since deceased). In essence, judgment and decree of the trial Court dismissing the suit, has been set aside.

Mr. R.B.S.Chahal, learned counsel for the appellant-defendants submits that Hem Singh was owner of a chunk of land and he was married to Mohinder Kaur. Out of the lions of Mohinder Kaur and Hem Singh, earlier two daughters were born, namely, Surinderjit Kaur, Bhupinder Kaur - plaintiffs. However, after 20 years of their birth, one son namely Gurjit Singh was born. Both Surinderjit

Kaur and Bhupinder Kaur were married. Hem Singh unfortunately expired on 09.12.1961. Gurjit Singh only son pre-deceased Mohinder Kaur, who died on 10.09.1999. During the life time of Gurjit Singh, Mohinder Kaur had executed a general power of attorney on 30.03.1993 in favour of Gurjit Singh. Gurjit Singh was married to Ajit Jeji and from their lions, Amrik Singh Jeji (son) in the year 1976 was born. During the life time of Mohinder Kaur, Amrik Singh Jeji, son of Gurjit Singh and Ajit Jeji, filed two suits in respect of land owned by Mohinder Kaur through attorney Gurjit Singh and the judgments and decrees dated 14.10.1994 and 28.09.1996 were passed. In essence, property owned by Mohinder Kaur was given to Amrik Singh, Jeji grandson of Mohinder Kaur and in this regard, two mutation bearing Nos.1190 and 1314 were also entered into. Mohinder Kaur expired on 03.11.2001.

It is in the year 2002, suit at the behest of the respondent-plaintiffs, i.e., aforementioned daughters, challenging the aforementioned judgments and decrees, allegedly vitiated in law on account of fraud, was filed. The trial Court, on the basis of the oral and documentary evidence, found that there was no fraud, much less, breach of trust as Mohinder Kaur during her life time, who lived for 05 years after suffering of decree, did not challenge the aforementioned decree. However, the lower Appellate Court has committed illegality and perversity in reversing the well reasoned judgment by holding that Gurjit Singh had played a fraud upon Mohinder Kaur, as the power of attorney, aforementioned, *ibid*, did

not empower to sell and alienate the property. He further submits that appeal involves the following substantial questions of law for determination by this Court:-

“1. Whether the consent decrees suffered by the grandmother *through her power of attorney/only son, in favour of her only grandson could be considered as 'transfer' since he already had antecedent title and a pre-existing right?*

2. *Whether the action of the plaintiffs in instituting the present suit in the circumstances as submitted above is an abuse of the process of the Court as held by the trial Court?*

3. *Whether the judgments and decrees dated 14.10.1994 and 28.09.1996 were an act of fraud and misrepresentation being played by Gurjit Singh upon Mohinder Kaur or not?”*

Mr. K.S.Boparai, learned counsel appearing on behalf of respondent No.1 submits that the contents of general power of attorney dated 30.03.1993 did not empower Gurjit Singh to sell and alienate the land. Principal had assigned the duty to the agent for managing the property. In this regard, he has drawn the attention of this Court to the contents of the General Power of Attorney. He further submits that suit instituted by Amrik Singh spoke about some alleged family settlement, which has not seen the light of the day, much less, could not have been shown as Hem Singh expired in the

year 1961. The aforementioned two factors weighed in the mind of the lower Appellate Court in reversing the judgment and decree of the trial Court. The suit cannot be said to have been barred by law of limitation and there is no limitation to claim the right of inheritance. Once fraud has been established, it vitiates everything, rightly so, the aforementioned judgment and decree, has been set aside and thus, prays for dismissal of the appeal, which does not involve the substantial question of law.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below, much less, appraised the lower Court record.

It is unfortunate that dispute is between aunt (bua) and nephew (bhatija). It is a matter of record that Mohinder Kaur after the demise of Hem Singh, has become the absolute owner of the property and she could deal with the property in any manner, she wanted. The plaintiff, to a specific question in cross examination, has unequivocally admitted that Gurjit Singh and Mohinder Kaur were living together in the same house. The plea of the plaintiffs that Gurjit Singh procured the receipt of the summons in a suit filed by Amrik Singh is not able to cut ice for the reason that Mohinder Kaur and Gurjit Singh were living together in a joint mess. Nothing contrary has been proved, in essence, it has not been proved on record that Mohinder Kaur and Gurjit Singh were living separately and they were at loggerheads. Before amendment in Section 8 of the Hindu Succession Act, no married daughter had right in the estate of the

parents. It is only on 9th March, 2005 amendment has been put into force. I have gone through contents of the General Power of Attorney, which empowers the attorney holder/agent to defend and file suit or to do any other act on his/her behalf. Absence of a defendant to defend the case would not be fatal as the suit revolved around an act done by Gurjit Singh. There was nothing personal to be divulged/extracted by the respondent-plaintiffs, therefore, the plea that in the absence of the principal, the defence of the defendants cannot be looked into, is not sustainable. The most important fact which is to be seen is that after the existence of the aforementioned judgments and decrees of the years 1994 and 1996, Mohinder Kaur lived for 05 years and she did not challenge the same during her life time. No evidence has been brought on record to show that Mohinder Kaur did not have the knowledge of the same. Had it been so, perhaps the findings rendered by the lower Appellate Court would have some foundation to stand. Once Surinder Kaur has admitted that both Mohinder Kaur and Gurjit Singh were living together and therefore, both mother and son were living in fiduciary relationship and it is in these circumstances, the General Power of Attorney was executed. Nobody can challenge the whim and desire of the person who has left heavenly abode, in essence, the whim and desire of Mohinder Kaur who executed GPA in favour of her son should be regarded and respected. It is common practice that on demise of the parents, siblings start fighting vis-a-vis estate of their parents particularly when the parents died intestate. Even the Will is

executed, the same is also challenged and the parties drag themselves in the prolonged litigation.

I am of the view that there should be minimum litigation amongst family members, keeping in view the conduct and behaviour of the siblings to the parents. The lower Appellate Court, being the last Court of facts and law, has committed illegality and perversity in not assigning reasons for setting aside the judgment and decree on the premise that Gurjit Singh had played a fraud upon Mohinder Kaur, but the fact remains that Mohinder Kaur was never aggrieved of the same.

Keeping in view the aforementioned facts, findings of the judgment and decree of the lower Appellate Court is not sustainable. Accordingly, the same is set aside. The aforementioned substantial questions of law are answered in favour of the appellants and against the defendants. In essence, the suit is dismissed and appeal stands allowed.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

December 14, 2015
savita