

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2747 of 2011 (O&M)

Date of Decision: 02.07.2015

Smt. Mangeja

..... Appellant

Versus

Pyare Lal

..... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.R. Yadav, Advocate,
for the appellant.

Mr. M.K. Mittal, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Smt. Mangeja widow of Birda resident of Village Berli Khurd, Tehsil and District Rewari brought a suit challenging the sale deed dated October 27, 1997 and the mutation sanctioned on the basis of sale deed and for a declaration that the sale deed has been obtained secretly by misrepresentation and fraud committed upon her by producing someone else impersonating as the plaintiff before the office of Sub Registrar at the time of registration of the sale deed.

2. Her case was that she never sold her land; there was no necessity for her to sell the land; she never appeared before the office of Sub Registrar and the entire proceedings are vitiated by fraud; the mutation was sanctioned in connivance with the revenue officials. She never knew of the sale deed and the mutation entered on October 25, 1999 till April 10, 2001

when she applied for and got copies of the mutation from the Patwari. When the defendant came to take possession of the suit land it was only then she came to know of the misdeed. She requested the defendant to treat the sale deed and mutation as cancelled which he refused to do so on July 15, 2001. Hence, the suit was brought in the civil court before the learned Additional Civil Judge (Senior Division) Rewari.

3. On notice issued on the suit, the defendant vendee appeared and contested the case by filing written statement. The defendant pleaded that Mahabir Singh, son of the plaintiff, on the basis of a General Power of Attorney executed by the plaintiff in favour of her son on April 19, 1995 sold the land to him on the basis of this attorney and that is how the sale deed was executed. Meaning thereby, Smt. Mangeja's son Mahabir Singh under the authority of the GPA executed the sale deed in favour of the defendant. The General Power of Attorney was registered on April 19, 1995. The sale was in October 1997. He pleaded that suit property was purchased with the consent of the plaintiff and she had full knowledge of the sale of her property by her son. The entire sale consideration was paid to the plaintiff at her residence. The plea of fraud and misrepresentation was denied. Possession was delivered on the spot and, therefore, the question of issuance of permanent injunction against the defendant was misconceived as he was in possession of the land under a sale deed. The suit was brought after a period of four years of the sale deed on July 21, 2001.

4. The plaintiff filed a replication and re-asserted and re-affirmed the version in the plaint.

5. On the basis of the pleadings of the parties, the following issues

were framed:-

"(1) Whether the plaintiff is owner in possession of the land as mentioned in para no.1 of the plaint? OPP

(2) Whether the registered sale deed bearing no.3603 dated 27.10.1997 and the mutation no.1816 sanctioned on 25.10.1999 is a result of fraud and misrepresentation, if so to what effect? OPP

(3) Whether the plaintiff is estopped by her own act and conduct from filing the suit? OPD

(4) Whether the plaintiff has no cause of action to file the present suit? OPD

(5) Whether the suit of the plaintiff is not maintainable in the present form? OPD

(6) Whether the suit is time barred? OPD]

(7) Whether the suit is liable to be dismissed on account of insufficient court fee? OPD

(8) Relief."

6. The plaintiff stepped into the witness box as PW-1 and corroborated her case by way of affidavit Ex.PW-1/1. In addition, the plaintiff examined Bhagwan Singh as PW-2 and Satish Kumar as PW-3 who supported her version in their affidavits Exs.PW-2/1 and PW-3/1.

7. On their turn, defendants examined Anil Kumar Lakhera, deed writer as DW-1, who proved the sale deed Ex.D-1 by way of his affidavit Ex.DW-1/A. The Registration Clerk was examined as DW-2 who brought the original record of GPA and proved the same as Ex.DW-2/1. The attesting witness of the sale deed Sunder Lal son of Ram Chander was examined as DW-3 who supported the defendant's case. Shri N.K. Lakhera, Advocate stepped into the witness box as DW-4 who brought the register of Durga Parsad deed writer and identified his signatures. The defendant appeared in the witness box as DW-5 and corroborated his stand in the affidavit and proved the sale deed as Ex.D-1. Shamsher Singh Malik, Finger

Print Expert was examined as DW-6 who proved his report Ex.DW-6/A and photographs and negatives which were duly exhibited on record. After closing the evidence, the defendant tendered copies of Jamabandi D-2 and copies of mutation as Ex.D-3.

8. In rebuttal, the plaintiff tendered copy of the Jamabandi for the year 1998-99 as Ex.P-A. Issues # 1 & 2 were taken up together as they were inter-linked. The onus was on plaintiff to establish that she was sole owner in possession of the suit property and the sale deed and mutation were liable to be set aside being induced by fraud and misrepresentation.

9. A peculiar situation arises after the plaintiff took the emphatic stand in the plaint that sale deed was obtained by impersonation when the existence of the General Power of Attorney executed by the plaintiff in favour of her son was not pleaded by her but in defence. This turned the tables on the plaintiff. In the course of arguments before the learned trial court, the plaintiff had to eat crow and retract from the plea of impersonation. She side stepped to soften the blow deposing innocently that she not aware that the sale deed was executed by her son as a GPA holder. But still she argued that the sale deed and mutation sanctioned are the outcome of fraud and misrepresentation and are, therefore, liable to be set aside and the suit decreed accordingly. With the dramatic shifting of stand by the plaintiff, she was confronted with another insurmountable barrier that she had not challenged the General Power of Attorney, a document duly proved by the deposition of the witnesses and the expert opinion of the Finger Print Expert in his report where he opined and then deposed in the Stand that figuring out thumb impressions is an exact science. The plaintiff

was also tragically confronted with the registered General Power of Attorney which is a public document when certified is *per se* admissible in evidence. This evidence was in crucifixion of the case propounded by the plaintiff and completely discredited it.

10. In the light of the evidence brought in by the defendants, the trial court concluded that the plaintiff voluntarily executed the General Power of Attorney in favour of her son Mahabir Singh which was never cancelled. Sadly, the plaintiff went to the extent of denying her relationship with Mahabir Singh being her son but the fact was admitted in her pleadings. Moreover, the witnesses of the plaintiff admitted Mahabir Singh as her “real” son. The trial court read the terms of the GPA and found that the plaintiff had empowered her son to alienate the suit land. It was established beyond a shadow of reasonable doubt that Mahabir Singh had executed sale deed in favour of defendant as GPA of plaintiff. The court compared the thumb impressions on the sale deed, the GPA and in the register of conveyance maintained in the Tehsil office with her sample thumb impressions and saw then in the light of expert evidence which discredited the theory of impersonation. Issues # 1 & 2 were decided against the plaintiff and in favour of the defendant. When the plaintiff voluntarily executed GPA in favour of son, she could not wriggle out of the document, then, she is estopped by own act and conduct to file the suit.

11. Issue # 3 accordingly, went in favour of the defendant and against the plaintiff as fall out of the findings on issue # 1 & 2. If the property was sold through valid GPA which has not been cancelled, no cause of action accrued in her favour to file the suit. Issue # 4 went in favour of the

defendant. If the sale deed and the mutation are legal and valid, plaintiff is not entitled to declaration and permanent injunction when the suit is not maintainable and this is how issue # 5 was also decided in favour of the defendant.

12. Issue # 3 was on limitation in bringing the suit. GPA was executed on April 19, 1995 and the sale deed on October 27, 1997 and the suit brought on July 21, 2001 and was clearly time barred under Article 58 of the Limitation Act, 1963. The court *a quo* rightly held that the suit could have been filed up to the year 2000. On court fee, i.e. issue # 7 the court decided against the plaintiff and it was held that she was liable to pay ad valorem court fee on the sale consideration on the sale deed to bring a challenge to it. Since fraud was not proved in the making of the sale deed the suit was miserably time barred but was filed with deficiency in court fee. The suit was liable to be dismissed on this count itself as well as State revenue could not be deceived.

13. In view of the above, the learned Additional Civil Judge (Senior Division), Rewari dismissed the suit on March 18, 2008.

14. Since the facts lie in a narrow compass this court does not feel the necessity to discuss what the lower appellate court did since it has taken a look at the evidence again and come to the same conclusion holding that fraud was not proved and impersonation was not proved. The sale deed was proved. The General Power of Attorney was proved but not challenged. Therefore, there could only be one conclusion that Mahabir Singh son of Smt, Mangeja was authorized to alienate property on behalf of his mother through a registered POA which has not been revoked, rescinded or

cancelled by any legal instrument till the date of sale, till the filing of the suit and till presently.

15. I have no reason whatsoever to differ with the clear opinions expressed and the work done by the courts below on the evidence on record which all findings are sound on facts and in law and call for no interference. I would commend the dismissal of the appeal on all fronts.

16. Accordingly, the appeal stands dismissed with costs in all the courts.

(RAJIV NARAIN RAINA)
JUDGE

02.07.2015
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