

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

R.S.A. No. 2081 of 2013 (O&M)

Date of Decision:- 25.05.2015

Rattan Lal and others

.....Appellants

Versus

Raj Kumari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Santosh Sharma, Advocate,
for the appellants.

Mr. Anil Kshetarpal, Senior Advocate
with Mr. Vivek Khatri, Advocate
for respondent Nos.1 and 2.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the judgment and
decree dated 18.12.2012, whereby the first appellate court dismissed the
appeal against the judgment and decree dated 06.11.2009, passed by
Additional Civil Judge, Civil Judge (Sr. Divn.) Jhajjar.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff Matu Ram had filed the suit for declaration and he is owner in possession of land in question. Defendant No.1 is wife of defendant No.2, who is real son of plaintiff and is an officer of Revenue Department of Haryana Government. Defendant No.2 got executed one release deed in favour of defendant No.1 on the basis of GPA regarding suit land and as such the release deed dated 20.08.2001 is illegal, not effective and not binding upon the rights of plaintiff. However, the defendants in collusion with revenue officers got entered mutation No.2653 dated 27.11.2001 in their favour is also illegal, null and void because defendant No.2 was never appointed as general power of attorney. Rather the said release deed was result of fraud. Plaintiff also took the plea that he was of the age of 80 years and was hard of hearing and he was taken to the Court to get his signatures on some papers for obtaining loan and he wants to appear as a surety and fraudulently got the documents executed and the same is not binding upon him.

4. Defendants mainly contested the suit on the ground that general power of attorney was duly executed and in terms of the said general power of attorney the release deed was executed. There was no question of fraud or misrepresentation. The plaintiffs have no right to

challenge the said release deed by way of filing the suit. Mutation No.2643 was also duly sanctioned on the basis of release deed and the present suit is without any merit and be dismissed.

5. On these facts, the following issues were framed by the Court of first instance:-

- “1. Whether plaintiff is owner and in possession of the suit land detailed and described in para No.1 of the plaint?OPP.
2. Whether release-deed dated 20.08.2001, mutation No.2653 dated 27.11.2001 and Power of attorney dated 29.06.1998 are illegal, null & void and not binding on the rights of the plaintiff on the grounds mentioned in the plaint?OPP
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. Whether plaintiff has no locus-standi to file the suit?OPD
5. Whether plaintiff has no cause of action to file the present suit?OPD
6. Whether the plaintiff is stopped from filing the present suit by his own act and conduct?OPD
7. Whether the suit is barred by limitation?OPD
8. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of parties?OPD
9. Whether the court fee paid by the plaintiff is not sufficient, if so, its effect?OPD
10. Whether the plaintiff has not come to the Court with clean hands?OPD
11. Relief.”

6. Court of first instance after recording the evidence and appreciation of the same, dismissed the suit. First appeal preferred by plaintiffs was also dismissed. Hence, Regular Second Appeal before this Court.

7. In the present case, the following substantial question of law

involved: -

1. Whether general power of attorney executed by plaintiff Matu Ram, authorized defendant No.2 to get the release deed executed?
2. Whether the release deed was executed in accordance with law and binding upon plaintiff?
3. Whether the Courts below mis-appreciated the evidence, which resulted into perversity?

8. At the time of arguments, Mr. Akshay Bhan, Senior Advocate, learned counsel for the appellants mainly took the plea that certain most important points which requires consideration by this Court was that the present case was filed by Matu Ram during his life time. Defendant No.2 Sham Lal was none else but son of plaintiff, who was working in the revenue department and he had got release deed executed in favour of his wife Smt. Raj Kumari. It is the case of plaintiff that suit property was ancestral/self acquired property. Appellant has taken the plea during his life time that he was taken to the Court for getting some signatures as a surety on loan documents for the house but defendant No.2 misused his fiduciary relationship and his status being an employee of revenue department got the documents executed and managed to get the release deed executed of his entire land, which was never the intention of plaintiff. The date of knowledge of plaintiff is to be taken for the purpose of limitation. More so, Raj Kumari-defendant No.1 herself has admitted in her cross examination that plaintiff Matu Ram used to have blind faith in defendant No.2 and defendant No.2 while misusing

the said faith got the entire land transferred in favour of his wife on the basis of release deed. So, circumstances itself established that release deed was got executed fraudulently.

9. While arguing on these points, Mr. Anil Kshetarpal, Senior Advocate, learned counsel for the respondents mainly took the plea that on the basis of general power of attorney Ex.D2, all the powers were given by the father including alienation of the suit property. The power was given specifically for execution of release deed which itself is a mode of transfer. Had there been any bad intention on the part of defendant No.2, he could have got the same release deed executed immediately after the execution of general power of attorney. On this point, the date of execution of general power of attorney would be relevant, as general power of attorney was executed on 24.06.1998 and the release deed was executed after 20.08.2000 i.e. after more than 2 years. This fact itself belies the version of Matu Ram though he filed a suit during his life time but he had not made any deposition in the Court during his life time and unfortunately he died during the litigation. Mere statement of LRs of Matu Ram are no ground to set aside the documentary evidence, on the basis of which, both the Courts have returned the concurrent findings. More so, law on the point is settled that fraud is required to be proved as a charge in a criminal case because it is very easy to allege fraud but the requirement of law is that charge must be proved.

10. In support of his arguments, learned counsel for respondents

placed reliance upon judgment from Hon'ble Supreme Court in case **Kuppuswami Chettiar Vs. A.S.P.A. Arumugam Chettiar and another, 1967 AIR SC 1395**, that a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. Learned counsel for respondents also placed reliance upon judgment from Co-ordinate Bench of this Court in case **Harjot Singh and others Vs. Gurjit Kaur and others, 2011(2) PLR 44**, wherein this Court was seized almost of similar controversy and view was taken that release deed executed would have the effect of transferring title in the land in favour of defendants who had no pre-existing right or title in the land.

10. Having considered the rival contentions raised by learned counsel for both the parties, this Court is of the considered view that execution of document i.e. general power of attorney and release deed is to be taken into consideration in its entirety. The Courts cannot ignore factual position available on the file that the parties to the litigation are none else but father and son. Father was undisputedly owner of the property. His son is defendant No.2 before the Court who got executed general power of attorney in his favour and thereafter got the release deed executed in favour of his wife. The most important fact is that the said transactions were challenged by Matu Ram himself during his life time. He was of the age of about 80 years. The physical and mental conditions of a person at the age of 80 years, is a matter of common knowledge and cannot be ignored by the Court altogether. It is an important fact that

defendant No.2 was admittedly working in the revenue department. The documents i.e. general power of attorney and release deed was to be executed with the involvement of revenue department itself and but for the connivance of revenue officials such a fraud could not be executed.

11. No doubt, it is settled proposition of law that plea of fraud does not simply require allegations but the same requires proof of the same. The facts and circumstances of the case in hand itself are best evidence to prove that Matu Ram was the victim of fraud. Otherwise, he could not have dared to file the suit against his son during his life time. The Courts cannot ignore the fact that parties to the litigation were having fiduciary relationship. This factum has been admitted by defendant No.1-Raj Kumari in her cross-examination as DW3 that her father-in-law Matu Rau was having blind faith in his son Sham Lal. Thereafter, Sham Lal completely misused his fiduciary relations and got the release deed executed in favour of his wife. However, both the Courts below have not appreciated this controversy in the light of this background and recorded finding simply by saying that plea of fraud has not been proved strictly. Hence, the Courts below have not appreciated the evidence correctly. It is settled proposition of law that evidence has to be considered keeping in view the facts of the particular case which itself speaks a lot about fraud having been played upon plaintiff. It is also settled proposition of law that fraud are always held in secrecy and there cannot be any direct evidence of such a conspiracy, in view of the law laid down by Hon'ble Supreme Court in case **Shivnarayan**

Laxminarayan Joshi Vs. State of Maharashtra, (1980) 2 SCC 465.

12. Now coming to the point whether Matu Ram had in fact authorized his son Sham Lal to get the release deed executed on the basis of general power of attorney and the said documents clearly mentioned that there was no such authority with Sham Lal to get the release deed executed. Such power of attorneys are required to be interpreted in strict words used by the person giving such an authority and nothing can be read in between them.

13. Similar controversy had gone before this Court in case **Krishan Kumar Vs. Nand Lal and others, 2010(4) 691** that relations between the donor of the power and the donee of the power is one of principal and agent and the expression 'agency' is used to connote the relation which exists where one person has no authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relationship has its genesis in a contract where someone other than the person who has a right to act in respect of certain things has under a contract of agency has the right to act on behalf of principal but the authority conferred by written instrument has to be strictly construed and for what the power of attorney authorizes depends on its terms and purpose of which it is executed. There was no such recital in GPA authorizing the agent to get the release deed executed and if a particular power is not conferred on the donee by the donor in the power of attorney, said power cannot be exercised by donee as it would be out of the purview of the instrument itself.

14. In view of the above, the questions of law framed in this case are returned in favour of the plaintiff and judgments and decrees of both the Courts below are set aside and suit of the plaintiff decreed. Matu Ram (since deceased) was owner in possession of the land and the release deed dated 20.08.2001 is illegal and not binding on the rights of the plaintiff and consequently, mutation No.2643 dated 27.11.01, prepared on the basis of such release deed is illegal, null and void and general power of attorney dated 29.06.1988 was a result of fraud and not binding on plaintiff Matu Ram in any way.

15. Resultantly, the present Regular Second Appeal accepted.

May 25, 2015
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(SHEKHER DHAWAN)
Judge