

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

R.S.A No. 3102 of 2014 (O&M)  
Date of decision:- 20.08.2015

Ghisa Singh

...Appellant

Versus

Bakhtawar Singh & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sat Narain, Advocate  
for the appellant.

RITU BAHRI J.

Plaintiff-Appellant (for short 'the appellant') is in second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of the appellant was dismissed.

Appellant and Respondent No. 12 and 13 were owners in possession of the suit land detailed in para No. 1 of the plaint, which was inherited by them from their father Umrao Singh. The date of birth of the present appellant is 01.10.1957 and that of respondent No. 3 is 04.04.1995 and respondent No. 12 was stated to be of unsound mind by birth. It was pleaded that to usurp their land, the contesting defendants and Jhabbu Singh in collusion with defendant No. 6 prepared a forged general Power of Attorney No. 49 dated

04.08.1969 and at that time, plaintiffs were minor and no guardian has been appointed by the Court at the time of execution of power of Attorney and neither defendant No. 6 Man Singh was the guardian of the plaintiffs on 04.08.1969, the mother of the plaintiffs Phoola Devi was alive and the natural guardian. In this power of attorney, the appellant has been wrongly shown as the guardian of the plaintiffs. The power of attorney is thus liable to be set aside along with vasika No. 1908 dated 28.11.1969, which has been executed on the strength of power of attorney. The plaintiffs acquired the knowledge regarding the alleged sale deed and power of attorney on 25.03.2007 when they went to the Halqa Patwari for claiming compensation.

On notice, defendant Nos. 1 to 3 appeared and filed written statement submitting that the plaintiffs has the knowledge of power of attorney dated 04.08.1969 as well as registered sale deed dated 28.11.1969 since the beginning and the present suit is barred by limitation. In the suit property, Jhabbu Singh was coming as co-sharers on the basis of registered will and Smt. Gindori widow of Jhabbu Singh has no concern with the suit property and is an unnecessary party. On merits, it was submitted that Jhabbu Singh and defendant No. 1 were coming in possession of the suit property and after the demise of Jhabbu defendant No. 1 and 3 are coming in possession of the suit property. Even

electricity connection in Killa No. 60/16 has been taken by defendant No. 1 in his name bearing No. KUAG 55 now new number is HR46 KU51 0773. Vidya Devi and Shanti were major at the time of execution of power of attorney and plaintiffs have wrongly shown the age of Gheesa Singh and Shanti Devi. It has been denied that Vidya Devi is of unsound mind and even she was married to Gaje Singh and one child was born out of this wedlock. The power of attorney in favour of Gheesa Singh has been executed by mother of plaintiffs and Man Singh was made a general power of attorney on the basis of power of attorney in favour of Gheesa Singh as Phoola Devi was the natural guardian of Gheesa Singh, therefore, no permission was required to be taken from the Court. The suit is barred by limitation.

In a separate written statement filed by defendant No. 2, the plea of limitation has been taken up and it was admitted that the plaintiffs have been admitting that Bakhtawar and Jhabbu Singh are owners of the suit property and after demise of Jhabbu Singh, defendant Nos. 1 and 3 are coming as owners of possession of the suit property. Satpal has inherited the property by a registered will dated 06.08.1989 of Jhabbu Singh.

Defendant No. 6 has filed the written statement with the same that of defendant No. 2.

From the pleading of the parties, the following

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issues were framed by the trial Court:-

- “1. Whether the power of attorney No. 44/4 dated 04.08.1969 is wrong, illegal, null and void being fraudulent as claimed and liable to be set aside as claimed? OPP
2. Whether the sale deed No. 1980 dated 28.11.1969 based on power of attorney No. 44/4 dated 04.08.1969 is illegal, null and void being mere piper transaction and liable to be set aside as claimed? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped from his own act and conduct to file the suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit?OPD
6. Whether the suit is liable to be dismissed being vague, null and void? OPD
7. Relief.”

Both the Courts after going through the entire evidence led by the parties dismissed the suit of the appellant and gave a concurrent finding of fact that it is not established that plaintiffs are in possession of the suit land or that the impugned power of attorney and sale deed came into their knowledge on 25.03.2007 when they contacted the

patwari for compensation for destruction of their crop, as the plaintiffs have led no evidence about any such destruction of crop. They have no led any evidence to prove their possession over the suit land. Gheesa Singh in his cross examination admitted that the spot inspected by the Patwari is done for destruction of crop due to hailstorm, which is recorded in the revenue record but they have not produced any such entry in the revenue record having any entry of destruction of crop of their land. Further, Gheesa Singh has showed his ignorance about the existence of electricity connection in killa No. 60/16 and stated that he has not taken the electricity connection in the suit land. The suit of the plaintiffs in simplicitor for declaration was held to be not maintainable as they have not prayed the relief of possession.

Phoola Devi mother of the plaintiffs has challenged the power of attorney dated 04.08.1969 in her testimony as P.W.4 but the evidence of P.W.3 Shamsheer Singh, Hand Writing and Finger Print Expert goes on to show that the power of attorney has been executed by Phoola Devi. There is no rebuttal to the evidence, which has been adduced by the defendants and thus, the power of attorney stands proved. Reference has been made to the judgment of Hon'ble the Supreme Court in a case of Rattan Dev vs. Pasam Devi, 2002(3) CCC 680.

The plaintiffs have failed to prove that they have acquired the knowledge in the year 2007 and therefore, the suit of the plaintiffs was held to be barred by limitation. Even if it is presumed that Gheesa Ram and Santosh were minors at the time of execution of alleged power of attorney and the sale deed and Vidhya Devi was of unsound mind, then they should have challenged the same after attaining the age of majority, within a period of three years, which has not been done in the present case. The sale deed has been executed in the year 1969 and the suit was filed in the year 2007.

In view of the above, the judgments passed by both the Courts calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

August 20, 2015  
G Arora

( RITU BAHRI )  
JUDGE