

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

107

RSA-4717-2014 (O&M)

Date of Decision: 17.11.2015

GAJE SINGH

... Appellant

Versus

S.L. MALU AND ANOTHER

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sachin Kadyan, Advocate for
Mr. M.L. Sharma, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (Oral)

1. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.
2. Plaintiff alleged that he is a co-owner in possession of agricultural land hereinafter referred as suit land. He entered into an oral agreement to sell for a total consideration of Rs.47,00,000/- Defendant paid an amount of Rs.12,00,000/- and further issued cheque dated 23.04.2000 for remaining sum of Rs.34,50,000/-. Plaintiff further alleged that balance sale consideration was not received as the cheque presented was dishonoured. A criminal complaint under Section 138 of Negotiable Instruments Act is statedly pending. Plaintiff further alleged that defendants in collusion with each other fabricated GPA No.44 dated 10.06.1999 which has

been claimed to be null and void in the suit. On the basis of said GPA defendants got executed a sale deed dated 27.03.2000. Plaintiff claimed that the said sale deed is also null and void as the defendants never paid the sale consideration. The suit came to be filed on 29.09.2004.

3. The suit has been contested by the defendants on all customary pleas. Defendants claimed that the land in question was sold at the rate of Rs.2,90,000/- per acre. An amount of Rs.50,000/- was received vide cheque No.756641, an amount of Rs.5,00,000/- was received vide cheque No.52465, an amount of Rs.2,50,000/- was received vide cheque No.52487 and an amount of Rs.7,50,000/- was received vide cheque No.21649. Sh. S.L. Mallu was appointed as General Power of Attorney by the plaintiff who sold the property in question vide registered sale deed dated 27.03.2000. Possession was also delivered to the vendee on the spot. The assertions of the plaintiff were denied in the context of sale consideration to the tune of Rs.47,00,000/-, rather the land in question was sold by the plaintiff at the rate of Rs.2,90,000/- per acre and entire sale consideration stood paid to the plaintiff.

4. From the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPD

2. Whether the plaintiff has no cause of action to file the present suit as alleged? OPD

3. Whether the plaintiff's suit is not legally maintainable in the present form? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Relief.”

5. Parties were put to trial. They led evidence accordingly.

6. In conjunction with the law points framed by the appellant in para No.5 of grounds of appeal following points arise for consideration of this Court:-

“1. Whether the plaintiff has proved GPA Ex.DW/A being result of fraud and fabrication?

2. Whether the plaintiff did not appear before Sub Registrar, Sohna for the purposes of executing GPA Ex.DW/A?

3. Whether the act of presenting cheque Ex.P1 after the date of execution of sale deed pre-supposes the plaintiff being consented party to the sale deed and its due execution?

4. Whether the suit is within limitation even when plea of limitation is not set up as a defence by the defendants?”

7. Both the Courts have dealt with the aforesaid issues with reference to evidence and found that GPA is not the result of fraud and fabrication of any type. The execution of GPA has been proved with reference to the requirement of depositions and registration thereof in the office of Sub Registrar. Under Section 3 of the Limitation Act it is the onerous duty of the Court to see whether suit is within limitation or not. For declaring General Power of Attorney

dated 10.06.1999 to be null and void, the suit in question came to be filed only on 29.09.2004 which is apparently found to be beyond limitation. Reference can be made to **2002(3) Civil Court Cases 586 (Orissa) Sanghmitra Jena Vs. The Director of Higher Education** and **1996 (2) Civil Court Cases 441 Anoop Singh Vs. Smt. Bachni** to hold the suit to be beyond limitation.

8. The law points as proposed in the grounds of appeal appear to be factual grounds and do not involve in the context of proved facts on record. Resultantly, finding no merit in this case, the same is dismissed in limine.

(RAJ MOHAN SINGH)
JUDGE

November 17, 2015

prince