

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.6137 of 2014 (O&M)
Date of Decision: 04.08.2015**

Tirath Singh

... Appellant

Versus

Manpreet Kaur

... Respondent

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

Present: Mr. H.S. Dhandi, Advocate,
for the appellant.

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

RAJIV NARAIN RAINA, J.

1. Plaintiff Tirath Singh had six sons. One of them Hardeep Singh was, to use a metaphor, the black sheep of the family. The relationship between father and son ran foul. Tirath Singh disowned his son Hardeep Singh. He gave it in the newspapers. This was in the year 1995. Hardeep Singh had contracted a second marriage with Manpreet Kaur. The first wife Balwinder Kaur had registered a criminal case against her father-in-law Tirath Singh and defendant Manpreet Kaur. The sons of Tirath Singh were also named as accused in FIR 428 of December 24, 1998 lodged at Police Station Sadar, Patiala under sections 494 (bigamy), 498-A (subjecting wife to cruelty) and 120-B IPC. While the case was going on Hardeep Singh prepared a general power of attorney purportedly from his father, the plaintiff, and has also obtained thumb impressions of his mother on it by concealing facts from the father. At the trial Tirath Singh denied the execution of general power of attorney ostensibly in favour of his son.

Meanwhile, on the strength of that general power of attorney Hardeep Singh executed three sale deeds in favour of his wife Manpreet Kaur on November 07, 2000, November 08, 2000 and November 09, 2000 of his father's property. The plaintiff asserted in the present civil suit 254 of June 08, 2005 that the sales were fraudulent and without consideration. There was no necessity for plaintiff to sell his property. If the land was sold no money was paid to Tirath Singh.

2. In these circumstances, Tirath Singh instituted the present suit challenging the sale deeds as illegal, null and void and liable to be set aside as they were not binding on him. Plaintiff pleaded that the suit lands were co-parcenary properties and other co-parceners had a birth right in the suit land. Hardeep Singh died an unnatural death on September 27, 2002 before the suit was instituted. The sale deeds were kept secret by Hardeep Singh during his life-time of the father and thereafter Manpreet Kaur remained tight lipped. Possession of suit property continued to vest with the plaintiff duly reflected in the revenue entries.

3. Manpreet Kaur started proclaiming herself as owner of the suit properties on the strength of the sale deeds and came to take forcible possession of the suit land from Tirath Singh. On this aggression, plaintiff approached the Halqa Patwari on May 14, 2005 from where he came to know of the existence of the sale deeds in favour of Manpreet Kaur. The plaintiff requested defendant to get sale deed cancelled or revoked as they were without authority of law, the POA being a fudged document. However, the defendant did not give in, which led to the filing of the suit for declaration challenging the sale deeds.

4. Defendant Manpreet Kaur denied the facts stated in the plaint. She positioned herself as a bona fide purchaser of suit property under sale deeds duly registered in her name with mutations sanctioned in her favour. She also took the plea that the suit was time barred. She was owner in possession of the suit land and khasra girdawaris also reflected her name. She is in cultivating possession over the property in dispute. She denied that the suit property is co-parcenary property. She also pleaded that land measuring 16 bighas 13 biswas out of the suit land comprised in khasra # 1213/2(8-14), 1214/2 (7-19) were mortgaged with the Primary Agriculture Development Bank, Rajpura and notice of it has been made in the Jamabandi vide rapat # 165 dated December 12, 2001. To reiterate, the suit was instituted on June 08, 2005 against three sale deeds registered in the year 2000. It was her say that the transactions leading up to the Jamabandi were in the knowledge of the plaintiff and therefore challenge to the sale deeds was time barred.

5. Replication was not filed.

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

"1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled for possession of suit land as prayed for? OPD

4. Whether suit of the plaintiff is not maintainable? OPD

5. Relief."

7. The defendant appeared not to be happy with the framing of the five issues had preferred an application for framing of additional issues

which was allowed by the trial Judge. The additional issues are:-

"4-A Whether the plaintiff has not come to the Court with clean hands? OPD

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

4-C Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties? OPD

4-D Whether suit of the plaintiff is time barred? OPD

4-E Whether the plaint of the suit of the plaintiff is liable to be rejected under order 7 rule 11 CPC? OPD

4-F Whether the defendant is entitled to compensatory costs U/S 35-A of CPC/ OPD

4-G Whether the plaintiff is estopped from filing the present suit by his act and conduct and relief of equity cannot be granted to the plaintiff? OPD"

8. The parties led their evidence in support of their respective cases, both oral and documentary.

9. Apart from other evidence, the defendant produced DW-5 Navdeep Gupta, a Handwriting and Fingerprint Expert to compare the disputed and standard signatures of Tirath Singh for which he used the Urdu script. The entire case hinges upon the fact in issue whether the power of attorney from father to son dated July 05, 1999 was a valid instrument or not. If it is a valid document then late Hardeep Singh had power to alienate his father's property.

10. The defendant left no stone unturned in leading clear and cogent evidence in her favour with respect to sale deeds including producing the Handwriting and Fingerprint Expert and she was able to produce and prove all the material documents Exs.D-1 to D-39 in evidence. The witnesses to the sale deed were produced to depose as to facts. The fixed burden and the shifting onus, in abence of rebuttal evidence on the issue to prove that the

power of attorney was a result of fraud and deceit was on the plaintiff to discharge. Plaintiff failed to discharge his burden. If this is so the action must fail. Plaintiff did not lead even a single witness to prove that he never executed a power of attorney dated July 05, 1999 in favour of his son Hardeep Singh or that Hardeep Singh mislead plaintiff in the creation of a forged document or a document without proven consent of Tirath Singh upon evidence. The plaintiff could not even prove the basic thing that he had disowned his son as no evidence was brought on record to support the plea except Mark A-1 dated November 27, 1995 which could not be treated as evidence. This is what the court below thought and quite rightly so as it needs no argument.

11. The trial Judge reasoned that the power of attorney was a worthless document if it was meant to conduct the proceedings in a criminal case to defend Tirath Singh who was an accused in the FIR since criminal proceedings cannot be defended on a power of attorney as the charge is personal. The Judge records in his judgment that if fraud was committed in the making of the power of attorney then plaintiff failed to lodge a criminal complaint against Manpreet Kaur and Hardeep Singh during the period of fourteen years intervening since July 05, 1999 when the power of attorney was made. The report of the Handwriting Expert Ex.D-10 substantiated the defendant's plea that the signatures of the plaintiff with his specimen signatures matched. The trial court read the pleadings in the plaint and the written statement and focused on paragraph 6 where only vague allegations are levelled by Tirath Singh with respect to the GPA being a document orchestrated by deceit and fraud. On these premises the trial court dismissed

the suit.

12 The court of first appeal focused more sharply on the weaknesses in paragraph 6 by reproducing the reply to para.6 in the written statement in the judgment which reads as follows:-

"(6) That para no.6 of the plaint is wrong and denied. It is wrong that Hardeep Singh had prepared a false general power of attorney from the plaintiff. In fact, the plaintiff himself executed a general power of attorney in favour of Hardeep Singh and the same has not been got cancelled by the plaintiff till the death of Hardeep Singh. No notice regarding cancellation of general power of attorney has been given by the plaintiff to defendant nor Hardeep Singh. Wrong facts have been stated by the plaintiff."

13. The plaintiff did not file replication to rebut the averments of the defendant contained in para.6 of the written statement and this the court of first appeal thought is a material evasion of true facts and circumstances which go against the plaintiff and to my mind rightly since the judicial thinking charts the correct path of reasoning. The plaintiff did not even think it fit to assert that his signatures were taken on blank stamp papers whereas the GPA Ex.P-2 was a registered document and bears the photographs of the plaintiff. Moreover, the plaintiff did not examine his wife Raj Kaur who was a material witness to the GPA to prove that their signatures were obtained by fraud since the power of attorney was executed by both Tirath Singh and Raj Kaur allegedly in favour of their late son. The trial court also found that the sale deeds duly proved on the file reveal that in the year 2002 the plaintiff distributed his share among his sons and, therefore, was competent to dispose of his share by empowering his son Hardeep Singh to alienate the property on his behalf. When the three sale

deeds were proven then there is a presumption in law that sale consideration passed into the hands of the plaintiff and the material assertion was not rebutted either in pleadings or by leading evidence. The courts below have safely assumed in the premises obtaining from confines of evidence that sale consideration passed and, therefore, it mattered little to whom Hardeep Singh sold the property to, even if it were his second wife whether married legally or not. In any event, morality can have no sway on transfer of property or the rights of a sale deed holder to press his civil rights. Conduct has no place in civil disputes unless conduct is itself a fact-in-issue with relevance to the judicial determination of a suit. Besides, the court of first appeal held on the point of limitation that three sale deeds were of the year 2000 while the suit was brought on June 08, 2005, that is, after the expiry of the prescribed period of limitation of three years in the Limitation Act, 1963 to bring an action in a court of law to challenge a sale deed. When the allegation of fraud was not proved by plaintiff in the making of the sale deeds or in the making of the power of attorney and these facts are assumed to be known to the plaintiff then limitation began to run after the first sale deed was executed on November 07, 2000 and the two other sale deeds that followed on the next and the following day. On these premises, the suit was dismissed and the appeal was rejected against which decrees, the plaintiff is in second appeal.

14. It is well settled that findings of fact based on appreciation of evidence are not open to judicial review in second appeal under section 100 of the CPC. The courts below are the last courts of fact and law and even mere errors of fact and law are not open to interference on the second appeal

side of this court, cf. Supreme Court decision in **Santosh Hazari vs. Purushottam Tiwari (D) through LRs.**, (2001) 3 SCC 179: 2001 (3) RCR (Civil) 243 which is one of the series of binding precedents that holds the field.

15. No substantial question of law arises for consideration.

16. For the foregoing reasons, no merit is found in this appeal and the same is ordered to stand dismissed. As the main appeal has been dismissed, the pending applications shall stand disposed of as no orders are required to be passed therein.

(RAJIV NARAIN RAINA)
JUDGE

04.08.2015
manju