

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

CR No.3271 of 2015
Date of decision : 27.10.2016

Parsin Kaur (deceased through LRs)

...Petitioner

Versus

Manjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Naresh Kaushik, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order, whereby application moved under Order 23 Rule 1 Sub-Rule 4 of Rule 3 read with Section 151 CPC for setting aside of the statement suffered on 04.10.2014 and order of even date vide which the suit seeking following relief:-

“Suit for declaration to the effect that plaintiff is owner in possession of land measuring 30 kanals out of land 56 kanals 1-5 marlas, detailed below:-

A) Land measuring 11 kanals 7 marlas which is ½ share out of land measuring 22 kanals 14 marlas bearing khewat/khatauni No.120/157, Khasra No.2//11 (3K-K 12(8-0), 14(0K-3M), 20(0-2), 17(2-in, 18 (8-0), total 22 kanals 14 marlas in which plaintiff is joint owner in possession to the extent of ½ share.

B) Land measuring 0K-1M comprised in khewat/khata No.122/160, khasra No.2//3 (8-0), 13(7-9), total 15 kanals 9 marlas of which plaintiff is joint owner in possession of 0-I M 1/206 share, out of 15 kanals 9 marlas.

C) Land measuring 18 kanals 12 marlas comprised in Khewat/Khatauni No.208/269, Khasra No.1/1//3 (4K-9M), 4 (6K-1M), 8/1 (7-2), 9(0-11), 12/1(0-9), total 18 kanals 12 marlas which is exclusive ownership in possession of plaintiff, situated in village Talwara, Tehsil Bholath, District Kapurthala as per jamabandi for the year 2009-2010 and General Power of Attorney hearing No.410 dated 23.02.2011 registered in the office of Sub-Registrar, Bholath, District Kapurthala alleged to be executed by plaintiff Parsin Kaur in favour of defendant No.2 is illegal, wrong, fake, void, ultravires, ineffective, forged, fabricated result of fraud and misrepresentation not binding upon the right, title and interest of plaintiff as plaintiff has never executed the above-mentioned General Power of attorney in favour of defendant No.2 and the same is liable to be set aside.

And

Further declaration to the effect that sale deed dated 14.9.2011 alleged to be executed by defendant No.2 on the basis of alleged fake General Power of Attorney dated 23.02.2011 vide which defendant No.2 sold land measuring 30 kanals detailed below:-

A) 11 kanals 7 marlas which is $\frac{1}{2}$ share of plaintiff out of land 22 kanals 4 marlas bearing khewat/khatauni No.120/157, Khasra No.2//11/3-18, 12(8-0), 14(0-3), 20(0-2), 17(2-11), 18 (8-0).

B) Land measuring 0K-1M share of plaintiff out of land bearing khewat/khatauni No.122/160, khasra No.2//3 (8-0), 13(7-9) of which plaintiff has got 1/206 share.

C) Land measuring 18 kanals 12 marlas bearing Khewat/Khatauni No.208/269, Khasra No.1/1//3 (4-9K) 4 (6K-1M), 8/1 (7K-2M), 9(0-11), 12/1(0-9) situated in village Talwara, Tehsil Bholath, District Kapurthala as per jamabandi for the year 2009-10, in favour of defendant No.1 is illegal, wrong, null and void, not binding upon the right, title and interest of plaintiff, does not confer any right, title and interest to the defendant No.1 without consideration, result of fraud and misrepresentation played by defendants upon plaintiff and has got no value in the law and alleged mutation No.1841 dated 26.11.2011 alleged to be sanctioned on the basis of alleged void sale deed dated 14.09.2011 in favour of defendant No.1 is also illegal, wrong, void, ineffective, not binding upon the right, title of plaintiff, does not confer any right, title and interest to defendant No.1 and is liable to be set aside.

AND

Suit for permanent injunction restraining the defendant No.1 or her agent and attorney from selling/alienating/transferring the above-mentioned land measuring 30 kanals to any one in any manner and also restraining the defendants interfering the possession of plaintiff or ousting the plaintiff from above mentioned land measuring 30 kanals illegally and forcibly forever.

AND as a consequential relief.

Suit for possession of above mentioned 30 kanals land, if this Hon'ble Court comes to conclusion that plaintiff is not in possession of 30 kanals land out of 56 kanals 15 marlas land mentioned in parts (A), (B) and (C). ”

was dismissed as withdrawn, has been dismissed.

Mr. Prateek Pandit, learned counsel appearing on behalf of petitioner-plaintiff submits that in the contents of the application, it was

stated that no instruction was given to the counsel to withdraw the suit. In support of the contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *Himalayan Co-operative Group Housing Society Vs. Balwan Singh*, 2015(7) SCC 373.

He further submits that counsel has been engaged who without signing power of attorney suffered statement and withdrew the aforementioned suit, though, no authority was given to the agent to do this.

Per Contra, Mr. Naresh Kaushik, learned counsel appearing on behalf of respondents submits that order under challenge is perfect, legal and justified. There is no illegality and perversity. Once statement has been made for withdrawal of the suit, application was not maintainable.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Prateek Pandit, for, as per the the ratio decidendi culled out by Hon'ble Supreme Court in *Himalayan Co-operative Group Housing Society case (Supra)*, had laid down following principles, same reads thus:-

- “(i) *Lawyers owe fiduciary duties to their clients – Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.*
- (ii) *A lawyer must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement.*
- (iii) *Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.*
- (iv) *In come cases Lawyers can make decisions without consulting client – While in others, the decision is reserved for the client.*
- (v) *It is often said that the lawyer can make decisions as to tactics*

without consulting the client, while the client has a right to make decisions that can affect his rights.”

Once there is specific assertion in the application with regard to the authority of the counsel who has alleged to have been suffered statement in the absence of signature, suit could not have been withdrawn. Once this aspect has been brought to the notice of the Court, Court should have looked into and passed the order pragmatically. Having failed to do so, I am of the view that order under challenge is not sustainable and is liable to be set aside.

Application (Annexure P-7) is allowed.

Suit is ordered to be restored.

Accordingly, revision petition stands allowed.

27.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No