

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

**RSA-1407-1995 (O&M)
Date of decision : 28.09.2016**

Ranjit Singh

... Appellant

Versus

Surjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Rai, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking possession of 6/7th share in the agricultural land by challenging the judgment and decree of the lower Appellate Court, though, the trial Court had partly decreed the suit.

Mr. M.S. Rai, learned counsel appearing on behalf of the appellant-plaintiff submits that the plaintiffs had not executed any registered power of attorney dated 02.07.1977 in favour of Ram Dei as they had also acquired the share as made in the suit on demise of Shanker. Shanker was the owner of the property and after his death, he was survived by widow Ram Dei and three sons and daughters. Ram Dei had played a fraud upon him by executing the sale deed on 13.06.1979 in favour of the defendant(s). They had not given any authority or power to Ram Dei for selling the property. It was only for the purpose of management. No sale consideration has been deposited and therefore, interest has been seriously

effected. In fact, Ram Dei had colluded with the defendant(s) and usurped the power given in the power of attorney. The document aforementioned was executed for the purpose of taking loan, but the same has been used as power of attorney. The principal had never authorised the agent as per the provisions of Order 3 Rule 1 CPC for alienating the property. The trial Court partly decreed the suit, but the lower Appellate Court has dismissed the suit. The lower Appellate Court has committed illegality and perversity in recording the finding that no documentary evidence regarding date of birth of Somoti, had been produced to prove that she was minor on 02.07.1977, whereas birth certificate (Ex.P-2) of Gulab Devi shows her date of birth as 25.01.1964 and accordingly, she was 14 years' old at the time of the execution of the general power of attorney. PW-3 Somoti had also submitted that she was 16 years' old at the time of the execution of the alleged power of attorney. All these factors have not been take care of by the lower Appellate Court, thus, there is a misconstrual and misreading of the documentary evidence and prays for setting aside the judgment and decree under challenge.

Per contra, Mr. C.B. Goel, learned counsel appearing on behalf of the respondent(s)-defendant(s) submit that GPA dated 02.07.1977 was a registered document which carries a presumption of truth. No explanation has come forth as to how under what circumstances, the minor would append the signatures on the registered document. The plaintiff(s) has miserably failed to prove the date of brith as noticed above by the lower Appellate Court. Ram Dei had become the absolute owner and could deal with the property in any manner. The plaintiff(s) has no right and interest in

the property, aforementioned. Even the suit was filed in the month of April 1987, much less, no declaration under Section 34 of the 1963 Act for setting aside the sale deed has been sought. The limitation to challenge the registered document is three years. Assuming for an argument sake that the plaintiff(s) had become major and the suit was yet not within limitation, thus, urges this Court affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force in the submissions of Mr. M.S. Rai, for, GPA, aforementioned, is a registered document which carries a presumption of truth subject to its rebuttal. The ingredients of fraud as envisaged under Order 6 Rule 4 CPC are conspicuously wanting. The factor for which the the suit is liable to be dismissed is that no declaration under Section 34 of the 1963 Act had been sought. The registered document is valid until and unless the same is sought to be set aside in accordance with law. The birth certificates had not been proved in accordance with law as they have only been tendered. Even otherwise, the information given to the office of Sub-Registrar containing the record of date of birth is self-serving. They could have produced the school certificate or the other documents to show their age. I cannot remain oblivious of the fact that Ram Dei, who had alleged to have played fraud, was not impleaded as defendant. There appears to be an apparent collusion. In my view, the filing of the suit is nothing, but an act of greed/aggrandizement.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial

question of law arises for determination and accordingly, the appeal is dismissed.

28.09.2016	(AMIT RAWAL)
yogesh	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No