

Regular Second Appeal No.315 of 2008 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.315 of 2008 (O&M)

Date of Decision: August 11, 2016

Harnek Singh (since deceased) through L.Rs

...Appellants

Versus

Sadhu Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sachin Mittal, Advocate,
for the appellants.

Dr.Parveen Hans, Advocate,
for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

Appellants are aggrieved of the dismissal of the suit seeking permanent injunction against the respondent-defendants from alienating agricultural land measuring 51 kanals bearing Khewat No.149, Khatoni No.228 to 233, as per jamabandi for the year 1998-99 situated at Village Simbalwala, Tehsil Tohana, District Fatehabad on the basis of the alleged General Power of Attorney (for short "GPA") on the premise that the plaintiffs are owners of the aforementioned land to the extent of

Mr.Sachin Mittal, learned counsel for the appellants submits that since the defendants were openly claiming execution of the alleged GPA dated 6.1.1989, the suit aforementioned was filed, though the alleged GPA and as well as consequential effect of sale deed dated 24.5.2002 had not been challenged, but the fact remains that the Court below framed the issue with regard to the sale deed and, therefore, the parties were alive to the situation and, thus, the relief of declaration was inherent. Defendant No.3 had propounded the registered GPA, but did not produce the original one as only registered copy of the same had been proved. The Expert examined by the defendants had only taken the admitted signatures of plaintiff No.1 and not of plaintiff No.2 and, thus, there is falsity in the report of the Expert and adverse inference was liable to be drawn against defendant No.3 for having not produced the original GPA. He further submits that no doubt the wives of the plaintiffs executed registered lease deeds of even date in favour of defendant Nos.1 and 2 and once the lease deeds were already there and the possession had been handed over, there was no need to execute the sale deed on the basis of the attorney and recital of handing over the possession again. All these factors were sufficient to prove that defendant No.3 had acted against the power of the principal, rather breached the trust by misusing the powers. The Courts below did not appreciate the aforementioned

facts and declined the relief.

Dr.Parveen Hans, learned counsel for respondent Nos.1 to 3 submits that the execution of the registered lease deeds of even date was, in fact, a sale and the GPA, aforementioned, has been proved through the testimony of the attesting witnesses, who deposed that it was plaintiff, who had executed the GPA, which was never challenged or cancelled during the existence and till filing of the suit, much less during the pendency of the suit, which resulted into sale deed dated 24.5.2002 in favour of defendant No.1. Defendant No.3 is none else but the maternal uncle of the plaintiffs and father-in-law of defendant No.1. All were known to each other and, therefore, there was no mistrust. Both the Courts below, being the last Courts of facts and law, after examining the evidence, declined the relief and, thus, urges this Court for affirming the findings by dismissing the present appeal. No substantial question of law, much less any illegality and perversity arises.

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 submission of Mr.Mittal, for, assuming for argument sake that appellants do not admit that the relief of declaration was inherent and they were alive to the situation and led evidence, but for claiming declaration, it was incumbent upon the plaintiffs to summon the witness from the

concerned office of the Sub Registrar with regard to the registration of GPA dated 6.1.1989. If at all, he had not executed the GPA, the suit had to be based upon the ingredients of Order 6 Rule 4 CPC. On going through the contents of the plaint, there is no pleading with regard to the alleged forgery, in essence, the plaintiffs ought to have amended the suit by incorporating the aforementioned averments. Having failed to do so, the plaintiffs have not discharged the onus and rightly so, the Courts below believed that the registered document carried the presumption of truth, in essence, the plaintiffs have failed to rebut the correctness of the registered document.

There is no force in the submission of Mr.Mittal vis-a-vis the Handwriting Expert having not taken the signatures of one of the plaintiffs, but I am of the view that the plaintiffs have not even pleaded or prove the ingredients of Order 6 Rule 4 CPC. I find no illegality and perversity in the judgments and decrees of both the Courts below. No substantial question of law arises for determination. No ground for interference is made out.

Appeal stands dismissed.

August 11, 2016
ramesh

(AMIT RAWAL)
JUDGE