

RSA Nos.4462 of 2010 (O&M).
RSA No.158 of 2011 (O&M) &
RSA No.3440 of 2012 (O&M)

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

1. RSA No.4462 of 2010 (O&M)
Date of decision : 22.08.2016

Hoshiyar Singh and others

...Appellants

Versus

Ved Parkash

..Respondent

2. RSA No.158 of 2011 (O&M)
Date of decision : 22.08.2016

Ved Parkash

...Appellant

Versus

Hoshiyar Singh

..Respondent

3. RSA No.3440 of 2012 (O&M)
Date of decision : 22.08.2016

Narpat Singh

...Appellant

Versus

Daman Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rakesh Nehra, Advocate for the appellants
(In RSA No.4462 of 2010)
for respondent (In RSA No.158 of 2011)

Mr. M.K. Mittal, Advocate for the appellant.
(In RSA No.3440 of 2012)

Mr. Rao Devinder Singh Nirban, Advocate for appellant.
(In RSA No.158 of 2011)
for the respondent(s).
(In RSA No.4462 of 2010)
(In RSA No.3440 of 2012)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three aforementioned regular second appeals. The appeal bearing No.3440 of 2012 is arising out of the decision of Civil Suit No.518 of 2002 titled as Narpat Singh and another Vs. Dalip Singh and others (hereinafter to be referred as Suit No.1). Appeal bearing No.158 of 2011 is arising out of the decision of Civil Suit No.54/2004/2005 titled as Hoshiyar Vs. Ved Parkash and others (hereinafter to be referred as Suit No.2) and appeal bearing No.4462 of 2010 is arising out of the decision of Civil Suit No.476/2001/2005 titled as Ved Parkash Vs. Hoshiyar Singh and others (hereinafter to be referred as Suit No.3)

In suit No.1, Narpat Singh and Depty Prashad-plaintiffs sought declaration for setting aside of the judgment and decree dated 30.07.1992 passed in Civil Suit No.368/1992 titled as Dalip Singh etc. Vs. Mehtab

Singh etc. on the premise that they had executed a registered GPA dated 02.07.1986 in favour of Mehtab Singh which had only the power to compromise and not to give a consent of divesting of title/ownership.

Mr. Mittal, learned counsel appearing on behalf of appellant in RSA No.3440 of 2012 submits that Courts below have mis-interpreted the power of attorney dated 02.07.1986 aforementioned whereas the ingredients of fraud and misrepresentation as envisaged under Order 6 Rule 4 of Code of Civil Procedure have been proved on record. There is categorical pleadings in the plaint that power of attorney did not envisage the power to alienate the right or interest, thus, agent acted beyond the power given by the Principal. It is in this backdrop of the matter, the suit was filed on 28.02.2002 by raising the cause of action in the year 10.12.2001 and the defendant refused to acknowledge the ownership of the plaintiffs. Suit No.2 is instituted at the instance of Hoshiyar Singh claiming the possession from Ved Parkash (defendant No.1) and Suit No.3 is at the instance of Ved Parkash against Hoshiyar Singh.

Mr. Rakesh Nehra, and Mr. Rao D.S. Nirban, learned counsel submits that both the parties have mutually agreed outside the Court for not claiming the possession of each other property as they are not interested in proceeding ahead with the possession.

Mr. Mittal, in support of his arguments has relied upon ratio decidendi culled out by this Court in *Krishan Kumar Vs. Nand Lal & amp ors. 2010(3) Civil Court Cases 648* to contend that power to enter into compromise or sell does not include the power to transfer and the act of

suffering statement in suit tantamounts to transferring of the right and interest in the property and thus urges this Court for setting aside of the judgments and decrees passed in Civil Suit No.1 while decreeing the suit as well as appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Mittal, for, till filing of the suit, GPA dated 02.07.1986 has not been cancelled. I must appreciate the mind of the lawyer who drafted the suit to bring the same within a period of limitation. For the sake of brevity, para No.5 of the plaint, reads thus:-

“5. That the plaintiffs have repeatedly requested the defendants not to interfere in the peaceful possession of the plaintiffs and to get the decree dated 30.07.1992, passed in the Civil Suit No.368 of 1992, titled Dalip Singh etc. Vs. Mehatab Singh, obtained on the basis of fake fabricated power of attorney, set aside and further to admit the claim of the plaintiffs regarding the suit land. Firstly, the defendants went on putting off the matter on one pretext or the other and finally refused on or about 25/02/2002, which the date of cause of action. Since about the existence and passing of the decree in dispute had come to the knowledge for the first time on 10/12/2001 and after obtaining the certified copy of the same, the date of cause of action is in continue from December 2001.”

Article 59 of the Limitation Act, 1963 provides that limitation is of 3 years when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known

to him. Para No.5 of the aforementioned plaint does not reveal as to how and under what circumstances it came into existence. Even other paragraph also do not reveal. In my view suit ex facie was time barred and as per the judgment rendered by Division Bench of this Court in *Ibrahim alias Dharam Vir Vs. Smt. Sharifan alias Shanti*, 1979 PLJ 469, wherein it has been held that mutation does not give cause of action to institute the suit but only when there is forcible dispossession or apprehension of the same on the title, the suit can be brought within the purview aforementioned provision of law. Even the ingredients of Order 6 Rule 4 of Code of Civil Procedure are conspicuously absent. This Court while hearing the Case has raised question to Mr. Mittal, as to who was put into possession of the property, answer was Hoshiyar Singh. Thus, appellant was in the knowledge of the fact about the possession. No steps had been taken to get judgment and decree set aside. During the interregnum, third party rights have been created in favour of Ved Parkash and Hoshiar Singh. The ratio decidendi culled out in the Krishan Kumar's case (Supra) is not disputed but the fact remains that for foregoing reasons, same would not apply.

For the reasons aforementioned, I do not find any illegality and perversity in the judgment and decree of both the courts below, much less, no ground for interference is made out.

As regards the claim in suit Nos.1 and 2, learned counsel for the appellant made statement at Bar that suit should be dismissed as they have mutually agreed for exchange of land and do not stake the claim or relief as sought/described in the suit.

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Keeping in view the aforementioned statement, Regular Second Appeals aforementioned are hereby allowed and the judgment and decree of the trial Court is set aside.

Accordingly, RSA No.4462 of 2010 & RSA Nos.158 of 2011 are allowed and RSA No.3440 of 2012 is dismissed.

22.08.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- **Yes**

Whether reportable:- **No**