

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.1483 of 2015 (O&M)

Date of Decision: February 23, 2016.

Jagdish Kumar

.....APPELLANT(s).

VERSUS

Raj Kumari and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by Jagdish Kumar plaintiff against the concurrent judgments of the Courts below dismissing his suit seeking relief of declaration that :-

(i) order dated 19.09.1997 passed by SDM-cum-Assistant Collector 1st Grade, Abohar for recovery of share of produce for the crop of 'Rabbi' and 'Sauni', 1995 qua the suit land;

(ii) order dated 26.07.1999 passed by Assistant Collector 1st Grade, Abohar and consequent proceedings relating to execution of that order;
were illegal, invalid, forged, fraudulent;

(iii) General Power of Attorney dated 07.06.1995 alleged to have been executed by Sheo Nath, who had died prior to the execution of that power of attorney, was fabricated and bogus.

(iv) The general power of attorney given by Manphool was used during the pendency of the proceedings, before revenue Court even after death of Manphool.

2. Case of the plaintiff, in brief, is that Sheo Nath, one of the co-owner of the suit land had died on 10.01.1988 and Manphool, defendant No.8 died on 13.05.1996. However, defendant No.5, who was appointed as attorney of Sheo Nath and Manphool vide General Power of Attorney dated 07.06.1995, kept on using the attorney and filed proceedings before the revenue authorities as mentioned above despite his incompetence to proceed on behalf of Manphool and Sheo Nath after their death.

3. The Courts below dismissed the suit of the plaintiff on the ground that plaintiff has not been able to prove the death certificate of Sheo Nath. The first Appellate Court also dismissed the appeal of the plaintiff on the ground that the plaintiff had not produced on record original death certificate of Sheo Nath. The suit challenging the order dated 26.07.1999 filed on 23.11.2007 was held as barred by limitation. It was also observed that civil Court has no jurisdiction in the matter.

4. I have heard learned counsel for the appellant and perused the paper book and judgments of the Courts below with his assistance.

5. Learned counsel for the appellant-plaintiff has argued that there is no bar to the civil Court jurisdiction to declare a transaction fraudulent at any stage, as the fraud transcends all barriers and no technical rules concerning jurisdiction etc. would come in the way of pronouncing an act based on fraud as illegal. He has relied on the observations in ***Devi Lal Vs. Balwant Singh and another 2005(4) RCR (Civil) 658; Madan Lal and another Vs. Rajesh Kumar (Dead) through LRs. 2005(4) RCR (Civil) 72; and Gurcharan Singh and others Vs. Angrez Kaur and another 2008(4) RCR (Civil) 178.***

6. The submissions made by learned counsel for the appellant-plaintiff cannot be disputed but in the instant case, the appellant cannot be given any benefit on these submissions. The fraud, if any, as per the appellant, was played with the revenue authorities which has exclusive jurisdiction in the matter of ejectment of a tenant under the Punjab Tenancy Act, which is a complete Code having the provisions of appeal, revision, review etc. The plaintiff has not availed and has approached the revenue authorities in the matter.

7. On perusal of the judgments of the Courts below, I find that the plea of the plaintiff that the power of attorney was result of fraud, was discarded on the ground that the plaintiff failed to prove that Sheo Nath had died on 10.01.1988. Citations referred by learned counsel for the appellant-plaintiff may be relevant to challenge the proceedings before the concerned Court, if those are based on fraud by a party or its fraudulent conduct. It is settled proposition of law that fraud vitiates all judicial acts. However, in this case, appellant has failed to substantiate his plea of fraud by leading any cogent and convincing evidence and both the Courts have rightly declined the relief as claimed by the appellant-plaintiff.

8. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

9. No substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

February 23, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE