

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

RSA No.4746 of 2016 (O&M)

Date of Decision: 19.09.2016

Amir Chand (deceased) through LRs

.....Appellant

Vs

**Greater Mohali Area Development Authority (GMADA)
Mohali through its Estate Officer and others**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Harpreet Singh Gharuan, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.12264-C of 2016

This is an application for bringing on record the legal representatives of deceased/appellant Amir Chand, who died on 30.06.2016.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Amir Chand as shown in para no.1 of the application are ordered to be brought on record, subject to all just exceptions.

RSA No.4746 of 2016 (O&M)

[1]. Plaintiff through his legal representatives is in

Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for declaration and permanent injunction to the effect that General Power of Attorney (for the short 'the GPA') dated 24.04.1990 allegedly executed by plaintiff in respect of House No.HE 306, Ground Floor, Phase I, Mohali was forged and fabricated document. The consequent sale deed dated 19.03.2010 executed by defendant No.2 in favour of defendant No.3 on the basis of said GPA was illegal, null and void. All transactions based on the said GPA were also claimed to be null and void. Mandatory injunction was also sought against defendant No.1 directing him to re-transfer the suit property in the name of the plaintiff, who claimed himself to be *bona fide* owner of the property. Permanent injunction was also sought against defendant Nos.1 and 4 to restrain them from transferring, alienating and creating charge over the suit property in any manner.

[3]. Plaintiff claimed himself to be a Senior Citizen. He was allotted EWS House No.HE 306 (GF), Phase I, Mohali by the Punjab Housing Development Board, Chandigarh on 24.11.1976 and thereafter he got the same transferred in the

name of his daughter Paramjit Kaur on 20.04.1990 in the records of the Estate Officer, PUDA (now GMADA)/defendant No.1. The house was re-transferred in the name of plaintiff by his daughter vide transfer order dated 10.03.2006. In the records of PUDA, Mohali, the necessary incorporation was made thereby showing the plaintiff to be the owner of house in question from 2006 onwards. After the transfer of the house in the name of plaintiff conveyance deed of the house was executed in favour of the plaintiff on 21.03.2006 by defendant No.1 which was duly registered in the office of Sub-Registrar, Mohali. Defendant No.2 being brother of the plaintiff was allowed to stay in the house as licensee by the plaintiff. In January 2010, plaintiff requested him to vacate the premises as he wanted the same towards his personal needs, but defendant No.2 put off the matter for one reason or the other in order to gain time. In July, 2010 plaintiff visited the house and was surprised to see that house was demolished for the purposes of renovation. Then the plaintiff came to know that the house in question was sold by defendant No.2 on the basis of some forged and fabricated GPA allegedly executed by the plaintiff. Defendant No.2 sold the house in favour of defendant No.3 vide sale deed dated 19.03.2010. Subsequently, defendant No.3 further sold the house in question to defendant No.4. Plaintiff

further alleged that his brother/defendant No.2 in connivance with defendant Nos.3 and 4 and official of defendant No.1 had played fraud with him. With this background the suit in question was filed.

[4]. The suit was contested by the defendants on all counts. As per record Darshan Singh was GPA of the plaintiff, who applied for the transfer of the house in favour of defendant No.3. After completion of all the formalities, necessary permission was granted to defendant No.2 for sale of the property vide letter dated 16.03.2010. The said house was transferred in the name of defendant No.3 on 25.03.2010. thereafter defendant No.3 moved an application for sale of the house in favour of defendant No.4. The house in question was transferred to defendant No.4 vide letter dated 14.06.2010.

[5]. On completion of the pleadings, both the parties went to trial on the following issues:-

- “1. *Whether the plaintiff is entitled to for declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
4. *Whether the suit of the plaintiff is not maintainable? OPD*

5. *Whether the plaintiff has not come to the court with clean hands? OPD*
6. *Whether the plaintiff has no locus standi to file the present suit? OPD*
7. *Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD*
8. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. After appraisal of the evidence, trial Court discussed issue Nos.1 to 3 jointly and held that the property was sold by defendant No.2/brother of the plaintiff on the basis of GPA Ex.D-1. The document was not questioned by the plaintiff in any manner, nor any evidence was led. Consequently, the suit was dismissed vide judgment and decree dated 22.09.2014.

[8]. Lower Appellate Court affirmed the findings of the trial Court and the application under Order 41 Rule 27 CPC filed along with the grounds of appeal was also dismissed. That is how the present appeal came to be filed in this Court. Along with the appeal, an application under Order 41 Rule 27 CPC has also been filed for adducing additional evidence.

[9]. The plaintiff/appellant sought to adduce additional evidence on the ground that the transfer of the house in

question was made in the name of daughter of the plaintiff on 20.04.1990 and complaint was filed by the plaintiff to the SSP, Mohali. Both the documents were found by the plaintiff after the decision before the trial Court and thereafter the plaintiff sought indulgence of the Court to produce additional evidence at appellate stage to challenge the GPA Ex.DW/1 on the ground of its being forged document and the same to be verified from Handwriting Expert. The said application was contested by the defendants on the ground that no evidence was brought before the trial Court in the aforesaid context. The expert evidence cannot be allowed at the appellate stage, particularly for filling up the lacuna.

[10]. I have deliberated upon the issue.

[11]. The additional evidence at appellate stage as sought by the plaintiff/appellant has to meet the requirement that firstly the court below had refused to admit the evidence which ought to have been admitted by the trial Court. No such additional evidence was moved before the trial Court, therefore, this condition is not applicable. Secondly the party seeking to adduce additional evidence has to establish that despite due diligence the evidence was not within his knowledge or the same could not be produced by him before the trial Court. The factum of knowledge was very much available with the plaintiff

earlier and the plaintiff/appellant could not demonstrate that despite due diligence the same could not be adduced before the trial Court. This condition is also not attracted. Thirdly the appellate Court, if requires any document to be produced or any witnesses to be examined, can certainly allow production of such evidence by way of additional evidence so as to pronounce the judgment in an effective manner or for any other substantial cause for just decision of the case. In my considered opinion, all these ingredients are not attracted to the facts of the present case.

[12]. Apparently, the GPA was executed on 24.04.1990 i.e. the date on which the plaintiff was not even owner of the property having transferred the same in favour of his daughter on 20.04.1990. It was not Special Power of Attorney, therefore, the use of GPA at a time when plaintiff re-gained the title cannot be faulted with any inherent infirmity in the GPA. Since the property was re-transferred in the name of the plaintiff on 10.03.2006 and conveyance deed was also executed in his favour on 21.03.2006, therefore, use of GPA at that juncture cannot be termed to be without any basis, particularly when the GPA was never questioned by the plaintiff/appellant, nor any evidence was led to show that the same was forged and fabricated. The alleged plea of that GPA did not contain the

signature of the plaintiff could not be proved by the plaintiff himself by way of examining any expert evidence at the trial stage. No pleas were taken by the plaintiff/appellant to cancel the GPA which was executed on 24.04.1990 and the same remained in force till the time, when the same was used by defendant No.2 to effect sale in favour of defendant No.3.

[13]. Both the documents dated 20.04.1990 and 14.07.2010 and examination of Handwriting Expert for the document Ex.DW-1 were available before the plaintiff during trial and even before the institution of the suit. The document dated 20.04.1990 was supposed to be the backbone of the suit, but the documents were not brought on record by the plaintiff before the trial Court despite the opportunity available to him. The expert evidence cannot be allowed to be led in order to fill lacuna in the plaintiff's case as such indulgence would be having the effect of nullifying the judgment and decree of the trial Court, which was obtained by the party after due process of law and by leading evidence.

[14]. The alleged plea that the GPA was forged and fabricated could have been proved by the plaintiff/appellant by leading expert evidence at the relevant stage. Provisions in terms of Order 41 Rule 27 CPC cannot be invoked to fill up the lacuna during trial and the same would give rise to *de nove* trial

at the appellate stage.

[15]. Having considered the issue in detail, I find that no indulgence can be given in the Regular Second Appeal. Consequently, no law point worth consideration is involved in the present appeal. The Appeal is found to be totally devoid of merits and the same is accordingly dismissed.

CM No.12263-C of 2016

[16]. Since the appeal is dismissed on merits, therefore, application for condonation of delay of 61 days in filing the appeal is not required to be adjudicated upon and the same is rendered infructuous.

CM No.12265-C of 2016

[17]. Since the prayer for additional evidence on the same premise was declined by the lower Appellate Court while deciding the appeal on merits, the factum of application for additional evidence at appellate stage has been taken care of in the main order. This application has become wholly inconsequential and the same is decided in the manner as suggested in the main order.

September 19, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No