

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

RSA No.1705 of 2014 (O&M)

Date of decision:11.03.2016

Dharam Pal and others ... Appellants

Vs.

Mohan Lal @ Durga Singh ... Respondent

RSA No.1207 of 2015 (O&M)

Dharam Pal and another ... Appellants

Vs.

Mohan Lal @ Durga Singh ... Respondent

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. N.S.Shekhawat, Advocate
for the appellants (in RSA No.1705 of 2014).

Mr. Vikas Kumar, Advocate
for the appellants (in RSA No.1207 of 2015).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1705 of 2014 and 1207 of 2015.

Appellant-defendants No.1 and 2 are aggrieved of the concurrent findings of facts and law, whereby, suit claiming declaration vis-a-vis relinquishment deed dated 17.11.1989 and

22.01.2010 being null and void, has been decreed by both the Courts below.

Mr.N.S.Shekhawat, learned counsel appearing on behalf of the appellants (in RSA No.1705 of 2014) submits that on 17.11.1989, respondent No.1/plaintiff executed a 'General Power of Attorney' in favour of defendant No.1. Earlier, land measuring 71 kanals 1 marla was owned by Tirlok Chand, father, who, died on 29.12.1988 and left behind a Will dated 25.12.1988 executed in favour of his wife Kesar Devi. The civil suit filed by Kesar Devi against all the children was decreed, vide judgment and decree dated 14.03.2001. On 16.05.2003, though the property measuring 31 kanals 1 marla was transferred, but in pursuance to the release deed dated 31.12.2009 executed by defendant No.1, land measuring 25 kanals was allegedly transferred in the name of other brothers, i.e., defendants No.2 and 3 and not in the name of strangers and release deed has been executed by other siblings including the mother. Both the Courts below have committed illegality and perversity in ignoring the fact that respondent-plaintiff was major at the time of execution of the 'General Power of Attorney' which contained the power to alienate and transfer the property and thus, filing of suit is nothing but an act of greed and somersault, which is not permissible in law. It is not a case of the plaintiff that his signatures were taken by playing fraud, fabrication and misrepresentation or under force or undue pressure. The date of birth of respondent-plaintiff was 18.07.1970 as

per the affidavit submitted by the mother but the Courts below relied upon the school leaving certificate which shows the date of birth as 12.02.1975. Thus, there is illegality and perversity in the judgments and decrees of the Courts below and urges this Court to formulate the substantial questions of law, as culled out in the grounds of appeal.

Mr. Vikas Kumar, learned counsel appearing on behalf of the appellants (in RSA No.1207 of 2015) submits that subsequent suit challenging the relinquishment deed dated 22.01.2010 vis-a-vis share in the house is hit by the provisions of Order 2 Rule 2 of the Code of Civil Procedure as first suit was filed on 4.2.2010 after the execution of the relinquishment deed, whereas, second suit was filed on 01.06.2012. This aspect has also been ignored by the Courts below.

I have heard learned counsels for the appellants and appraised the impugned judgments and decrees of the Courts below and of the view that there is no merit in the submissions made by learned counsels for the appellants, for the reasons that school leaving certificate reveals the date of birth of plaintiff as 12.02.1975, thus, he was minor, in essence, 14 years of age at the time of execution of 'General Power of Attorney.' The aforementioned relinquishment deed has been executed by defendant No.1 acting as an agent in pursuance to the powers given by the Principal. It is settled law that in the absence of any appointment of guardian, no

minor can execute any document without the order of the Court appointing the guardian. Thus, all subsequent acts of execution of the release deed are nullity in the eyes of law as interest of the minor had not been kept intact by virtue of the aforementioned deeds. The release deed dated 31.12.2009 pertains to the land, whereas, other one, i.e., dated 22.01.2000 vis-a-vis house, therefore, respondent-plaintiff chose to file two suits.

Keeping in view the aforementioned facts and circumstances of the cases, I am of the view that both the Courts below rendered the concurrent findings of facts and law, based upon the appreciation of oral and documentary evidence. I do not find any illegality and perversity in the finding, much less, no substantial question of law arises for adjudication of the present appeals.

Accordingly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

March 11, 2016
savita