

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 20, 2016

1. R.S.A.No.6038 of 2016

Balwinder Kaur & another

...Appellants

Versus

Rajwant Kaur & others

...Respondents

2. R.S.A.No.6095 of 2016

Jagtar Singh

...Appellant

Versus

Smt.Rajwant Kaur & others

...Respondents

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

Present: Mr.D.S.Pheruman, Advocate
for the appellants (in RSA No.6038 of 2016).

Mr.Chetan Bansal, Advocate,
for the appellant (in RSA No.6095 of 2016).

Mr.Vaibhav Narang, Advocate,
for the Caveators.

AMIT RAWAL, J.

By this common order, I intend to dispose of two Regular
Second Appeals bearing No.6038 of 2016 instituted at the instance of
Balwinder Kaur and Jaswant Kaur-defendant Nos.1 and 5 and 6095 of 2016
filed by Jagtar Singh, who is the beneficiary by virtue of the sale deed
respected by the defendants.

Plaintiff Rajwant Kaur widow of Sukhwinder Singh Sandhu
instituted the suit claiming the following relief:-

“Suit for possession of land having an area of 50.75 sq.yards, forming part of main property no.24, having khasra no.2529 min, total area 101.5 sq.yards, surrounded as East...House of Bakshish Singh; West.....House of Malook Singh; North..... Street and South.....Open vacant plot, situated at Sultanwind Sub-urban Abadi Ishwar Nagar, Tarn Taran Road, Amritsar, more elaborately shown as ‘Red’ in the site plan no.1 attached with the suit by way of declaration to the effect that the plaintiffs are the exclusive legal and lawful owners of the aforesaid property and the registered sale deed dated 26.10.1996 registered in the office of Sub-Registrar, Amritsar on 29.10.1996 alleged to have been executed by Sh.Sukhwinder Singh Sandhu through his attorney namely Sh.Jagmohan Singh in favour of defendant no.1 after the death of Sh.Sukhwinder Singh Sandhu is forged, fabricated, null, void and illegal document which carries no legal force in the eyes of law and is not binding upon the legal rights of the plaintiffs over the property aforesaid.

b) For possession of property having an area of 48 sq.yards, bearing khasra no.2492/5min, situated at area of Sultanwind Sub Urban Abadi Sant Mishra Singh colony, Tarn Taran Road, Amritsar, more elaborately shown as ‘RED’ in the site plan No.2 attached with the suit by way of Declaration to the effect that the plaintiffs are the legal and lawful owners of the property as stated above and the registered sale deed dated 26.10.1996 entered in the office of Sub-Registrar, Amritsar on 29.10.1996 alleged to have been executed by Sukhwinder Singh Sandhu through his attorney namely S.Jagmohan Singh after the death of Sh.Sukhwinder Singh Sandhu is illegal, null and void document, which carries no legal force in the eyes of law and the same is not binding upon the rights of the plaintiffs qua the property aforesaid

mentioned.

2(b) And also for declaration to the effect that the sale deed dated 15.05.1997 executed by defendant no.1 Smt.Balwinder Kaur in favour of Smt.Pritam Kaur defendant no.2 duly entered in the office of Sub Registrar on 16.05.1997 is wrong, illegal, null and void document which carries no legal force in the eyes of law and its execution is not binding upon the rights of the plaintiff and also for declaration to the effect that the sale deed dated 13.07.1998 executed by Prita Kaur in favour of Jagat Singh duly entered in the office of Sub Registrar, Amritsar on 16.07.1998 regarding the suit property having an area of 48 sq.yards bearing khasra no.2492/5 min, situated at area Sultanwind Sub-urban, AbadiSant Mishra Singh Colony, Tarn Taran Road, Amritsar is also wrong, illegal, null and void document, which carries no legal force in the eyes of law and its execution is not binding upon the rights of the plaintiffs qua this property.

c) For permanent injunction restraining the defendants from alienating in any manner both the properties aforesaid mentioned.”

Plaintiff along with her minor son Jobanjit Singh filed the aforementioned civil suit claiming that Sukhwinder Singh Sandhu son of Sardara Singh was the exclusive, legal and lawful owner in possession of the properties described in Paras (a) and (b), as noticed above, who had purchased the property mentioned in Para (b) having an area of 48 sq.yards from its previous owner vide registered sale deed dated 5.7.1995 and similarly property described in Para (a) of the head note of the plaint measuring 50.75 sq.yards on 17.10.1995 and a registered sale deed was also executed by the previous owner. Sukhwinder Singh Sandhu was working in Bahrain (United Arab Emirates). However, unfortunately he died an unnatural death on 17.10.1996. Balwinder Kaur, real sister of Sukhwinder

Singh Sandhu despite having known about the death of her brother, hatched a conspiracy with one Jagmohan Singh son of Kehar Singh and got the power of attorney of Sukhwinder Singh Sandhu registered on 25.10.1996 in favour of Jagmohan Singh. Since the plaintiffs were busy recuperating from the loss suffered, they did not know the conspiracy inasmuch as that Balwinder Singh had, further sold the land vide the sale deeds, noticed above.

Mr.Chetan Bansal, learned counsel for appellant-Jagtar Singh in RSA No.6095 of 2016, who is alleged to have purchased the property from Balwinder Kaur and Mr.D.S.Pheruman, learned counsel for the appellants in RSA No.6038 of 2016 submit, that both the Courts below have committed illegality and perversity in not appreciating the provisions of Sections 201 and 208 of the Indian Contract Act as the power of attorney holder did not have the knowledge regarding the death of Sukhwinder Singh, but acquired eight days thereafter, i.e., on 29.10.1996. Any act done by him would not render the sale deeds null and void. It has been proved on record that Jagmohan Singh, who was attorney holder of late Sukhwinder Singh, did not have the knowledge of death of Sukhwinder Singh neither on 25.10.1996 nor on 26.10.1996, i.e., at the time of execution of the sale deeds in favour of Balwinder Kaur. The factum of marriage of Rajwant Kaur with Sukhwinder Singh was emphatically denied. Rajwant Kaur admitted in cross-examination that her husband had given power of attorney to Jagmohan Singh and she never informed Jagmohan Singh with regard to the death of late husband, therefore, the suit filed was nothing, but an act of greed.

They further submit that the sale consideration was passed on

to Rajwant Kaur by the agent acting on behalf of the principal and the act of the agent in view of the death of the principal is recognised in view of the provisions of law referred above. In support of his contention, Mr.Chetan Bansal has relied upon the ratio decidendi culled out by this Court in **Mehnga Singh Versus Lal Chand and others, 1999 (2) SimLJ 1640.**

Plaintiff No.1 has failed to prove, much less led any evidence to, *prima-facie*, establish that she was lawful legal wedded wife of Sukhwinder Singh, plaintiff No.2 being child. The documents placed on record are self-serving documents and do not prove the case. Both the Courts below have, while rendering the findings on issue No.6, completely ignored the oral and documentary evidence. There is no pleading as to how the marriage of Rajwant Kaur with Sukhwinder Singh Sandhu (since deceased) was performed, in fact, the essential ceremonies. The reliance on the photographs is neither here nor there. It is not a conclusive piece of evidence, much less being inadmissible. All these factors lead to an irresistible conclusion that there is a gross illegality and perversity, therefore, the judgments and decrees are liable to be set-aside.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellants, for, in order to establish the factum of being relative and marriage, the following documentary evidence has been placed on record:-

- a) Ex.PW1/E: Birth certificate of plaintiff No.2, wherein the parentage of both plaintiff No.1 and Sukhwinder Singh Sandhu (since deceased) has been mentioned;
- b) Ex.PA: Residence certificate issued by the Tehsildar Taran Tarn dated 12.8.1995, wherein the name of husband of Rajwant Kaur is mentioned as Sukhwinder Singh;

- c) Ex.PW4/1: Account opening form dated 12.6.1995;
- d) Ex.PW4/2: Bank account statement;
- e) Ex.PW5/1: Passport application;
- f) Ex.PW6/1: Record of the Local Registrar Birth and Death, Municipal Council, Tarn Taran in regarding the birth of Jobanjit Singh-plaintiff No.2.;
- g) Ex.PW7/10: Marriage card;
- h) Ex.P11/1 & Ex.P11/2: Voter list to show that Rajwant Kaur is the wife of Sukhwinder Singh.

All the documents are prior in time to the death of Sukhwinder Singh. It can be understood that the documents are of later point of time being manufactured in order to establish the relationship. It is a classical case where the sister has played a fraud upon her sister-in-law by playing fraud that her brother, who had unfortunately died on 17.10.1996, got the attorney registered after his demise, i.e., on 25.10.1996 and got the sale deed registered in favour Balwinder Kaur on 26.10.1996 and thereafter she further sold. In my view, the provisions of Section 208 of the Indian Contract Act would not come into play as she had not been able to rebut the direct, cogent or corroborative evidence of having not acquired the knowledge. It could be understood that the act done by the agent was in favour of a third party, but I cannot remain unmindful of the fact that the beneficiary of the sale deed Balwinder Kaur is the sister of deceased Sukhwinder Singh. All these factors have been taken care of by the Courts below, thus the sale deeds noticed above have rightly been set-aside.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below, which are based upon oral and documentary evidence. No case for interference is made out.

Appeals stand dismissed.

December 20, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No