

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

RSA No.6322 of 2016 (O&M)

Date of Decision.07.12.2016

2. RSA No.6323 of 2016 (O&M)

Daya Kishan and another

.....Appellants

Vs

M/s Arihant Corporation and another

.....Respondents

Present: Mr. Keshav Pratap Singh, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.16582-C of 2016 in RSA No.6322 of 2016

C.M. No.16588-C of 2016 in RSA No.6323 of 2016

For the reasons stated in the applications, delay of 23 days in
filing the appeals is condoned.

Applications are allowed.

RSA Nos.6322 and 6323 of 2016

This order of mine shall dispose of two regular second appeals
arising out of consolidation/decision of two suits bearing No.386 of 2008
titled as “M/s Arihant Corporation and another Vs. Daya Kishan and
another” (hereinafter called the 1st suit) seeking declaration and permanent
injunction and Civil Suit No.568 of 2010 titled as “Daya Kishan and
another Vs. M/s Arihant Corporation and others” (hereinafter called the 2nd
suit) seeking declaration and permanent injunction. The 1st suit was allowed
and the 2nd suit was dismissed by the trial Court and hence, two appeals
were filed before the lower Appellate Court which affirmed the finding of
the trial Court.

Mr. Keshav Partap Singh, learned counsel appearing for the appellants submits that as per the registered power of attorney dated 12.06.1989, the appellants had authorized one Hakikat Rai to deal with the property to the extent of 1/3rd share out of total land measuring 51 kanals 1 marla. He exceeded the jurisdiction, much less, authority and executed a registered sale deed dated 12.10.1989 in favour of the plaintiffs in the 1st suit and defendants in the 2nd suit in respect of land measuring 22 kanals whereas 1/3rd share of 51 kanals 1 marla comes to 17 kanals and the mutation sanctioned was illegal and void as it should have been only for 17 kanals. The beneficiaries of the sale deed instituted the suit as noticed above which is, ex facie, barred by limitation as the mutation and sale deed are of the year 1989 and the suit is of the year 2008. In order to protect the possession, the 2nd suit was filed by the appellant seeking injunction/declaration. No doubt, the sale deed in excess of area was challenged but the court fee in that regard had not been paid. The court fee can always be paid at the appropriate time in case the Court is convinced with the arguments and arrive at finding whether the party challenging the sale deed has been able to prove the same through direct and cogent evidence. The Courts below have decreed the 1st suit and dismissed the 2nd suit. It is in this backdrop of the matter, two appeals were filed before the lower Appellate Court which has also committed gross illegality and perversity and hence, present regular second appeals.

The agent cannot exceed the power given in the document and therefore, the act was unlawful and without jurisdiction and the sale deed to the extent of excess area was liable to be set aside, thus, urges this Court for setting aside the judgments and decrees rendered by both the Courts below.

I have heard learned counsel for the appellants, appraised the paper book and of the view that till the filing of both the suits, registered GPA has never been cancelled. No action has been taken against the agent for causing breach of trust reposed in him. It was incumbent upon the plaintiffs in the 2nd suit (appellants herein) to lead evidence for setting aside the sale deed of excess area. Though during the course of arguments, Mr. Keshav Pratap Singh submits that the appellants are in possession but when this Court confronted him to refer any document in this regard, answer was that no document had been placed on record. Be that as it may be. I would not delve upon the possession of the property and leave this question open. Therefore, in the absence of the evidence noticed above and particularly non-payment of court fee, declaration has rightly been declined. I do not intend to subscribe the view of Mr. Keshav Pratap Singh that the suit was barred by law of limitation as sanction of the mutation would not give cause of action. It is only when there is threat of possession or cloud on the title, the party would have a right. The aforementioned view of mine is derived from the ratio decidendi culled out from the judgment of Hon'ble Division Bench of this Court in *Ibrahim @Dharamvir Vs. Sharifan @ Shanti 1979 PLJ 469.*

For the reasons aforementioned, I do not intend to differ with the finding rendered by both the Courts below as the same are based upon preponderance of evidence. No ground for interference is made out. Both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No