

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-5298-2014(O&M)

Date of decision : 27.01.2016

Maya Bai and others

... Appellants

Versus

Raj Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellants.

REKHA MITTAL. J.

The present regular second appeal has been directed against the concurrent findings recorded by the Courts below whereby the suit filed by the appellants was dismissed by the trial Court and the judgment and decree passed by the trial Court has been affirmed in appeal.

Maya Bai and her sisters, daughters of Sher Singh filed the suit for declaration claiming that they are owners of land measuring 2 kanals out of total land measuring 136 kanals 15 marlas detailed in the head note of the plaint on the premise that respondent No.2 illegally, fictitiously and without any consideration sold the suit land in favour of respondent No.1, vide registered sale deed bearing vasika No.3595 dated 16.12.2003. Further prayer has been made for permanent injunction restraining respondent No.1 from alienating the land in question. It has

been averred that respondent No.2, brother of the appellants, is joint owner with the appellants in the entire land, brought them to the Court complex on the pretext that joint land is to be got partitioned and also to raise loan, got executed power of attorney dated 15.03.1996 in his favour from the appellants and got it registered on 18.03.1996 from the Sub Registrar, Fazilka whereas the appellants never executed such power of attorney in favour of respondent No.2 nor he was authorised to alienate the suit land. When the appellants came to know about execution and registration of the sale deed on 18.12.2003, they got cancelled the power of attorney in favour of respondent No.2 vide Vasika no.222 registered in the office of Sub Registrar, Fazilka. Another plea raised by the appellants is that no consideration qua the sale of suit land has been paid to the appellants and the respondents in connivance with each other, with an intent to usurp the suit land and to cause wrongful loss, have managed the sale deed in dispute.

Respondent No.1 filed the written statement challenging the maintainability of the suit; suit being bad for mis-joinder and non-joinder of parties; barred by limitation; the appellants being estopped by their own act and conduct to file the suit and locus standi of the appellants to file the suit. The factum of execution of sale deed dated 16.12.2003 by respondent No.2 in favour of respondent No.1 has been admitted with the averments that prior to execution of sale deed, the agreement to sell dated 16.12.2003 was reduced in writing for land measuring 6 kanals 6 marlas

for a total sale consideration of ₹1,42,000/- and an amount of ₹1,37,000/- was paid towards earnest money. It is further averred that case of the appellants is falsified as earlier, respondent No.2 for himself and on behalf of the appellants along with Sajwar Singh, Kakku Singh, Raj Singh, Makhan Singh sons of Sher Singh had sold land measuring 4 kanals vide vasika No.31 dated 04.04.1996. The appellants voluntarily appointed respondent No.2 as their General Attorney without any misrepresentation and the same is legal and genuine one. All other material averments have been denied with a prayer for dismissal of the suit.

The learned trial Court framed eight issues for determination and issue No.2 reads as follows:-

“2. Whether general power of attorney dated 15.03.1996 registered on 18.03.1996 is the result of fraud or misrepresentation as alleged?OPP”

To discharge the onus of issue No.2 one of the appellants Maya Bai appeared in the dock and reiterated her version given in the plaint. The learned trial Court bestowed its thoughtful consideration to the pleadings of the parties, evidence adduced on record and arguments advanced by their respective counsel and came to decide issue No.2 against the appellants while disposing of issues No.1, 2, 5, 7 & 8 together and as a consequence, the suit of the appellants was dismissed. The findings recorded by the learned trial Court were affirmed in appeal by the District Judge, Ferozepur.

Counsel for the appellants is not in a position to give a valid challenge to the consistent findings recorded by the courts below by holding that the appellants have failed to substantiate their plea that the power of attorney executed on 15.03.1996 and registered on 18.03.1996 is the result of fraud or misrepresentation. There is no denial that prior to execution and registration of the disputed sale deed on 16.12.2003 on the basis of power of attorney executed in March 1996, respondent No.2 earlier executed sale deed dated 04.04.1996 on behalf of the appellants as well, in favour of Ramesh Chander and others in regard to 4 kanals of land, the copy whereof is Ex. DA. In view of the evidence on record, I find myself unable to accept the submissions of the appellants that either there is any illegality or perversity in the findings recorded by the courts below holding in favour of respondent No.1. On the contrary, if respondent No.2 has not paid the sale consideration received from respondent No.1 on their behalf, the appellants are always at liberty to take recourse to appropriate proceedings in accordance with law for recovery of money. In view of the above, no substantial question of law as has been sought to be raised or otherwise arises for consideration.

For the reasons aforestated, finding no merit, the appeal is dismissed in limine.

(REKHA MITTAL)
JUDGE

January 27, 2016.

Davinder Kumar