

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

**R.S.A No.5362 of 2014 (O&M)
Date of decision :04.08.2016**

Harbans Singh

..... Appellant

Versus

Sarwan Singh & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: MrAmandeep Singh Manaise, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 12676-C of 2014

This application has been filed under Section 151 of the Code of Civil Procedure, 1908, for condonation of delay of 39 days in re-filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 39 days in re-filing the present appeal is hereby condoned.

RSA No. 5362 of 2014(O&M)

The present appeal has been preferred against the judgment and decree dated 05.03.2014 passed by learned Additional District Judge, Gurdaspur, whereby the appeal filed by the appellant-plaintiff against the

judgment and decree dated 16.12.2010 passed by the learned Additional Civil Judge (Sr. Division), Gurdaspur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff has filed the suit for declaration to the effect that he is co-owner in joint possession to the extent of 1/ 3rd share in the suit land measuring 132 Kanals 2 Marlas as detailed and described in the head note of the plaint situated in the revenue estate of village Rania, Tehsil and District Gurdaspur and the sale deed dated 09.03.1998 alleged to have been executed by defendant no.1 on behalf of the plaintiff in favour of his grandsons (defendants no.2 to 5) is illegal, null and void, without any consideration and is a result of fraud and misrepresentation, which is not binding on the rights of the plaintiff and the power of attorney dated 20.10.1997 alleged to have been executed by the plaintiff in favour of defendant no.1 is the result of fraud and misrepresentation.

4. As per averments in the plaint, the plaintiff and his brother-defendant no.1 and defendants no. 6 to 12 are co-owners in the suit land to the extent of 1/ 3rd share each. The plaintiff also owns the land in village Aghapur, Tehsil and District Bharatpur (Rajasthan) along with defendant no.1, which they have purchased in the year 1971. The plaintiff was residing in village Aghapur (Rajasthan) and was not residing in village Rania, therefore he authorized his brother-defendant no.1 to look after his land. On 20.10.1997, he agreed to execute the special power of attorney in favour of defendant no.1, but he dishonestly and fraudulently got executed the general power of attorney in collusion with scribe and

attesting witnesses. It is further pleaded that defendant no.1 with fraudulent intention executed the sale deed on 09.04.1998 of the share of the plaintiff in favour of defendants no.2 to 5 on the basis of said power of attorney for a nominal sale price of Rs.2,18,000/-, whereas the value of the land was more than Rs.5 lacs per acre. Hence this suit.

5. Defendants no.1 to 5 contested the suit on the grounds *inter alia* that the plaintiff and defendant no.1 were co-sharers in the land at village Aghapur (Rajasthan). The said land was in possession of the plaintiff and the land situated at village Rania was in possession of defendant no.1. With a mutual consent they agreed to exchange their land. The suit land was given to defendant no.1. He left his share in the land situated at village Aghapur (Rajasthan) in favour of the plaintiff. Defendant no.1 also agreed to pay Rs. 7 lacs to the plaintiff. Rs. 2000/- were paid on the same day. Subsequently, the remaining amount was also paid. The plaintiff has also executed an agreement to sell in favour of the defendant dated 20.10.1997. So, he was left with no right, title or interest in the suit land. Therefore, amended power of attorney and sale deed are the legal documents.

6. Appellant-plaintiff filed the replication to the written statement of defendants. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 25.09.2004:-

1. Whether the plaintiff is entitled to declaration with consequential relief of injunction as prayed for?OPP.
2. Whether the plaintiff has no locus standi to file the present suit? OPD.
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff is debarred by his act and conduct from

- filing the suit?OPD
5. Whether the suit is bad for non joinder of necessary parties? OPD 2 to 5.
 6. Whether the suit is not within time?OPD
 7. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff with costs, vide impugned judgment and decree dated 16.12.2010.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal, which was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 05.03.2014. Hence this Regular Second Appeal by the appellant-plaintiff.

9. I have heard Mr. A.S.Manaise, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that it is an admitted fact that the plaintiff-appellant was co-sharer in the suit land to the extent of 1/ 3rd share. He contended that the alleged power of attorney dated 20.10.1997 is the result of fraud and misrepresentation. The plaintiff has only authorized defendant no.1 his brother to look after the land at village Rania as plaintiff was residing in village Aghapur (Rajasthan). He has simply agreed to execute the special power of attorney. But, defendant no.1 in connivance with scribe and attesting witnesses got executed the fraudulent general power of attorney dated 20.10.1997. He further contended that on the basis of said bogus power of attorney, he executed the sale deed dated 09.03.1998 in favour of his grandsons. The plaintiff has never consented for the sale of his

share. Learned counsel for the appellant further contended that the alleged exchange deed was never acted upon. The land situated at village Aghapur (Rajasthan) was never transferred in the name of the plaintiff. Thus, he contended that the learned Courts below have wrongly dismissed the suit filed by the plaintiff.

11. I have duly considered the aforesaid contentions.

12. The plaintiff has filed the suit for declaration that he is joint owner in possession of the suit land to the extent of 1/ 3rd share. He has challenged the general power of attorney dated 20.10.1997 on the basis of fraud and misrepresentation and the sale deed dated 09.03.1998 executed by defendant no.1 in faovur of his grandsons (defendants no.2 to 5) being illegal and not binding on his rights.

13. It is the settled principle of law that the declaration is a discretionary relief which is available only to the person who comes to the Court with clean hands. The person who suppresses the material facts from the Court is not entitled for such discretionary relief. From the evidence adduced by the defendants, it has been established that the plaintiff and defendant no.2 had agreed to exchange their land. The land situated at village Aghapur (Rajasthan) was given to the present appellant-plaintiff and the land situated at village Rania was given to defendant no.1 by dint of the exchange agreement dated 04.03.1997. The defendant was also to pay Rs. 7 lacs to the plaintiff in addition to the land. The plaintiff has admitted that exchange agreement took place on 04.03.1997 which was scribed by the deed writer. He has admitted his signatures in the register of the deed writer against the entry no. 145

dated 04.03.1997 which was scribed by the deed writer. It is also proved from evidence on record that Rs. 2000/- were paid to the plaintiff on the date of the agreement of exchange. A sum of Rs. 2,98,000/- was paid vide receipt dated 06.06.1997. The plaintiff has sold the land measuring 4 Marlas belonging to the defendant for a sum of Rs. 64,000/- and the remaining amount of Rs. 3,36,000/- was paid to him on 20.10.1997. In this way, he has received the entire amount of Rs. 7 lacs. But, all these material facts were deliberately and intentionally suppressed by the plaintiff in the plaint. Such material suppression makes him dis-entitled to the discretionary relief of the declaration.

14. It has also come in evidence that on 20.10.1997, the plaintiff has also executed the agreement to sell. The execution of the general power of attorney dated 20.10.1997 is further established from the evidence led by defendants in the shape of statement of DW-1 Dharam Chand, the scribe and DW-3-Kamaljit Singh, Advocate, the attesting witness. Appellant-plaintiff has also admitted his signatures on the general power of attorney. So, the general power of attorney dated 20.10.1997 is proved to be a legal and valid document.

15. The appellant-plaintiff was left with no right, title or interest in the suit land with the exchange of the land. Defendant no.1 has received the said land by way of exchange from the appellant-plaintiff. So, he was fully competent on the basis of general power of attorney dated 20.10.1997 to execute the sale deed dated 09.03.1998 in favour of defendants no.2 to 5. Consequently, the appellant-plaintiff cannot lay any challenge to the general power of attorney dated 20.10.1997 and the sale

deed dated 09.03.1998. Resultantly, he cannot be declared to be the co-owner in joint possession of the suit property and the learned Courts below have rightly declined his claim.

16. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

August 04, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No