

RSA No.769 of 2014 (O&M)

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

**RSA No.769 of 2014 (O&M)
Date of decision:20.05.2016**

Rajinder Kumar Gupta

... Appellant

Vs.

Swaran Dass and others

... Respondents

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. K.K. Goel, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr. M.S.Sachdeva, Advocate accepts notice on behalf of the respondents.

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit seeking declaration, permanent injunction and alternative for possession in respect of land measuring 6 kanals 1 marla, whereby, sale deed dated 04.08.1995 executed on behalf of defendant No.3 through Attorney Holder, GPA dated 30.07.1992 allegedly executed by the appellant-plaintiff, has been dismissed, much less, the appeal has also met with the same fate.

Mr. K.K.Goel, learned counsel appearing on behalf of the

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appellant-plaintiff submits that it is categoric case that registered General Power of Attorney dated 30.07.1992 (Ex.P4) was never executed in favour of defendant No.3. However, defendant No.3 in collusion with defendants No.1 and 2 sold the aforementioned property vide sale deed dated 4.8.1995. The plaintiff had become owner of the property by virtue of sale deed dated 09.10.1978. The attesting witnesses of the alleged Power of Attorney, namely, Roop Singh Ahluwalia and Raj Kumar have not been examined, much less, there is no statutory compliance of the provisions of Section 69 of the Indian Evidence Act, whereas, Gurmeet Singh, clerk of the Scribe has been examined but in his cross examination, he feigned ignorance with the name of advocate practicing at Ludhiana, in essence, it is irresistible concluded that he was not a clerk in his office and was an introduced witness. The Courts below have also non-suited the plaintiff on the ground of limitation as suit had been filed in September, 1998 on acquiring the knowledge about the sale deed and power of attorney. Article 59 of the Limitation Act prescribes that the limitation starts from the date of the acquisition of the knowledge, thus, all these facts have not been noticed by the Courts below while dismissing the suit and as well as, appeal. In essence, defendants have miserably failed to prove the Power of Attorney propounded by the attorney holder as onus is always upon the propounder. Once propounder has failed to discharge the onus, the question of rebuttal does not arise and thus, urges this Court for formulating the following substantial questions of law arise for adjudication of the present appeal:-

“1. Whether the judgments and decrees of the Courts below

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dismissing the suit and appeal on the ground of limitation are sustainable or not?

2. *Whether the alleged admission of the plaintiff qua GPA can be read in isolation or not?*

3. *Whether the respondent-defendants have failed to prove the execution of the Power of Attorney as original Power of Attorney has not seen the light of day.”*

Mr. M.S.Sachdeva, learned counsel appearing on behalf of the respondent-defendants submits that both the attesting witnesses were summoned. However, report came that Roop Singh Ahluwalia had died and Raj Kumar was not residing at the address. Therefore, defendant No.3-alleged attorney holder was proceeded against ex parte. Having left with no other option, permission to prove GPA by way of secondary evidence was sought and granted. The appellant-plaintiff unequivocally admitted the execution of the POA. The suit as noticed above was filed beyond three years, i.e., after 6 years from the date of execution of the GPA and therefore, the Courts below have rightly held that it being barred by law of limitation. The respondents have purchased the property after verifying the record and noticing the fact that power of attorney, aforementioned, was registered document which had not been revoked or cancelled. Both the Courts below have concurrently rendered the findings of facts and law which cannot be interfered until and unless any substantial question of law arises and thus, urges this Court for affirming the findings rendered by both the Courts below.

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In support of his aforementioned contention, he relies upon the judgment rendered by the Hon'ble Supreme Court in **Grasim Industries Ltd. And another vs. Agarwal Steel 2010(1) RCR (Civil) 932** to contend that presumption is stronger, in case, power of attorney is executed by businessmen as they are careful people.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that finding rendered by the Courts below qua suit being barred by law of limitation is not only erroneous, but also fallacious. For the sake of brevity, provisions of Article 59 of the Limitation Act read thus:-

To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
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It has been categorically pleaded that on acquiring the knowledge of the aforementioned, sale deed, the suit was filed and the sale deed being a registered document, can be challenged within a period of three years, as per the provisions of Article 59 of the Limitation Act. Thus, finding qua limitation is set aside in favour of the appellant-plaintiff and against the respondent-defendants. However, vis-a-vis, plea of fraud and forgery, on reading of the admission of the plaintiff, cat came out from the bag when he unequivocally admitted the execution of GPA (Ex.P4). Demeanor and veracity always surface during the cross examination. Had

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the aforementioned admission been not there, perhaps there would be some force in the submissions of Mr. Goel, as the respondent-defendants had not made any effort to get any relative of Roop Singh Ahluwalia examined and even the report of process server ought not to have been relied upon. A very faint attempt has been made to comply the provisions of Section 69 of the Indian Evidence Act. The Power of Attorney is a registered document. Endorsement on the sale deed speaks of that payment of ₹1,50,000/- to the attorney by the respondent-defendants on purchasing the land in dispute. In case, the attorney had not passed on consideration, the remedy, for the plaintiff was to sue the defendant No.3 and not to adopt the method and mode as has been adopted.

There is another aspect of the matter. Though faint attempt was made to lodge an FIR against defendants No.1 and 2 including defendant No.3 but the story as surfaced during the course of trial was that both the concerned police stations did not have the jurisdiction. Nothing prevented the plaintiff to avail the remedy in accordance with law by filing a private complaint. No sane person would sit idle, in case, actual fraud had been played upon him.

For the foregoing reasons, question of law No.1 as noticed above, is answered in favour of the appellant-plaintiff and against the respondent-defendants. However, questions of law No.2 and 3, are answered in favour of the respondent-defendants and against the appellant-plaintiff.

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With the aforementioned modification qua limitation, judgments and decrees of the Courts below on other issues are affirmed. No ground is made out for interference.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 20, 2016
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