

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3443 of 2012
Date of Decision: 18.07.2017

Lichhmi

.....Appellant

Vs.

Karambir and Ors

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Parveen Kaushal, Advocate, for the appellant.

Mr.S.S.Virk, Advocate, for the respondent No.1.

Mr.S.S.Malik, Advocate, for respondent No.2.

RITU BAHRI, J. (ORAL)

The plaintiff-appellant has come up in this appeal against the judgment and decree of the trial Court dated 04.01.2011 and the appellate Court dated 12.01.2012, whereby the suit for declaration with consequential relief of joint possession has been dismissed.

The brief facts of the case are that Ram Dass was owner in possession of the suit land. He died leaving behind her widow Smt.Gian Devi and Lachhman as legal heirs. Thereafter, proforma defendant No.3- Lachhman sold his 1/3rd share to Ram Dhan vide registered sale deed being vasika No.4546 dated 13.01.1981 and in this regard mutation No.2440 was entered and sanctioned. In the year 1985, plaintiff and her mother Smt.Gian Devi were in need of money and her mother Gian Devi mortgaged her 1/3rd share orally to Ram Dhan and he obtained the possession of 1/3rd share of Smt.Gian Devi as mortgagee. Thereafter, Ram Dhan on 04.02.1985 managed to bring Smt.Gian Devi associated with her in the premises of Sub

Registrar, Panipat on the pretext that mortgage deed may be executed and she as well as her mother Smt.Gian Devi was made to sit outside the compound of Sub Registrar, Panipat and petitioner writer at the instance of Ram Dhan got signature of Smt.Gian Devi alleging on the mortgage deed but Ram Dhana fraudulently and misrepresently got registered the General Power of Attorney in the name of Performa defendant No.3 i.e. Lachhman and thereafter, Ram Dhan succeeded in getting registered lease deed dated 29.03.1985 in his name by Lacchman-the General Power of Attorney of Smt.Gian Devi. The plaintiff in the month of August, 2006 went to Halqa Patwari and it came to know about the registered lease deed and hence, the present suit.

On notice, defendants No.1 has filed written statement taking objection on the grounds of suit being barred by limitation. On merits, it had been submitted that Smt.Gian Devi leased out her share to Sh.Ram Dhan vide registered lease deed dated 29.03.1985 through her General Power of Attorney Lachhman, defendant No.3.

On the pleadings of both the parties, the following issues were framed on 14.02.2008:-

- “1. Whether the plaintiff is entitled to the declaration sought? OPP
2. Whether the plaintiff is entitled to the joint possession in the suit land? OPP
3. Whether the plaintiff's suit is time barred? OPD.
4. Whether the plaintiff's suit is barred by the principles of resjudicata? OPD.
5. Relief.”

The issues No.1 and 2 were inter-linked were inter-connected and therefore, both the issues have been dealt together by the Courts below.

lifetime filed a civil suit through her son Lachhman, who was her General Power of attorney. In that civil suit, she had pleaded that Lachhman had been appointed by her as her General Power of Attorney regarding her moveable and immoveable properties, including the suit land. The civil suit was dismissed having been abated on 01.03.1995. A certified copy of the order Ex.DW4/F. Gian Devi died on 19.03.1991. An application Ex.DW2/B was moved by her legal representatives i.e. Lachhman and Lichhmi for bringing on record as a party and a copy of Wakalatnama filed by Lachhman and Lichhmi was Ex.PW2/C. Vide order dated 01.03.1995 Ex.DW4/F, the civil court had held that the suit of the plaintiff-Gian Devi stood abated and this order had attained finality. All these facts were never stated by the plaintiff Lachhman in her plaint. However, regarding the facts i.e. civil suit No.619 of 1986 were brought on record in the written statement filed by the defendant/respondent No.1-Karambir and another fact which has been examined by both the Court that the lease deed was registered on 04.02.1985 in favour of her son Lachhman. Plaintiff-Gian Devi herself filed a suit in the year 1986 through her son Lachhman stating previous suit i.e Civil Suit No.619 of 1986 titled as Gian Devi Vs. Ram Dhan. She was required to plead these facts in her plaint, itself so filed on 28.11.2006. In para 3 of the plaint there was specific recital that Lachhman was appointed as power of attorney to look after her moveable and immoveable properties. During this period, she did not bring this fact before the Court that registered power of attorney executed by her on 04.02.1985 in favour of her son, was an outcome of fraud.. The plaintiff/appellant -Lachhmi had admitted in her cross-examination that her mother had appointed her brother as a power of attorney to look after the land which had

fallen to her share. She denied with regard to previous suit filed even Lachhman-respondent No.3 had not stepped into the witness box nor filed a written statement and hence the contention that respondent No.3 was under the influence of Ram Dhan was rejected. The lease deed Ex.D1 executed by Gian Devi which was registered on 29.03.1985 on payment of Rs.9900/- was received by Lachhman on 18.02.1985 vide Ex.D2. Hence the lease deed dated 29.03.1985 and their receipt Ex.D2 dated 18.02 1985 has been rightly held and not in view of the fraud of Gian Devi. Both the registered sale deed and strong presumption of the validity by the concerned authority. There was a strong presumption as per Section 60 of the Registration Act that proper parties had appeared before the Registering Officer and the Registering Officer had attested their document after ascertaining the parties identities. Since the earlier suit filed by Gian Devi stood abated vide order dated 01.03.1995 Ex.PW4/1, the plaintiff-Lichhmi was held debarred from instituting a fresh suit for the same relief by the principle of res-judicata. The earlier suit was abated vide order dated 01.03.1995, the present suit had been instituted on 28.11.2016 i.e. more than 11 years after the culmination of earlier proceedings, and that too, on same cause of action and for same relief. The lease money was paid by Ramdhan-father of defendants through receipt Ex.D2 to Gian Devi, through her General Power of Attorney-Lachhman. So, there is absolutely no glimpse of any fraud so apparent on record and proved as such by the plaintiff-appellant, through any cogent and convincing evidence towards the execution and subsequent registration of lease deed.

The finding by both the Courts that registered power of attorney

phraseology of the same would depict that the power of attorney holder (Lachhman) had been given unfettered powers to execute mortgage, execute sale deed, execute lease deed, execute gift deed, execution partition etc and finally Gian Devi during her lifetime and her son Lachhman had not committed any fraud with regard to execution of lease deed. The plaintiff- Lichhmi was in the knowledge of all the happenings as she had good relations with her brother.

So in the light of the discussion, no substantial question of law is arising out and the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present second appeal stands dismissed.

(RITU BAHRI)
JUDGE

18.07.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No