

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

**RSA No.4408 of 2016 (O & M)
Date of Decision:-15.02.2017**

Krishna

...Appellant

Versus

Pirithi Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Ms. Sharmila Sharma, Advocate
for the appellant.

HARI PAL VERMA J.

C.M. No.11529-C of 2016

For the reasons mentioned in the application, same is allowed
and the delay of 110 days in re-filing the appeal is condoned.

RSA No.4408 of 2016

The appellant/plaintiff (hereinafter 'the plaintiff') has filed the
present regular second appeal against the judgment dated 07.11.2015 passed
by learned Additional District Judge, Panipat, whereby her appeal against
the judgment and decree dated 15.5.2014 passed by learned Civil Judge
(Junior Division), Panipat was dismissed.

The plaintiff has filed the suit for declaration to the effect that she is owner in possession to the extent of 1/4th share i.e. 11 Kanal 12 Marlas out of agricultural land comprised in Khewat No.276 min/260, Khatoni No.295, Rectangle No.102, Killa No.20 min (4-0), 21(6-13), 22 (8-0), 23(7-12), 24(8-0), 25/1 (1-4), 25/3 (3-0), Rectangle No.103 Killa No.16 (4-4) total land measuring 42 Kanal 13 Marla situated in Village Sithana Sub Tehsil Madlauda, District Panipat (hereinafter 'the suit property') as well as the power of attorney bearing vasika No.1311 dated 5.2.1992, subsequent sale deed bearing vasika No.4056 dated 17.10.1995, relinquishment deed bearing vasika No.4681 dated 29.3.2011 as well as judgment and decree dated 14.11.1995 passed by learned Senior Sub Judge, Panipat, whereby rights of the plaintiff have been denied, are illegal, null and void and the same are result of fraud, therefore, are not binding upon the rights of the plaintiff. Consequent relief of permanent injunction restraining the defendants forever from alienating or dispossessing the plaintiff from the suit land or creating any charge thereupon has also been sought for.

As per the plaint, Bhagwana son of Sudhar was owner in possession of the suit property. He died on 19.1.1991 leaving behind two sons and two daughters as his legal heirs. The palintiff being the daughter of Bhagwana became owner in possession of the suit property to the extent of 1/4th share and mutation No.1441 was sanctioned in this regard. The power of attorney dated 5.2.1992 executed in favour of Kela Devi-defendant No.3 is a result of fraud committed by defendants No.1-Pirithi

Singh, defendant No.2-Om Pati and Om Parkash (since deceased) upon the plaintiff. The address of plaintiff and defendants has been wrongly mentioned in the said power of attorney. In the year 1992, plaintiff was facing financial crisis and was in need of money. Om Parkash and defendant No.1-Pirithi Singh, both brothers of the plaintiff have taken undue advantage of the situation of the plaintiff. The plaintiff was advised that they would secure a loan from bank for her and for that purpose share of the plaintiff in the suit property was required to be mortgaged with the bank. Thereafter, Om Parkash (since deceased) and defendants No.1 and 2 alongwith plaintiff went to the Tehsil Office, Panipat where signatures of the plaintiff were obtained on some blank papers to mortgage her share of land. It was promised to the plaintiff that she would get the loan soon from the bank. Thereafter, brothers of the plaintiff informed her that the bank has refused to extend the loan. In this manner, the defendants committed fraud upon the plaintiff. Since the year 1992 defendants were paying batai to her for her share in the suit property. In the month of December, 2010, defendants refused to pay the share from the crops and claimed themselves to be owners of the suit property. The defendant No.1 and late Om Parkash succeeded in getting the alleged power of attorney dated 5.2.1992 in favour of Kela Devi-defendant No.3 and a subsequent sale deed dated 17.10.1995 has been executed on the basis of aforesaid power of attorney, which is illegal and without consideration and the same is not binding upon the rights of the plaintiff. The plaintiff never authorized Kela Devi-defendant No.3 to sell her share in the suit property. She has alienated the

land of the plaintiff to her husband Om Parkash (since deceased) and defendant No.1 for a consideration of Rs.1,45,000/-. From the year 1992 to December 2010 the defendants never disclosed that they had become owners of the suit property. In this manner, the revenue entries after the year 1992 are illegal, null and void and mutations No.1470 and 2018 are also not binding upon the plaintiff. It has further been averred in the plaint that defendants No.3 to 6 have transferred their share in the suit property in favour of defendants No.1,7 and 8 by way of relinquishment deed dated 29.3.2011. The Relinquishment deed dated 29.3.2011 and judgment and decree dated 14.11.1995 are also illegal, null and void.

On notice, defendants No.1, 3 to 8 filed written statement and took various objections including maintainability, limitation, locus standi and estoppel etc. They have pleaded that the suit property is itself self-acquired property of the deceased Om Parkash and defendant No.1 and the same cannot be termed to be joint Hindu family property. It has further been stated that the right to succeed the suit property was accrued on the death of Bhagwana, which had taken place on 19.1.1992 whereas the plaintiff has sought declaration that power of attorney dated 5.2.1992 and sale deed dated 17.10.1995 are null and void, therefore, the suit of the plaintiff is not within limitation. The plaintiff and defendant No.2 had authorized the defendant No.3 by duly executed power of attorney dated 5.2.1992 and accordingly, plaintiff and defendant No.2 have decided to transfer their share in favour of Om Parkash (since deceased) and defendant No.1. Therefore, a civil suit No.2456 was filed on 13.6.1995 in the Civil

Court at Panipat. The plaintiff was in dire need of money, so, she demanded value of her share in the suit property from her brother Om Parkash and defendant No.1. Accordingly, it was settled that both brothers will make the payment to the plaintiff in cash and she would transfer her share through registered sale deed and accordingly defendant No.1 and Om Parkash (since deceased) made payment of Rs.1,45,000/- to the plaintiff and she executed the sale deed in favour of defendant No.1 and deceased Om Parkash with regard to her 1/4th share in the suit property. Even the other sister of plaintiff namely Ompati-defendant No.2 has also transferred her share in the suit property in favour of defendant No.1 and Om Parkash (deceased) vide Civil Court decree dated 14.11.1995.

From the pleadings of the parties, the trial Court has framed the following issues vide order dated 28.4.2011 :-

- “1. Whether plaintiff is entitled to a decree for declaration with consequential relief of permanent injunction as prayed for ? OPP
2. Whether the suit is not within limitation ? OPD
3. Whether the plaintiff has locus standi and cause of action to file and maintain the present suit ? OPD
4. Whether the plaintiff has not come to the Court with clean hands? If so, its effect ? OPD
5. Relief.”

The trial Court dismissed the suit of the plaintiff vide judgment dated 15.5.2014 and has observed that the plaintiff has failed to prove on record by cogent and clinching evidence that the suit property is ancestral/ joint Hindu family property. It has also been held that from any stretch of

imagination it cannot be said that GPA (Ex.P1) was not executed by the plaintiff and the same is result of fraud. The sale deed dated 17.10.1995 (Ex.P2) has been executed by the plaintiff in favour of Om Parkash (deceased) and defendant No.1-Pirithi Singh qua her share through her General Power of Attorney Kela Devi. Similarly, Ex.P2 is a registered document and presumption of truth is attached with the registered document. Therefore, it cannot be said that the sale deed (Ex.P2) is a result of fraud. Moreover, it was never the case of the plaintiff that she has ever moved any complaint before the authority regarding fabrication of GPA (Ex.P1) and sale deed dated 17.10.1995 (Ex.P2). Further, the judgment and decree dated 14.11.1995, which was passed in Civil Suit No.2456, the plaintiff though has alleged that she has impleaded defendant No.1 in suit No.2456 but defendant No.1 had been given up in that suit and decree dated 14.11.1995 was got effected by Om Parkash (deceased) and defendant No.2. It is matter of record that decree was passed on 14.11.1995 whereas the plaintiff has sold her share vide sale deed dated 17.10.1995 and as such the plaintiff was not a necessary party in the suit because she has already sold her share in favour of Om Parkash (deceased) and Pirithi Singh (plaintiffs in suit No.2456). In this manner, there is nothing on record to suggest that GPA (Ex.P1), sale deed (Ex.P2), relinquishment deed dated 29.3.2011 (Ex.P8), judgment and decree dated 14.11.1995 (Ex.P10) and Ex.P11 are forged documents and any fraud has been committed upon the plaintiff.

Against the judgment and decree dated 15.5.2014 passed by the Civil Judge (Junior Division), Panipat, the plaintiff preferred an appeal but

vide judgment and decree dated 7.11.2015, the appeal was also dismissed and in the appeal it has been held as under :-

“17. It is admitted fact that earlier Bhagwana was the owner of the land in dispute and appellant is the daughter of Bhagwana. It is also admitted that Bhagwana had expired in the year 1991 and mutation of inheritance Ex.P4 was sanctioned in favour of his four children i.e. Pirthi Singh, Om Parkash, appellant Krishna and Om Pati. The appellant has claimed that she had never executed any General Power of Attorney in favour of respondent No.3 and the same is a result of fraud. As the appellant has taken the plea of fraud, therefore, as per law laid down in **Lali Devi and others vs. Jai Singh and others 2013(1) LJR 333** where fraud is pleaded in a civil case, it is required to be proved beyond reasonable doubt just like criminal charge. In the instant case, the appellant has claimed that her brothers had taken her thumb impressions on some blank papers in order to mortgage her land for taking the loan. The appellant in her cross-examination has claimed that she had appended each thumb impressions on two papers but the copy of General Power of Attorney Ex.P1 produced on file clearly shows that appellant alongwith her sister has appended four thumb impressions on three pages of General Power of Attorney. The real sister of appellant was present with the appellant and she had not challenged the validity of General Power of Attorney Ex.P1 in any proceedings. Rather she had suffered a decree Ex.P11 in favour of Om Parkash (since deceased) and respondent No.1. It is not the case of appellant that she had also put her thumb impressions on any paper

which were submitted before bank for taking the loan. If the appellant had to take the loan from the bank by mortgaging the land of her share then she had also to fill some documents of the bank. This fact made it clear that appellant had concocted a false story regarding taking the loan from bank and execution of the documents for mortgage. The learned lower Court had also observed in para no.19 of the judgment that as such from any stretch of imagination it cannot be said that General Power of Attorney Ex.P1 was not executed by the appellant/plaintiff and the same is result of fraud. The copy of sale deed produced on file made it clear that respondent No.3 being General Power of Attorney had executed the sale deed Ex.P2 in favour of Om Parkash (since deceased) and Pirthi Singh. The appellant cannot claim that she had not received any money. The appellant has herself claimed in the plaint that she was facing financial crises and she was in the need of some money. The appellant had herself executed the General Hospital, Panipat in favour of respondent No.3 and thereafter sold the land of her share to her brothers through General Power of Attorney Ex.P1. The copy of judgment and decree dated 14.11.1995 Ex.P10 and Ex.P11 respectively also made it clear that sister of appellant had also given the share of her land to Om Parkash (since deceased) and respondent No.1.

18. Moreover the suit of the appellant is hopelessly time barred as General Power of Attorney Ex.P1 was executed in the year 1992 and sale deed Ex.P2 was executed in the year 1995 but the suit has been filed by the appellant in the year 2011. The appellant could challenge the General Power of Attorney Ex.P1 as well as sale deed

Ex.P2 within a period of three years but the same have been challenged after seventeen-eighteen years, therefore, the suit of the appellant is hopelessly time barred. The learned lower Court had considered the evidence placed on file in a correct mannere and dismissed the suit of the appellant.”

Learned counsel for the appellant has argued that the judgments and decrees passed by the Courts below are wrong and illegal. The averment in the reply filed by the respondents-defendants that the disputed property is self-acquired property of Bhagwana is falsified from the sale deed dated 17.10.1995 and judgment and decree dated 14.11.1995, which clearly reveals that the appellant is the owner in possession. Similarly, the power of attorney does not bear the signatures of any family member or any person from village or locality. The finding of the Courts below on the issue of limitation is also wrong. The relinquishment deed can only be executed with regard to ancestral property. The said stand of the defendants is self-contradictory because they have alleged that the propoerty is in the hands of Om Parkash (deceased) was self-acquired.

I have heard learned counsel for the appellant.

The plaintiff has sought relief of declaration to the effect that she is owner in possession to the extent of 1/4th share in the suit property and the power of attorney dated 5.2.1992 and subsequent sale deed dated 17.10.1995, relinquishment deed dated 29.3.2011 as well as judgment and decree dated 14.11.1995 are illegal, null and void. Her basic argument stands that the same is a result of frand and therefore not binding upon her

rights. But the report reveals that earlier Bhagwana was the owner of the land in dispute. The plaintiff is his daughter. Bhagwana expired in the year 1991. Accordingly, mutation (Ex.P4) was sanctioned in favour of his four children including the plaintiff. It is the case of the plaintiff that she has never executed any General Power of Attorney in favour of defendant No.3-Kela Devi and the same is result of fraud. She has stated that her brothers had taken her thumb impressions on some blank papers in order to mortgage her land for taking loan from the bank, whereas in her cross-examination she has claimed that she had appended her thumb impression on two papers whereas the copy of General Power of Attorney (Ex.P1) produced on the file shows that the appellant alongwith her sister appended their thumb impressions on three papers of General Power of Attorney. The real sister of the appellant was present at the time of execution of Power of Attorney. She has not challenged the validity of General Power of Attorney in any proceedings, rather has suffered decree dated 14.11.1995 (Ex.P11) in favour of Om Parkash (since deceased) and defendant No.1-Pirthi Singh. The power of attorney was executed in the year 1992 and sale deed was executed in the year 1995 but the plaintiff has filed the suit in the year 2011, therefore, there is no illegality by the Courts below that the suit was hopelessly time barred. There is concurrent finding of fact recorded by both the Courts below that the appellant/plaintiff has failed to establish that the fraud was ever committed upon her. She had executed the documents one after the another from time to time. Therefore, this Court does not find any illegality in the judgments and decrees passed by the Courts below. There

is no substantial question of law involved in the present appeal.

The regular appeal is hereby dismissed.

February 15, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No