

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

RSA No.3630 of 2015 (O&M).

Date of Decision: 12.01.2017.

Harjinder Singh

....Appellant.

VERSUS

Pawan Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jashandeep Singh Sandhu, Advocate for the appellant.

SNEH PRASHAR, J.

The instant appeal has been filed by appellant-plaintiff Harjinder Singh (hereinafter referred to as the “appellant”) assailing the judgment and decree dated 05.05.2015 passed by learned Additional District Judge, Sri Muktsar Sahib as well as judgment and decree dated 23.10.2013 passed in Civil Suit No.202 of 20.07.2007 by learned Additional Civil Judge (Senior Division), Sri Muktsar Sahib, by virtue of which suit for declaration and permanent injunction filed by the appellant against respondents-defendants Pawan Kumar and others (hereinafter referred to as the “respondents”) was dismissed and the appeal preferred by him was also dismissed.

The facts, in precise, are as under:-

Appellant Harjinder Singh filed a suit for declaration to the effect that the land measuring 42 Kanals 04 Marlas being 844/2523th share out of the land of 126 Kanals 03 Marlas vide Jamabandi for the year 1995-

revenue estate of village Chak Bir Sarkar, Tehsil and District Muktsar, is owned by him, his father, mother and brothers (respondents No.11 to 15) as it was purchased by his grandfather out of joint Hindu family income. The appellant further sought declaration that the General Power of Attorney dated 29.01.1998 and registered on 28.02.1998 by his father Gurjant Singh (respondent No.11) was a forged and fabricated document as had been prepared by misusing the signatures of his father on blank papers. The sale deed dated 16.09.1999 and registered on 17.09.1999 executed by Pawan Kumar on the basis of the said General Power of Attorney was also illegal, null and void and ineffective. The sale deed executed on 20.07.2007 by Vinod Kumar (respondent No.2) in favour of Ashok Kumar etc. (respondents No.7 to 10) and the mutation based on the said sale deed were also challenged as illegal, null and void. By way of consequential relief, a decree of permanent injunction restraining respondents No.1 to 3 and 7 to 10 from dispossessing him from the suit property except in due process of law was sought.

The appellant alleged that his father Gurjant Singh was the Karta of the joint Hindu family. He was addicted to vices and used to unnecessarily spend money on his bad habits. He, his mother and sister were unable to stop him from his said acts. He had sold land comprised in Killa No.25/1 to Makhan Singh for Rs.50,000/-. So the question of executing a General Power of Attorney dated 29.01.1998 in favour of Pawan Kumar did not arise. Otherwise also, his father Gurjant Singh had no right to execute a General Power of Attorney in favour of Pawan Kumar when the property was joint Hindu coparcenary property of the parties. Possession on the suit

Joint written statement was filed by respondents No.1 and 2 raising various preliminary objections and controverting the claim of the appellant. In the written statement filed by respondents No.7 to 10 they claimed to be bonafide purchasers for consideration and prayed for dismissal of the suit.

Respondents No.11 to 13 filed a joint written statement pleading that Gurjant Singh (respondent No.11) has already filed a suit regarding the suit land which is pending before Additional Civil Judge (Senior Division), Sri Muktsar Sahib and in that suit Gurjant Singh has claimed cancellation of sale deed in favour of respondent No.2 and has also sought decree of permanent injunction restraining the respondents from alienating the suit land further. They further alleged that Pawan Kumar, being a commission agent, had committed fraud with him and had got prepared a false Power of Attorney on the basis of which he executed the sale deed.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether power of attorney dated 29.01.1998 executed by the defendant No.11 in favour of defendant No.1 is illegal, null and void? OPP
3. Whether sale deed dated 16.9.99 registered on 17.9.99 is illegal, null and void? OPP
- 3-A Whether two sale deeds dated 20.4.2007 executed by defendant No.2 in favour of defendants No.7 to 10 are illegal, null and void? OPP
4. Whether the plaintiff is entitled for injunction, as prayed for? OPP

5. Whether the suit is time barred? OPD
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Whether suit is bad for non-joinder/mis-joinder of necessary parties? OPD
8. Whether defendants No.7 to 10 are bonafide purchaser if so its effect? OPD
9. Relief

Both the parties adduced evidence in support of their rival contentions.

Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court dismissed the suit of the appellant vide impugned judgment and decree dated 23.10.2013.

Appellant preferred an appeal against the judgment and decree dated 23.10.2013 which was dismissed by learned Additional District Judge, Sri Muktsar Sahib vide judgment and decree dated 05.05.2015.

Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

The submissions made by Mr. Jashandeep Singh Sidhu, learned counsel representing the appellant have been considered.

Learned counsel for the appellant argued that from the evidence adduced by the appellant, it stands established on record that the suit property was ancestral/coparcenary property in the hands of Gurjant Singh. The appellant, being a coparcenar, had right and interest in the suit property by birth and Gurjant Singh, who was Karta of the joint Hindu

family, had no right to alienate the suit property without legal necessity. The

fact that the General Power of Attorney was alleged to have been executed on 29.01.1998 and was registered after one month i.e. 28.02.1998 shows that it was not a genuine document and had been got prepared by Pawan Kumar by playing fraud on Gurjant Singh. Neither Pawan Kumar nor respondent No.2 Vinod Kumar could prove the legal necessity of Gurjant Singh which prompted him to execute the General Power of Attorney or subsequently the sale deed. The said documents, being without consideration, are liable to be set aside.

Both the Courts below have concurrently rejected the plea of the appellant that the suit property was ancestral and coparcenary property of joint Hindu family. The findings of learned first appellate Court on the said contentious issue are as under:-

“I find no illegality and irregularity in the findings recorded by the learned lower Court on various issues. Appellant/plaintiff has filed the suit admittedly during the lifetime of his father Gurjant Singh, who was owner of the suit property. During the lifetime of Gurjant Singh, appellant/plaintiff will have right to file the present suit and will have right to challenge the act done by owner of the property only, if he has some right in the property. He would have right in the property, if, suit property is held to be ancestral and co-parcenary property of Joint Hindu Family. Learned lower Court has rightly held that the suit property is not ancestral and co-parcenary property of Joint Hindu Family, as a party who asserts the property to be ancestral and co-parcenary property of Joint Hindu Family has to show that

*it was owned by common ancestor and had descended to the party or parties concerned by inheritance and in no other manner. Both these elements are to be proved positively and if either of them remained to be proved, the property can not be stated to be ancestral and co-parcenary property of Joint Hindu Family, as has been held by **the Hon'ble High Court, in case titled as Sham Kaur Versus Harin Singh & Others, 1971, Revenue Law Reporter, 318, that it is well settled that all property is presumed to be non-ancestral or self acquired in the hands of the owner and a heavy and serious onus rests on the person asserting it to be not so. Under Punjab Custom, the expression "ancestral property" has a special connotation. It is not sufficient to prove that the last male-holder had inherited it from his grand father, and as such, it was his ancestral property. It has to be established further that it had devolved from the common ancestor of parties. That is to say, the party asserting it to be ancestral, has to show :***

- (a) that it was owned by the common ancestor ; and*
- (b) that it had descended to the party or parties concerned by inheritance and in no other manner.*

And in the present case, the defendants have placed on record the copy of the mutation Ex.DX/1, where A.C. IInd Grade has sanctioned the mutation on 19-11-1972 of the suit property on the basis of a decree dated 06-09-1971, passed by Sub Judge, Sri Muktsar Sahib in Civil Suit No. 393 and

whereby the property was mutated to Tek Singh, Roop Singh and Gurjant Singh sons of Ujaggar Singh. So, as per mutation Ex.DX1, the property came to Gurjant Singh defendant/respondent No. 11 by way of a Court Decree. As such, Gurjant Singh had not inherited the property by way of survivorship. So, the learned lower Court has rightly held that the suit property is not ancestral and co-parcenary property of Joint Hindu Family. As such, during the lifetime of Gurjant Singh the appellant/plaintiff has no right to challenge the execution of Power of Attorney executed by defendant No. 11 or sale deed executed by defendant No. 1 in favour of the defendant No. 2 on the basis of that Power of Attorney, as during his lifetime, Gurjant Singh alone had right to revoke the Power of Attorney executed by him and he had every right to deal with the property in whatever manner, he liked. Gurjant Singh being exclusive owner of the suit property has every right to alienate the same during his lifetime and the appellant/plaintiff has no right to challenge the transactions carried out by Gurjant Singh during the lifetime of Gurjant Singh. As such, there is no illegality in the findings recorded by the lower Court and appeal of the appellant/plaintiff is devoid of any merit. The same is dismissed with costs and judgment and decree sheet passed by the learned Lower Court is hereby affirmed.”

Learned counsel for the appellant could demonstrate no

Court or learned first appellate Court. When it was proved that the suit property was not inherited by Gurjant Singh by way of survivorship and the suit property was not ancestral/coparcenary property of a joint Hindu family, the appellant had no right in the suit property and also had no right to challenge the execution of Power of Attorney or sale deed through Power of Attorney by Gurjant Singh. It was pleaded in the written statement filed by Gurjant Singh (respondent No.11) that he had already filed a suit in respect of the suit land claiming cancellation of the sale deed in favour of Vinod Kumar (respondent No.2). When Gurjant Singh himself had filed a suit during his lifetime, the instant suit filed by the appellant is nothing but an abuse of the process of the Court.

Thus, there is no merit in the appeal and also no substantial question of law arises for intervention in the concurrent findings of learned trial Court and learned first appellate Court.

Dismissed.

Since the main appeal itself has been dismissed, the Civil Miscellaneous No.8832-C of 2015 stands disposed of.

(SNEH PRASHAR)
JUDGE

12.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**