

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.5133 of 2015 (O&M)
Date of Decision: 07.07.2017

Davinder Kaur and others ..Appellants

versus

Gurmeet Kaur ..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Baldev Singh Sodhi, Advocate, for the appellants.

RAMENDRA JAIN, J.

CM No.12270-C of 2015

Allowed as prayed for.

RSA No. 5133 of 2015

The unsuccessful defendants have filed the present Regular
Second Appeal.

Briefly stated, initially, the suit land measuring 8 Kanals-8 ½
Marlas was owned by the father of respondent-plaintiff-Gurmeet Kaur,
namely, Nath Ram @ Nath son of Dulla, resident of village Karnana, Tehsil
and District Nawanshahr, who died intestate on 25.5.2000, leaving behind
Gurmeet Kaur and her sister Devi, appellant-defendant no.3, as class-1
legal heirs. Nath Ram @ Nath was not blessed with any male child. He was
aged 95 years at the time of his death and was not keeping good health. He
was not of sound mind during his last times. Hence, taking advantage of
mental condition of Nath Ram @ Nath, husband of appellant no.1

namely, Ajit Singh, being nephew of Nath Ram @ Nath, was cultivating the suit land as lessee. The respondent-plaintiff approached Ajit Singh appellant-defendant no.2, the lessee, to pay the arrears of lease money qua the suit property, but he denied the title of the respondent-plaintiff and his sister Devi, appellant-defendant no.3, over the suit land and claimed that Nath Ram @ Nath, during his life time, had appointed him as his general attorney and had also got registered a sale deed in favour of his wife Devinder Kaur i.e., appellant-defendant no.1 and thus, the respondent-plaintiff and her sister, could not have inherited any property from Nath Ram @ Nath.

The respondent-plaintiff, by her suit, for possession, challenged the aforesaid sale deed and general attorney if any, allegedly, executed by her father Nath Ram @ Nath in favour of appellant-defendants no.1 and 2, respectively, being forged and fictitious documents.

Upon notice, the appellant-defendants contested the suit, pleading that Nath Ram @ Nath, in his full senses and with conscious mind, exercising due diligence, transferred the suit property in favour of Devinder Kaur, appellant-defendant no.1, without any pressure or stress. He also executed and registered a general attorney dated 28.2.2000 in favour of appellant-defendant no.2. Since Nath Ram @ Nath deceased, was not left with any right, title or interest in the suit property, therefore, the claim of the respondent-plaintiff was false.

The learned trial court decreed the suit vide judgment and decree dated 26.3.2014 holding that general attorney dated 28.2.2000 Ex.D4, allegedly, executed by the deceased Nath Ram @ Nath in favour of Ajit Singh appellant-defendant no.2 and further sale deed dated 18.5.2000

Ex.D5 executed by Ajit Singh in favour of his wife Devinder Kaur appellant-defendant no.1 were invalid, illegal documents and no valid title could be passed on the basis of the same in favour of the appellant-defendants.

Being aggrieved, the appellant-defendants preferred appeal before the learned Additional District Judge, Shaheed Bhagat Singh Nagar, which too resulted into dismissal vide judgment and decree dated 17.4.2015.

The learned counsel for the appellants contended that the power of attorney in favour of appellant-defendant no.2 and sale deed in favour of appellant-defendant no.1 are registered documents and thus, could not have been brushed aside by both the learned courts below as presumption of truth was attached to the same. He further contended that no proper court fee was affixed on the plaint. The sale deed in question in favour of appellant-defendant no.1 could not have been challenged in a simpliciter suit for possession without claiming the relief of recovery for the unpaid consideration.

I have given my thoughtful consideration to the submission made by learned counsel for the appellant and also gone through the impugned judgments carefully.

Undisputedly, no attesting witness of the sale deed, dated 18.5.2000 Ex.D5 and the General Attorney dated 28.2.2000 Ex.D4 was examined by the appellant-defendants before the learned trial court to prove their due execution. Even Ajit Singh appellant-defendant no. 2 did not dare to enter into the witness box to depose that the general attorney dated 28.2.2000 Ex. D4 was ever executed by Nath Ram @ Nath in his favour.

Hence, in the absence of examination of any executor of the alleged general

attorney Ex.D4, the person in whose favour the same was, allegedly, executed, has rightly been declared by both the learned courts below as invalid. No doubt, the presumption of truth is attached to a registered document, but I would like to add that the appellant-defendant no.1 did not lead any evidence to discharge that presumption. No official from the office of the Sub Registrar, where the impugned sale deed dated 18.5.2000 Ex.D5 was registered, was examined so as to prove as to whether the same was executed validly and registered by Nath Ram @ Nath deceased. As discussed above, no attesting witness with respect to the execution of the alleged sale deed was examined. Hence, simple production of the aforesaid sale deed on the record in the statement of appellant-defendant no.1 in whose favour the same stood, does not dispense with its proof.

That apart, there are many other various glaring factors to nullify the aforesaid sale deed dated 18.5.2000 Ex.D5 and general attorney dated 28.2.2000 Ex.D4 in favour of the appellants, which forced the learned courts below to declare the same as forged and fabricated documents. The appellant-defendants have admitted the factum of death of Nath Ram @ Nath on 25.5.2000, leaving behind the respondent-plaintiff and appellant no.3 as his class-I legal heirs. It is also not disputed that Nath Ram @ Nath died intestate and was not blessed with any male issue. The alleged general attorney claimed by appellant-defendant no.2 was executed in his favour on 28.2.2000 within less than three months prior to death of its executor Nath Ram @ Nath. The impugned sale deed dated 18.5.2000 Ex.D5 was also allegedly executed in favour of appellant-defendant no.1 within 07 days, prior to death of Nath Ram @ Nath. The respondent-plaintiff has taken a categorically stand that Nath Ram @ Nath, being 95 years of age, was not

maintaining sound health for the last many years, prior to his death due to old age. No evidence, whatsoever, has been led by appellant-defendant no.1 to dispel the aforesaid plea taken by the respondent-plaintiff. Even appellant-defendant no.1 had admitted the age of Nath Ram @ Nath at the time of his death as 80 years. The impugned sale deed finds mention the sale consideration of ₹3,69,000/-. However, appellant-defendant no.1 has miserably failed to prove on record that when and in what manner the sale consideration was passed over to Ram Nath @ Nath. During cross-examination, appellant-defendant no.1 has testified that the entire sale consideration was given to Nath Ram @ Nath at the time of execution of the sale deed. However, she kept on changing her stand one after another. She could not withstand to the test of her cross-examination successfully, as on asking from her as to specify the time period when the sale consideration was paid to Ram Nath @ Nath, at one point of time, she stated that the sale consideration was paid to Nath Ram @ Nath over a period of time, such as Rs. one lac at the time of execution of the sale deed, and on second time ₹75,000/- and likewise, similar payments were made on several occasions. However, she made somersault in her further cross-examination by deposing that sale consideration was paid to Nath Ram @ Nath in four installments. Rs. one lac was paid on the date of execution of the sale deed and later, installments were made after two months, four months and six months, whenever they were received by them. Regarding arrangement for money, she testified that it was arranged by her from her relatives, including her brother and other relatives, but could not specify the names of relatives. There is a specific recital in the sale deed in question that no sale consideration was received by Nath Ram @ Nath in the office

of the Sub Registrar, Nawanshahr. Hence, the deposition of appellant-defendant No.1 Devinder Kaur as DW1 that ₹one lac was paid on the date of execution and registration of the sale deed is contrary to the recital of the sale deed which casts doubt about its due execution.

More so, the registration of the sale deed just 07 days prior to the death of Nath Ram @ Nath creates a suspicion regarding its genuineness. Even otherwise, if Nath Ram @ Nath had any intention to sell his property to appellant-defendant no.2, in that eventuality, there was no necessity for him to execute any general attorney in favour of her husband Ajit Singh just three months prior to registration of the sale deed in question. The learned trial court has rightly observed that fabricating the general attorney and the subsequent sale deed were devised by appellant-defendant no.2 Ajit Singh and his wife Devinder Kaur defendant no.1 to usurp the property of Nath Ram @ Nath who must have been critically ill and not in a sound state of mind, otherwise, he would have gone to the office of the Sub Registrar to execute the sale deed. In the Saving Pass-book of Nath Ram @ Nath Ex. D2, no transaction was found after 31.5.1999. Therefore, the learned trial court has rightly observed that if any money had been paid by the appellant-defendant no.1 to Nath Ram @ Nath against the sale consideration mentioned in the sale deed in question, the same must have been deposited by Ram Nath @ Nath in his saving account and the entry for the same must have been reflected in his pass-book. According to the learned trial court only a sum of ₹3000/ to ₹ 4000/- were lying deposited in the aforesaid account of Nath Ram @ Nath. In view of above factual aspect of the case, the simpliciter suit for possession without claiming any other relief was very much maintainable.

Learned counsel for the appellants has not been able to raise any law point, much less substantial for determination of this court.

In view of the above discussion, the instant appeal, being without any merit, fails and is hereby dismissed with costs.

07.07.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether Reportable | Yes/No |