

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

**RSA No.2907 of 2017 (O&M)
Date of decision: 26.05.2017**

Gajraj and another

... Appellants

Vs.

Ravi Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Vipin Kumar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendants No.6 and 7 are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for declaration with consequential relief of permanent injunction filed by the plaintiff-respondent No.1 was decreed by both the learned Courts below.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of its impugned judgment, are that the plaintiff was owner in possession of half share of agricultural land measuring 40 kanals 1 marla comprised in Khewat No.71 Khata No.126, rect No.9, as detailed in Para No.2(A) of the plaint. He was also claiming himself to be owner in possession to the extent of 12 kanal 17 marlas in the total land measuring 112 kanal comprised in Khewat No.255/354, rect No.36, as detailed in Para No.2(B) of

the plaintiff. It was further urged that he never sold nor leased out any part of the land owned by him. It was further urged that the plaintiff never executed any document related to the land in question such as GPA etc. in favour of any person whomsoever. About two weeks ago, the plaintiff went to the village Patwari to obtain the revenue records of the land in dispute, as he wanted to get his share partitioned. He was shocked to see that he was not recorded as owner in possession of the land in dispute. On further enquiry, he came to know that defendant No.1 had managed a false and fabricated GPA dated 27.09.1990 allegedly executed in his favour by the plaintiff. The plaintiff urged that he never executed any such GPA and it does not bears his signatures. Rather, on the date of execution of the said GPA, he was minor and as such was not competent to execute any document, but defendant No.1 in collusion with other defendants and revenue officials executed two sale deeds and a lease deed of the land in question, the details as follows:

(a) The defendant No.1 sold land measuring 12 kanals 17 marlas out of the land in question to defendant No.2 vide sale deed bearing vasika No.841 dated 06.08.2003 and mutation No.1452 was subsequently sanctioned.

(b) The defendant No.1 further sold land measuring 20 kanals 1 marla to defendant No.3 vide sale deed bearing vasika No.141 dated 19.04.1991 and mutation No.819 was subsequently sanctioned.

(c) The defendant No.1 further leased out land measuring 13 kanals 11 marlas to defendant No.3 vide lease deed bearing vasika No.14 dated 19.04.1991 and mutation No.820 was subsequently

sanctioned.

The plaintiff further came to know that defendant No.3 sold the land in question to rest of the defendants, the details as follows:

(a) The defendant No.3 sold land measuring 8 kanals to defendants No.4&5 vide sale deed bearing vasika No.1661 dated 14.10.1997.

(b) The defendant No.3 further sold land measuring 13 kanal to defendants No.6&6 vide sale deed bearing vasika No.3709 dated 18.10.1995 and mutation No.1247 was sanctioned.

(c) The defendant No.3 further sold land measuring 2 kanals 4 marlas to defendants No.8, 9 and Lakhmi predecessor-in-interest of defendants No.10 to 13 vide sale deed bearing vasika No.1550 dated 13.06.1995 and mutation No.1169 was sanctioned.

(d) The defendant No.3 also sold land measuring 5 kanals 18 marlas to defendants No.14&15 vide sale deed bearing vasika No.950 dated 14.06.1994 and mutation No.917 was sanctioned.

(e) The defendant No.3 exchanged 10 kanals 19 marlas land out of the land in question with defendants No.8, 9 and Lakhmi predecessor-in-interest of defendants No.10 to 13 vide rapat No.763 dated 13.08.1994 and mutation No.938 was sanctioned.

The plaintiff had urged that the abovesaid transactions are null and void and not binding upon the plaintiff. The plaintiff, on acquiring knowledge of the abovesaid fraudulent transactions, asked the defendants to admit that he was lawful owner of the land in question and to get the revenue entries correct in his favour, but the defendants refused to do so. The suit had been filed by the plaintiff praying for a decree for declaration to the effect that he was lawful

owner/co-owner in possession of the land in question, as fully detailed in paras No.2(A) and 2(B) of the plaint and that he never executed the alleged GPA in favour of defendant No.1 and never authorized him to sell or alienate the land in question in any manner whatsoever and as such the alleged GPA dated 27.9.1990 was illegal, invalid and fraudulent and that further alienation made by the defendants, fully detailed in Para Nos.5 (a)(b)(c) and 6(a) to 6(e) of the plaint were null, void, illegal, invalid and the mutations sanctioned thereof, were also null and void and the entries in the revenue records in the name of the defendants were liable to be corrected in his favour and consequential relief of permanent injunction restraining the defendants from further alienating the land in question. The plaintiff had further prayed that if during the pendency of the suit, the defendants succeed in their illegal aim of taking forcibly his possession or in the eventuality, the plaintiff was not found to be in possession of the land in question, then a decree for possession may be passed in his favour.

Having been put to notice, defendants put appearance. Defendants No.1 to 3 filed their joint written statement, raising more than one preliminary objections. Similarly, defendants No.4 to 15 filed their joint written statement, contesting the suit of the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is in owner in possession of the suit property? OPP
2. Whether the impugned GPA dated 27.09.1990 is illegal, invalid and fraudulent and alienation made by the defendants and mutation sanctioned on the basis of same are illegal, null and void and the entries in the revenue records,

the name of the defendants are liable to be corrected in favour of the plaintiff? OPP

3. Whether the plaintiff is entitled to a decree for declaration and injunction, as prayed for? OPD
4. Whether the present suit is not maintainable? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the plaintiff is estopped by his own acts, conduct, acquiescences, latches, omissions and admissions from filing the present suit? OPD
8. Whether the suit is barred by limitation? OPD
9. Relief

With a view to prove his pleaded case, plaintiff brought on record voluminous documentary as well as oral evidence. However, defendants, in order to rebut the evidence of the plaintiff, did not examine any witness. It is also pertinent to note here that defendants No.4 to 15 were proceeded against ex-parte vide order dated 14.05.2012 passed by the learned trial Court. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly, suit of the plaintiff was decreed by the learned trial Court, vide its impugned judgment and decree dated 26.07.2012.

None of the defendants including appellants filed any first appeal.

However, since the learned trial Court granted only the decree for declaration and permanent injunction to the plaintiff, he felt dissatisfied and filed his first appeal, seeking a specific declaration that he ought to have been declared owner in possession by the learned trial Court. Said first appeal filed by the plaintiff also came to be allowed by the learned first appellate Court, vide its impugned judgment and decree dated 21.02.2017. Hence this regular second appeal on behalf of defendants No.6 and 7, impleading the plaintiff as contesting respondent No.1 and other defendants as proforma respondents No.2 to 14.

Heard learned senior counsel for the appellants.

It is a matter of record that none of the defendants challenged the ownership of the plaintiff at any point of time. Present appellants were claiming themselves to be bonafide purchasers. However to prove their pleaded case, they did nothing at all. Neither any oral nor any documentary evidence was brought on record at the hands of the appellants. As noticed hereinabove, the appellants were proceeded against ex-parte. This was the reason that the learned trial Court rightly decreed the suit of the plaintiff on the basis of his cogent and convincing evidence. In fact, it was the voluminous evidence produced on record by the plaintiff in the form of documentary as well as oral evidence.

A perusal of the abovesaid issues framed by the learned trial Court would show that onus to prove issues No.4 to 8 was on the defendants. However, since the defendants did not lead any evidence, all these issues were decided against them, as per para 15 of the judgment passed by the learned trial Court. As noticed above, none of the defendants, including the present appellants, felt aggrieved against the abovesaid judgment of the learned trial Court and they did not file any first appeal. No appeal was filed on behalf of

any of the defendants, despite the fact that the learned trial Court had granted a decree of declaration in favour of the plaintiff. The general power of attorney, which was the entire basis of the case of the defendants, including the present appellants, had been declared null and void by the learned trial Court. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is also pertinent to note here that defendants in their written statement took the plea of adverse possession, which would impliedly mean that the defendants were admitting the ownership of the plaintiff. It is also a matter of record that defendant No.1 sold the suit land to the vendors of the present appellants on the basis of abovesaid general power of attorney. This general power of attorney has been declared null and void by the learned trial Court and in spite of said specific finding having been recorded against the appellants, they did not challenge the judgment and decree of the learned trial Court, by filing their first appeal.

It speaks volumes against the defendants, including the present appellants. Once the appellants claimed themselves to be bonafide purchasers, it was least expected from them that they would have brought on record the relevant evidence in their favour, but they failed to do so, for the reasons best known to them. In such a situation, plaintiff was bound to succeed. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under: -

“Concededly, the date of birth of the plaintiff is 4.5.1980. In order to prove this fact, the plaintiff has placed on record his date of birth certificate issued by Municipal Corporation Delhi and other documents, namely, copy of passport Ex.P2, copies of secondary school examination Ex.P3, Ex.P4 and copy of Pan Card Ex.P5. He has further examined Smt. Shashi Bala (PW2), Sh. Banwari Lal (PW3) and Sh. Shiv Hari (PW4) to prove his date of birth and also proved on record register of admission and withdrawal (Ex.PW2/A and Ex.PW2/B), admission form (Ex.PW2/B and Ex.PW2/C) Secondary School examination certificate (Ex.PW3/A) and driving license (Ex.PW4/A). All these documents clearly go to prove that the actual date of birth of the plaintiff is 4.5.1980. Moreover, there is no evidence to rebut this evidence brought on record by the plaintiff and as such the trial court rightly held that the plaintiff was minor on the date of execution of the impugned GPA dated 27.9.1990. No doubt a minor can challenge any alienation made on his behalf within three years of attaining the majority, but this limitation shall be guided by Article 60 of the Limitation Act, 1961 and is applicable only when the sale of the property of the minor has been made by natural guardian without seeking permission of

the Guardian Court under Section 8 of the Hindu Minority and Guardianship Act 1956. But in the case in hand, the sale was not made by natural guardian, rather the plaintiff has challenged the sale deed and lease deed made on his behalf by General Power of attorney holder i.e. defendant No.1 on the basis of fraud and misrepresentation and as such Section 17 of the Limitation Act will be attracted that there is no limitation to challenge any transaction on the basis of fraud and the limitation will start to run from the date of knowledge of such fraud and as such the suit of the plaintiff cannot be said to be barred by limitation.

In so far as the arguments of respondents that they need not have filed separate appeal is concerned, no doubt it is settled proposition of law that the respondents can challenge the findings adverse to their interest, if any, in an appeal filed by the plaintiffs, without filing any objection in the appeal, but in the instant case the date of birth of the plaintiff is admitted by the respondents and even date of execution of general power of attorney i.e. 27.9.1990 is also not disputed by them, then it was for the respondents to prove that both these documents were not genuine, but there is no evidence on record to rebut these two documents, which have been duly proved as per requirement of the Indian Evidence Act. As such the respondents have no legs to stand on. The GPA executed by a minor shall not be binding upon the minor and is void ab initio. But, once the GPA has been declared as void and all the transactions made by the defendants fully detailed in Para No.5(a) to (c) and

Para No.6(a) to (e) of the plaint, on the ground of said GPA have been declared as illegal, null and void, the natural corollary that would follow is that the land shall revert back to the actual owner. None of the defendants has disputed the ownership of the plaintiff over the property in dispute and the very fact that the land was sold by defendant No.1 as general power of attorney holder of the plaintiff goes to prove that the plaintiff is owner of the property in dispute. Moreover, the defendants in their written statements have taken the plea of adverse possession, which by necessary implication means admission of the title of the plaintiffs. Meaning thereby, the title of the plaintiff is not disputed. So, the learned trial court gravely misconstrued the proposition of law and erred while holding that the plaintiff was not owner in possession of the property in dispute rather, once the defendants admits the title of the plaintiff it is for the defendants to prove their adverse possession. Even if it is presumed for arguments sake that the respondents are in longer standing possession of the property in dispute, such possession cannot be held to be legal and adverse to the rights of the rightful owner vesting therein, since the document on the basis of which the respondents claim long possession is fraudulent which confers no right, title or interest upon them. As a corollary, the possession, if any, would be deemed to be unauthorized and illegal, which is incapable of being hostile to the rights of the true owner, but most interestingly, the possession of the defendants is not even proved in this case and as such they

have no case or actionable cause at all. The findings of the trial court to that extent are reversed. The plaintiff is declared as owner in possession of the suit land detailed in Paras No.2(A) and 2(B)1 of the plaint and since it is established on record that the plaintiff was minor on the date of execution of the General power of attorney dated 27.9.1990, the impugned GPA is declared void and abinio. The findings of the trial court on all the other issues are hereby affirmed.”

So far as the judgments relied upon by learned senior counsel for the appellants in **Madhukar Vishwanath Vs. Madhao and others, 1999 (9) SCC 446**, **Sneh Gupta VS. Devi Sarup and othes, 2009 (6) SCC 194** and **Prem Singh and others Vs. Birbal and others, 2006 (5) SCC 353** are concerned, there is no dispute about the observations made and law laid down therein. However, on perusal of the cited judgments, none of them has been found of any help to the appellants, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan Vs. Ganeshi Lal, 2008 (2) SCC 533**.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later

judgment in **Ganeshi Lal**'s case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda**'s case (supra) and **Mohd. Illiyas**'s case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a

precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they

appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or

judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

In fact, present one was a case of no evidence qua the appellants. So far as the appellants are concerned, they were proceeded against ex-parte by the learned trial Court and thereafter, neither they ever thought it appropriate to get the said order set aside, whereby they were proceeded against ex-parte nor they led any evidence in support of their pleaded case. Once the appellants did not take any interest, whatsoever, in pursuing the litigation, they were bound to fail. That is what has been held by both the learned Courts below.

On the other hand, ownership of the plaintiff was not even disputed by the defendants, including the present appellants. The general power of attorney on the basis of which defendants were trying to draw their title by way of different sale deeds, had been declared null and void by the learned trial Court. In spite of such declaration having been granted by the learned trial Court in favour of the plaintiff, none of the defendants, including the present appellants, filed any first appeal. Under these circumstances, the learned Courts below were well justified in recording their concurrent findings of facts against the defendants, including the present appellants and in favour of the plaintiff, thus, the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned senior counsel for the appellants failed to point out any patent illegality or perversity in the findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme

Court in Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.05.2017
vishnu

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