

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

RSA No.3695 of 2017 (O&M)

Date of Order: 06.10.2017

Swaranjit Kaur and others

..Appellants

Versus

Kashmir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Som Nath Saini, Advocate,
for the appellants.

Mr. Vijay Lath, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendants are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Here is a case where property owned by a Non Resident Indian is being usurped by the near relatives.

Kashmir Singh, the plaintiff, was owner of the property in dispute. In good faith, he executed a General Power of Attorney in favour of Jit Singh, his elder brother. Jit Singh on the basis of this attorney first of all transferred the property in favour of son of the plaintiff i.e. defendant no.2. Thereafter, Jit Singh again got a General Power of Attorney from Kulbir Singh, son of the plaintiff, with respect to the same property and transferred it in favour of his own wife i.e. defendant no.3.

Learned trial Court has noticed that when Jit Singh appeared in the witness box as DW1, he admitted that sale deed in favour of Kulbir Singh was without payment of any actual consideration, although, it was

mentioned in the sale deed that it is for a consideration of Rs.7,00,000/-. Jit Singh further admitted that Kashmir Singh is residing in England and has solemnized second marriage and his relationship with his son Kulbir Singh are not cordial.

Both the Courts after appreciating the evidence available on the file have recorded concurrent findings of fact that General Power of Attorney has been misused and the defendants in collusion with each other has usurped the property of the plaintiff.

Learned counsel for the appellant has submitted as under:-

- (i) the finding of the Court that parties are in fiduciary relationship is not pleaded;
- (ii) plaintiff has not appeared in the witness box, he has only appeared through attorney, therefore, adverse inference should be drawn against the plaintiff;
- (iii) the suit is beyond limitation;
- (iv) execution of the attorney in favour of Baldev Singh through whom the suit was filed is not proved;
- (v) plaintiff has not sought possession, therefore, the suit is not maintainable.

I have considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the photo copy of the record produced by them.

(i) First argument of learned counsel for the appellant is that the finding of the Court that the parties are in fiduciary relationship is not

pleaded.

As per Order 6 Rule 2 of the Code of Civil Procedure, the pleadings have to be in a concise form. Facts have to be stated, evidence is not required to be pleaded. Plaintiff while filing a suit had disclosed the relationship and had also challenged the sale deeds dated 31.10.2007 and 07.03.2011. It was further pleaded that defendant no.1 has grabbed property by illegal means. In my considered opinion, such pleadings are sufficient.

(ii) Second submission of learned counsel for the appellant is that the plaintiff himself has not appeared in the witness box, he has appeared through attorney.

In the present case, counsel for the appellant has failed to show that as to what prejudice has been caused to the defendants on account of non-appearance of the plaintiff. Counsel has not brought to my notice any material question which may have been put to the attorney and he has failed to reply. The adverse inference can only be drawn if attorney is unable to answer the question put forth. In these circumstances, I do not find any force in the second submission of learned counsel for the appellant.

(iii) Next submission of learned counsel is that the suit is beyond limitation.

The Courts have examined this issue. It has been noticed that the plaintiff is residing out of India. Courts have noticed that since the plaintiff is not physically present in India and is in possession through Jit Singh, the elder brother and the plaintiff has specifically pleaded that he came to know of the alleged sale consideration only on 07.03.2011 when he got the enquiries conducted. Therefore, the suit filed by the plaintiff cannot be held to be barred by time. The reasons assigned by the Courts are borne

out from the record and are not shown to be erroneous.

Next submission of learned counsel for the appellant is that the execution of attorney in favour of Baldev Singh through whom the suit was filed is not proved. Baldev Singh has appeared in the witness box. He has produced the attorney which was sent to him by Kashmir Singh. A copy of the power of attorney is exhibited on the file. In these circumstances, it cannot be said that execution of the attorney is not proved.

Last submission of learned counsel for the appellant is that since the plaintiff is not in possession and he has not prayed for possession, hence, the suit is liable to be dismissed.

I have considered the submission of learned counsel for the appellant. In my opinion, the submission is factually incorrect. Plaintiff in the alternative has sought possession. Of course, he has pleaded as under:-

“In the alternative suit for possession if dispossessed from the suit land during the pendency of the suit”.

In any case the possession has been prayed for. Parties are closely related.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed with costs of Rs.50,000/-. The cost of Rs.50,000/- be deposited with the Punjab State Legal Services Authority, within a period of two months from the date of receipt of a certified copy of this order.

October 06, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No