

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

CR No.7399 of 2017
Date of decision : 28.02.2018

Gindori (since deceased) through her LRs

...Petitioner

Versus

Gajraj Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court refusing to shift the burden of proving the issue as to whether the General Power of Attorney dated 24.11.2005 is based upon fraud, misrepresentation and undue influence on defendant No.1.

The plaintiffs had filed a suit for declaration claiming that General Power of Attorney dated 24.11.2005 is result of fraud and misrepresentation. The plaintiffs had also asserted that defendant No.1 being real son of the brother had misused his fiduciary relationship and got a General Power of Attorney.

Learned trial Court after appreciating the pleadings of the parties framed the issues on 17.08.2012, which are extracted as under:-

“a) Whether the plaintiffs are entitled to a decree of

declaration to the effect that plaintiffs are joint owners in possession of the suit land mentioned in para No.1 of the plaint and GPA Vasika No.29/04 dated 24.11.2005, sale deeds Vasika No.443 dated 20.04.2007 and Vasika No.10556 dated 05.09.2011 are illegal, null and void, and not binding upon the plaintiffs? OPP

b) Whether the plaintiffs are entitled to a decree of permanent injunction restraining the defendants from alienating the suit property or creating any charge thereupon? OPP

c) Whether the suit is not maintainable? OPD

d) Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD

e) Whether the plaintiffs have cause of action to file the present suit? OPD

d) Relief.”

When the respective parties had led their evidence, the case was at the stage of rebuttal and final arguments. The plaintiffs filed an application for recasting the issues and shifting the burden on the defendants.

Learned trial Court after appreciating the facts available on the file dismissed the application.

Learned counsel for the petitioners has vehemently argued that since the plaintiffs were in fiduciary relationship with defendant No.1, therefore, under Section 111 of the Indian Evidence Act, onus is always on the person who claims that the transaction is in good faith. Hence, he submits that the learned trial Court should have recast the issue and put onus on the defendants. He has also relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Anil Rishi Vs. Gurbaksh Singh (2006)*

5 SCC 558.

In the considered opinion of this Court, the prayer made by the petitioners cannot be accepted for the following reasons:-

1. The case is now at the final stage i.e. rebuttal and arguments.
2. The onus to prove an issue keeps on shifting and parties had already led their evidence.
3. It is the assertion of the plaintiffs that the General Power of Attorney executed by them is result of fraud and misrepresentation. Such being the position, the onus is always upon the person who asserts a particular fact.

The judgment passed by the Hon'ble Supreme Court in the case of Anil Rishi's (Supra) is on the different facts, hence, not applicable.

In view of the above, the present revision petition is dismissed.

28.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No