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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-690-1989 (O&M)

Date of decision : 06.07.2018

Gamdoor Singh and another

... Appellant(s)

Versus

Gulzar Singh @ Ram Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant(s).

Mr. AS. Jattana, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are in regular second appeal against the concurrent findings of fact and law, whereby the suit of the respondent-plaintiff seeking declaration has been allowed in part.

Succinctly, the facts which emanate from the pleadings of the parties, are that the plaintiff Gulzar Singh @ Ram Singh, instituted the suit bearing No.115-C of 1980, claiming declaration to the effect that the judgment and decree dated 30.11.1979 rendered in Civil Suit No.947 of 1979 titled as "Gamdoor Singh V/s Kheta Singh etc." be declared null and void and with a further declaration that the plaintiff and proforma defendant No.4 are owner in possession of the suit land, on the premise that he was residing in Penag (Malaysia) and in order to look after the property, had appointed Chand Kaur wife of Basant Singh, resident of Rampura Phool,

Tehsil and District Bathinda, vide power of attorney dated 13.03.1980, as attorney. The suit was filed through Chand Kaur. It was alleged that Gulzar Singh and proforma defendant No.4, namely, Kapoor Singh and one Kheta Singh, were the sons of Bachna Singh son of Bishna Singh. The suit land was inherited by all the three brothers, aforementioned, from their forefather and thus, the property at their hands was joint having equal shares. The plaintiff had become owner to the extent of 3/4th share, whereas the defendant No.4 to the extent of 1/4th in the suit land. Gamdoor Singh managed to get a decree dated 30.11.1979 from Kheta Singh in respect of land measuring 55 kanals 0 marals, in the aforementioned suit, which had been obtained by playing fraud and misrepresentation, for, Gulzar Singh had never executed general power of attorney in favour of Kheta Singh authorizing him to transfer any of his holding or share.

Summons were issued to the contesting defendants. On 09.09.1980, defendant No.4 was given up by the plaintiff. Defendant Nos.1 to 3 contested the suit by raising all preliminary objections. It was stated that the decree, under challenge, on the basis of the written statement and statement suffered by Kheta Singh, was validly and legally passed. Kheta Singh being general power attorney of Gulzar Singh had authority to admit the claim on behalf of Gulzar Singh, thus, prayed for dismissal of the suit.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff and proforma defendant are owners in possession to the extent of 2/3rd share of the land as alleged in the plaint? OPP*
- 2. Whether the decree dt. 30.11.79 in civil suit No.947 is based*

upon fraud and liable to be set aside? OPP

3. *Whether Smt. Chand Kaur has been legally appointed his power of attorney by the plaintiff? If not so to what effect? OPD*

3(a) *Whether the plaintiff has not authorised deceased Kheta Singh to get a decree dt. 30.11.79 passed against him? OPP*

4. *Whether the suit is bad for non-joinder of necessary parties? OPD*

4(a) *Whether the proceedings conducted after 1.9.1980 are null and void against the defendant No.2 as he was major but show as minor during these proceedings, if so its effect? OPD*

4(b) *Whether the suit is not maintainable in the present? OPD*

4 (c) *Whether the suit is bad as alternative pleas have been taken in the plaint by the plaintiff? OPD*

4 (d) *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction and the proper court fee has not been affixed? OPD*

4 (e) *Whether the plaintiff has no cause of action to file the present suit? OPD*

4 (f) *Whether the defendants are entitled to special costs under Section 35-A of the CPC? OPD*

4 (g) *Whether the suit is time barred? OPD*

5. *Relief.*

The plaintiff in support of his case examined seven witnesses and brought on record the documents (Ex.P1 to Ex.P-10), whereas the defendants examined Bachan Singh as DW1, while Jalor Singh and Gamdoor Singh as DW-1 and DW-2 respectively and tendered in evidence the documents (Ex.D1 to D-3).

On the basis of the oral and documentary evidence, the trial Court decreed the suit in part by rejecting the objection of limitation and declared the plaintiff to be owner of half share in the suit land by setting aside decree dated 30.11.1979 as null and void and illegal passed in the suit, aforementioned, viz-a-viz share of the plaintiff. However, regarding share of Kheta Singh, was held to be valid. Similarly mutation bearing No.1740 sanctioned in pursuance to the decree was also declared null and void to the aforementioned extent. Since the possession of the suit land was found with the defendant Nos.1 and 2, it was held that the plaintiff was entitled to possession of the suit land to the extent of half share. The appeal laid before the lower Appellate Court was also dismissed and the judgment and decree of the trial Court was affirmed.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal raised the following submissions:-

i) Judgments and decrees of the Courts below are not sustainable in the eyes of law as power of attorney dated 23.03.1950 envisaged all powers to Kheta Singh to deal with the property. In this regard, he drew the attention of this Court to Ex.P-3 i.e. power of attorney by referring to the lines "Gulzar @ Ram Singh is authorized by the said authority to pay off debts contracted on mortgage in possession on our

ancestral lands situated at the said village Kamal and to obtain repossession", thus, there has been a misreading and misdirection by the Courts below and gross illegality and perversity.

ii) The land, in dispute, could not bifurcated as the possession of the land, in question, had remained with the father of the appellant for the last 30 years. The Courts below had erred in decreeing the suit by ignoring the fact that the suit was filed by Chand Kaur, the attorney of Gulzar Singh, who was not duly authorized to file the suit.

iii) Kheta Singh had validly suffered a consent decree dated 30.11.1979, though the present suit was filed in the year 1980, but it was on account of greed and dishonesty. Gulzar Singh wanted to wriggle out from the action taken by the duly authorised agent.

iv) The deletion of defendant No.4 was fatal to the decision of the suit as the suit was liable to be dismissed on the ground of non-joinder of the necessary party.

Per contra, Mr. A.S. Jattana, learned counsel appearing on behalf of respondent No.1 submitted the concurrent findings of fact and law decreeing the suit in part, cannot be interfered, until and unless there is gross illegality and perversity or any substantial question of law arises for determination. A plain and simple reading of the power attorney does not empower the agent to sell/alienate the property and rightly, the Courts below decreed the suit in part and ordered for possession of the suit property, thus, urges this Court for dismissal of the regular second appeal.

In rebuttal, Mr. Gupta, submitted that the Courts below could not order for possession, for, all the persons were in joint possession and the the same could have been termed as joint possession and for separate

possession, the remedy lied elsewhere i.e. through partition proceedings.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no merit and force in the submissions of Mr. Gupta, for, attorney dated 23.03.1950 (Ex.P-3) does not authorize the agent to alienate/deal with the property, it was only with respect to maintaining the property and therefore, Kheta Singh could not have suffered statement or transferred the property viz-a-viz share of the Gulzar Singh along with his own share as Gulzar Singh, Kheta Singh and defendant No.4 had their respective shares drawn from their fore-father, this is what the import of the judgments and decrees of the Courts below. In my view, the contents of power of attorney were not noticed by the Courts below while decreeing the suit on the basis of the statement suffered by the Kheta Singh, therefore, there was a glaring defect in the decree. The element of greed cannot be said to be one of the grounds as the suit was immediately filed in the year 1980, the moment the plaintiff came to know about the fraud and misrepresentation.

It is not the case of the defendants that the sale consideration received by Kheta Singh viz-a-viz share of Gulzar Singh was passed on to the plaintiff. All the factors have been correctly weighed by the Courts below.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination.

However, the Courts below could not have granted relief of possession from defendant No.1 as the status of the plaintiff and defendant Nos.1 and 2 would be of a joint ownership, at the best, it could have been

said to be joint possession. For the purpose of seeking separate possession, remedy is to claim partition, thus, by modifying the operative part of the impugned judgments and decrees with regard to the direction to defendant Nos.1 and 2, to hand over the possession, instead would be termed to be as joint possession.

With the aforesaid modification, the present regular second appeal is dismissed.

06.07.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No