

**RSA No. 827 of 2009 (O&M) and
other connected appeals**

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

**RSA No. 827 of 2009 (O&M) and
other connected appeals
Date of Order: 23rd January, 2018**

Gurdial Singh

...Appellant

Versus

Sewa Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Ravi Malhotra, Advocate, with
Mr. D. S.Chhina, Advocate,
for the appellant**

**Mr. M.L.Sarin, Sr. Advocate, with
Mr. Nitin Sarin, Advocate,
for respondents no.2 and 8.**

**Mr. Sudhir Pruthi, Advocate,
for respondent no.13.**

ANIL KSHETARPAL, J

By this judgment, three appeals i.e. Regular Second Appeal Nos.827, 828 and 829 of 2009 shall stand disposed of as three suits and three first appeals between the same parties were disposed of by a consolidated judgment passed by the trial court and affirmed in appeal.

Legal heir of plaintiff is the appellant in the present appeal against the judgment passed by the learned first appellate court.

Plaintiff late Smt. Harnam Kaur had filed 3 suits challenging sale deeds executed by her in favour of sons of her sister, Harbans Singh and

Rakesh Singh dated 05.10.1983, 12.10.1983 and 14.11.1983. It was the

case of the plaintiff that the aforesaid sale deeds are result of undue influence, misrepresentation and fraud. Plaintiff had also pleaded that the sale deeds were executed without consideration.

Defendants contested the suit by pleading that the sale deeds have been executed by the plaintiff with free will and volition. Defendants denied that there was any undue influence or fraud.

Learned trial Court decreed the suit, whereas learned first appellate court has reversed the judgment of the trial Court. That is how these appeals have been filed.

At the time of admission of the appeal, the following substantial questions of law were framed vide order dated 16.09.2014:-

- (i) Whether the judgment of the learned first appellate court is sustainable in law in view of the fact that the remand order passed by this Court in all the three regular second appeals, i.e. RSA Nos.259 to 261 of 2004 were decided by a single order dated 17.7.2006 in RSA No.259 of 2004 titled “Harbans Singh and another v. Gurdial Singh and others” was a limited one relating to the question as to who is the legal representative of Smt. Harnam Kaur deceased, which was not decided earlier?
- (ii) Whether the judgment of the learned first appellate court is based on conjectures and surmises?
- (iii) Whether the findings on issues No.1-A, 1-B, 1, 2,4 and 5 recorded by the learned first appellate court are perverse and not sustainable in law?

(iv) Whether the learned first appellate Court is justified in reversing the findings of the learned trial court on flimsy grounds?

I have heard learned counsel for the parties at length at with their able assistance gone through the judgments passed by the courts below as well as the record.

Now the stage is set to consider the questions of law framed earlier on which the appeals were admitted.

QUESTION NO.(i)

Whether the judgment of the learned first appellate court is sustainable in law in view of the fact that the remand order passed by this Court in all the three regular second appeals, i.e. RSA Nos.259 to 261 of 2004 were decided by a single order dated 17.7.2006 in RSA No.259 of 2004 titled “Harbans Singh and another v. Gurdial Singh and others” was a limited one relating to the question as to who is the legal representative of Smt. Harnam Kaur deceased, which was not decided earlier?

A careful reading of the order passed by this Court in RSA No.259 of 2004, titled as Harbans Singh and another v. Gurdial Singh and others, shows that this Court had accepted the appeal and remanded the case to the trial Court to first decide the dispute whether Gurdial Singh is a legal heir or not and thereafter decide the suit afresh. The relevant extract of the order passed by this Court while remanding the case on 17.07.2006 is as under:-

“ In view of the above discussion, the appeals are accepted and the judgments and decrees of the Courts below are set aside and the matter is remanded back to the trial Court to first determine the issue as to whether

respondent no.1 or any one else is a legal heir of the deceased-Harnam Kaur and whether right to sue in his favour or some one else survives or not and then will decide the suits afresh.

It has been noticed that the parties have been litigating since the year 1986 and twenty years have passed. In view of this fact, the trial Court shall decide the issue of legal heir within a period of six months from the date of receipt of a certified copy of this order and thereafter will decide the suits within the period of one year. The parties shall appear before the trial Court on 28.8.2006. The operative part of this judgment be communicated to the counsel for the appellants and respondent no.1.”

This Court had clearly directed that thereafter the suit be decided afresh.

In these circumstances, question no.1 as framed is required to be answered against the appellant.

QUESTION NO.(ii)

Whether the judgment of the learned first appellate court is based on conjectures and surmises?

QUESTION NO.(iv)

Whether the learned first appellate Court is justified in reversing the findings of the learned trial court on flimsy grounds?

Learned counsel for the appellant has submitted that the learned first appellate court has passed its judgment on conjectures and surmises.

He has submitted that the first appellate court has drawn certain inferences which were not permitted under law. Learned counsel for the appellant was requested to point out as to what are the conjectures and surmises drawn by the first appellate court, however, he could not point out any.

A careful reading of the judgment passed by the learned first appellate court shows that the learned first appellate court has appreciated the evidence available on the file and accepted the appeal. Counsel for the appellant could not point out any error in appreciation of evidence by the learned first appellate court. Learned first appellate court has recorded a finding of fact on appreciation of evidence available on the file. Learned first appellate court has also given reasons to set aside the judgment of the learned trial Court. The reasons given by the learned first appellate court are in accordance with law.

Learned first appellate court has noticed various grounds given by the trial court to set aside the sale deeds and after dealing with the reasons given by the trial court, the learned first appellate court has reversed the findings. Learned first appellate Court in short has given the following reasons:-

- (i) the first sale deed was executed by Smt. Harnam Kaur, herself, whereas two other sale deeds were executed by Harnam Kaur through her attorney Gian Singh.
- (ii) A reading of the statement given by Harnam Kaur in evidence clearly proves that Harban Singh and Pakhar Singh, defendants were living with her and cultivating her land for quite some time;
- (iii) Harnam Kaur was owning considerable amount of land

and had fought litigation with Mohinder Singh, till Hon'ble Supreme Court and hence she cannot be considered as a "Parda Nashin" lady;

(iv) She was in knowledge of the documents being executed by her;

(v) The impugned sale deeds were executed in the year 1983 but she did not take any action to assail the same for a period of almost three years;

(vi) Harnam Kaur had cancelled the General Power of Attorney after the filing of the suit;

(vii) Harban Singh and Pakhar Singh are sons of sister of Harnam Kaur and not strangers;

QUESTION NO.(iii)

Whether the findings on issues No.1-A, 1-B, 1, 2,4 and 5 recorded by the learned first appellate court are perverse and not sustainable in law?

The issues are with respect to validity of the sale deeds, plea of maintainability of the suit and the sale deeds being result of fraud and misrepresentation.

Learned first appellate court has discussed in detail these issues in paragraphs 12 and 13 of the judgment, which are extracted as under:-

12. The learned Civil Judge, Junior Division, while deciding issue No.1-A, 1-B of Civil Suit No.114/06 and Civil Suit No.113/06 and issue no.4 in all the suits come to the conclusion that the sale deeds are result of fraud and mis-representation. In Para No.41 she held that all the sale deeds and the power of attorney were witnessed by the persons who were related to the defendants. The adequacy of consideration has not

been proved and sale deeds were executed without any consideration. The defendants were not having means to give the payment not the plaintiff was having necessity to alienate her land. Rather, it proves that the plaintiff was a old lady of 90 years, and was related to the defendants who by mis-representing her got her thumb impression on various papers under the pretext of obtaining tubewell connection. The alleged power of attorney and the sale deeds dated 05.10.83 and 12.10.83 are result of fraud and mis-representation. The basis on which this finding has been given is the deposition of the witnesses. The inadequacy of consideration. Moreover, it has been alleged by the defendants that after the power of attorney, there was cancellation deed cancelling power of attorney dated 5.10.83. The cancellation deed is dated 17.11.86. This aspect of cancellation deed will be discussed lateron. Now we are to see whether the documents were executed or not. The sale deeds have been proved on the file by the defendants. Their witnesses have also been examined. No case has been made out that the thumb impressions of Harnam Kaur on the said sale deeds/and power of attorney are registered documents. Now if there is any doubt regarding their execution that has to be dispelled with by the plaintiff by leading cogent evidence. The onus was entire upon her to prove that the sale deeds are the result of fraudulent mis-representation. Now after going through the issues framed, I find that entire onus has been put on the defendants to prove that the plaintiff executed valid power of attorney and the sale deeds are for valuable consideration and Gian Singh had paid the consideration. Now I find that the fraud and mis-representation has been alleged by the plaintiff. So she

was to prove the same. Moreover, even if the onus has rightly been fixed upon the defendants to prove the proper execution of the sale deeds, then they have led cogent evidence on the file to prove that Harnam Kaur through her sweat will has executed the sale deeds and the power of attorney on the basis of which two sale deeds were executed by Gian Singh who was holder of power of attorney. In order to prove this, the defendants examined themselves to depose in favour of their sale deeds. They further examined the scribe Jagjit Singh Uppal who has supported the version of the defendants. Similarly, the power of attorney produced by Gian Singh has been proved as Ex.DW2/1. It was scribed by Jagjit Singh Uppal deed writer and after admitting the contents, Harnam Kaur affixed her thumb impression. Virsa Singh and Lambardar Malkit Singh witnessed the same. On the basis of this power of attorney, Gian Singh executed two sale deeds dated 12.10.83 and 14.10.83. To prove all these documents, their marginal witnesses have been examined sale deed Ex.DW2/6 dated 14.11.85 was witnessed by Malkiat Singh Lambardar. Defendants examined Virsa Singh DW3 who proved the sale deed dated 5.10.83. So in the totality of the circumstances, it was clear that all the sale deeds have been proved on the file. One sale deed was executed by Harnam Kaur herself whereas two sale deeds were executed by her attorney Gian Singh. Now, the story which has put forth by the plaintiff does not inspire any confidence. In the judgment itself learned Civil Judge, Junior Division has held that Harnam Kaur has fought litigation upto the Hon'ble Apex Court regarding the Will of her husband with his brother in law Mohinder Singh. So, it cannot be accepted that a lady who fought litigation upto the Hon'ble Apex Court

was not having knowledge regarding the document which she was going to execute. A lady who is owning a considerable amount of land, she is not expected to be so unaware regarding the documents which she was going to execute. In the year 1983, she executed. Moreover, the sub-Registrar to explain all these document to be executant. In the documents there is endorsement of sub-Registrar that the contents have been explained to the execution. Now the onus shifts on the plaintiff to prove that the documents were not explained to her. Her further conduct shows that she admitted the execution of the documents impliedly by not filing any criminal complaint against the defendants and the Sub-Registrar. In the year 1983, she was in her senses. She companied the defendants to the office of Sub-Registrar, Kartarpur. Upto this, it is admitted story. Now further the plaintiff alleges that on the pretext getting tubewell connection documents were got executed from her. As discussed above, she was knowing the nature of the documents which she was going to execute. Moreover, the documents were executed in the year 1983 and suit was filed in the year 1986. For full three years, she remained silent. Even otherwise, it seems that after getting the land from the plaintiff, the behaviour of Gian Singh, Harbans Singh and Pakhar Singh might have changed and Harbans Kaur might have approached Gurdial Singh etc. who got a Will executed from her and after that these suits were filed. Though, the Will is not in question, but certainly it was executed by Harnam Kaur much after the sale deeds and power of attorney. Then it cannot be said that she was not in her senses. So, it is clear that the sale deeds and the power of attorney were executed by Harnam Kaur fully knowing the contents. She was

in her sense which is clear proved from the fact that she executed a Will and filed three suits afterwards.

13. Now the other findings of the lower court holding the sale deeds invalid is the inadequacy of the consideration. There is nothing in the law to show that the consideration cannot be paid at the law to show that the consideration cannot be paid at home. A sum of Rs.48,000/- has been shown to be paid to Harnam kaur at the house. Much discussion has been made on the point of consideration. I find that the plaintiff has failed to prove on record any document which could show that the price of the adjoining land in the year 1983, was more than the price which has been mentioned in the sale deed. Now it is not necessary for the defendants to prove each and every detail of the source from where the money has come. The explanation has been put forward by the defendants that they have paid the consideration after selling the jewellery of their women. Now it is not practically possible to prove that to which jeweller same was sold. Even otherwise, Harnam Kaur was residing with them. They were cultivating the land. So it is possible that they were not having the amount. It is matter of common practice that in the village there are some adjustments made before going to the office of Sub-Registrar. The provision of contract act does not come into force when the execution of the document has been proved by the defendants. At the time of execution of the sale deed, sale consideration was already paid of Harnam Kaur. So, I find that inadequacy of consideration is not proved, rather, in the year 1983, price of land was not much. Accordingly, I do not find that the sale deeds are under value or no consideration

has been paid to Harnam Kaur.”

Learned counsel for the appellant could not point out any perversity or illegality in the appreciation of evidence by the learned first appellate court, which has been reproduced above.

Hence, question no.(iii) is answered against the appellant.

In view of the discussion made hereinabove, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate Court, which is neither shown to be perverse nor suffering from material irregularity.

The regular second appeals are dismissed.

23rd January, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: YES/NO
Whether reportable	: YES/NO