

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

RSA No.2735 of 2010(O&M)

Date of decision:23.5.2018

Santosh Wati

.....Appellant

VERSUS

Madan Lal Singla and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kunal Mulwani, Advocate for the appellant.

Mr. Baljinder Singh, Advocate for respondents No.1 and 8.

Mr. N.S. Dadwal, Advocate for respondents No.2 to 7.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Sh. Lajpat Rai (since deceased) now represented by Smt. Santosh Wati wife of Sh. Shanti Parkash was dismissed by the trial Court vide judgment and decree dated 15.03.2003 and findings recorded by the trial Court came to be affirmed in appeal by the Additional District Judge, Sangrur.

The present dispute pertains to agricultural land measuring 18 kanal 1 marla detailed in headnote of the plaint which was previously owned by Sh. Lajpat Rai (since deceased) and sold vide sale deeds No.1867 and 1878 dated 27.09.1993 registered on 27.09.1993 and 28.09.1993, respectively by Madan Lal Singla son in law of Lajpat Rai on the basis of General Power of Attorney dated 10.04.1991 registered with Sub Registrar Patiala.

Some of the undisputed facts of the case are that Sh. Lajpat Rai was married twice. Out of his first wedlock, Tarawati defendant No.4 wife of Sh. Madan Lal Singla defendant No.1 was born. Smt. Tarawati was married sometime in 1952. Lajpat Rai performed second marriage with Gianwati and she also passed away. Santosh Wati wife of Shanti Parkash is sister of Gianwati, second wife of Lajpat Rai. Lajpat Rai was owner of land measuring 51 kanal 15 marla situated in revenue estate of Sunam to the extent of half share and the remaining half share was owned by his brother Sh. Naunidh Rai. Lajpat Rai executed a Will on 06.12.1990 registered on 13.12.1990 whereby he bequeathed his half share in land measuring 51 kanal 15 marlas in favour of his daughter Smt. Tarawati and Smt. Santosh Wati in equal shares. The said Will was executed by Lajpat Rai with the consent and concurrence of Sh. Madan Lal Singla and Sh. Shanti Parkash who also signed the same. On partition of joint land between Lajpat Rai and his brother, land measuring 25 kanal 12 marlas came to the share of Lajpat Rai vide mutation No.13619. The appellant/plaintiff sold land measuring 7 kanal 11 marlas in the year 1993. He executed a General Power of Attorney in favour of Sh. Madan Lal Singla defendant No.1 and Sh. Shanti Parkash, Advocate and got it registered vide deed No.82 dated 10.04.1991 with Sub Registrar Patiala. He executed another registered Will dated 12.01.1996 in favour of his daughter Smt. Tarawati and Smt. Santosh Wati in equal shares regarding agricultural land measuring 18 kanal 1 marlas and cancelled the earlier registered Will dated 13.12.1990. It is averred that the plaintiff handed over the said General Power of Attorney to Sh. Shanti Parkash on 16.02.1996 and required him to execute the sale deed regarding half share

of land measuring 18 kanal 1 marla in favour of Dharampal and Jiwan Parkash son of Shanti Parkash, Advocate. Sh. Shanti Parkash attorney of plaintiff executed sale deeds in favour of Dharampal and Jiwan Parkash as per instructions of the plaintiff. The plaintiff challenged the sale deeds dated 27.09.1993 and 28.09.1993 Ex.P2 and P3 respectively inter alia on the following grounds:-

- (a) The original power of attorney was with the plaintiff and only a photostat copy thereof was taken by defendant No.1 by misrepresentation and fraud through his wife Smt. Tara Devi.
- (b) No amount of alleged sale deeds was paid to the plaintiff and factum of said sale deeds was not disclosed to him.
- (c) The sale deeds were executed in a clandestine manner and mutations have also been got sanctioned secretly in connivance with the revenue officials.
- (d) The consideration mentioned in the sale deeds is only nominal one and not the price prevailing in the market.
- (e) Defendant No.3 (vendee of one of sale deeds) is father in law of son of Sh. Madan Lal Singla and defendant No.2, another vendee is also his close relative.
- (aa) Power of attorney was executed in favour of Shanti Parkash and Madan Lal, thus plaintiff had decided to pass on his entire estate upon his death to two persons i.e. Santosh Wati and Tarawati.

- (bb) on 16.02.1996, under the instructions of Lajpat Rai two sale deeds were executed by Shanti Parkash in favour of defendants No.5 and 6 and possession of land covered by sale deeds dated 16.02.1996 was delivered to defendants No.5 and 6. Lajpat Rai cancelled the power of attorney dated 10.04.1991 vide cancellation deed dated 20.02.1996.
- (cc) Defendant No.1 was a very influential person. He wanted to deprive the plaintiffs LRs of benefit of the Will and wish of Lajpat Rai.
- (dd) The impugned sale deeds were prepared in haphazard manner revealing no real bargain of sale or purchase as no passage was provided to land covered by sale deed pertaining to 10 kanal 10 marlas..
- (ee) Mr. Inder Sain Singla Retired Tehsildar, attesting witness of the sale deeds is related to defendant No.1.
- (g) Defendant No.1 is not honest and sincere person and he always cheated the plaintiff.
- (h) Sh. Shanti Parkash executed sale deeds in favour of Dharampal and Jiwan Parkash only with regard to half share and consideration thereof was duly deposited in the account of plaintiff.
- (i) Defendant No.1 once got an affidavit signed from the plaintiff without disclosing its contents to him.
- (j) The plaintiff got the general power of attorney in favour of Sh. Madan Lal Singla and Sh. Shanti Parkash

cancelled and defendant No.1 was informed about the same.

- (k) The affidavit mentioned in sub para (I) was created by defendant No.1 just to defeat the right of Sh. Santosh Wati to the extent of half share of land bequeathed in her favour by the plaintiff in case of his death.
- (L) The said affidavit was taken back by the plaintiff from defendant No.1 with great difficulty and then cancelled it.
- (M) The plaintiff on coming to know of the alleged sale deeds executed by defendant No.1 sent complaints to S.S.P Patiala, Sangrur and D.G.P. Punjab, Chandigarh for necessary action.
- (N) The plaintiff had been lying in hospital fighting for his life and he was being looked after by family members of Smt. Santosh Wati including her husband Sh. Shanti Parkash. Smt. Tara Devi and her husband Sh. Madan Lal Singla came there only once and left after quarrelling with the plaintiff.
- (O) Defendant No.1 being son in law and Smt. Tara Devi being only daughter of the plaintiff were in a dominating position especially on account of his ill health and got copy of power of attorney by misrepresentation and executed the aforesaid sale deeds.

Counsel for the appellant would argue that prior to execution and registration of power of attorney in the year 1991, Sh. Lajpat Rai executed the first registered Will in December 1990 bequeathing his entire land measuring 25 kanal 12 marlas in favour of Tarawati and Santosh Wati in equal share. After sale of land measuring 7 kanal 11 marlas in 1993 and execution of power of attorney dated 10.04.1991, he again executed a registered Will dated 12.01.1996 in favour of Smt. Tarawati and Santosh Wati in equal share regarding land measuring 18 kanal 1 marla. It is argued with vehemence that execution of the aforesaid two Wills shows that the plaintiff intended that after his demise, land owned by him would be co-owned by Tarawati and Santosh Wati to the extent of half share each. It is further argued that even the power of attorney dated 10.04.1991 was executed by Lajpat Rai in favour of Sh. Madan Lal Singla, husband of Tarawati and Sh. Shanti Parkash, Advocate, husband of Santosh Wati with a clear intention that if they wanted to act upon the said power of attorney they would be entitled to deal with land in question to the extent of half share each so that returns of the half share shall go to the family of Tarawati and remaining half share to the family of Santosh Wati. It is argued with vehemence that Tarawati and Madan Lal Singla despite knowing fully well intention of Sh. Lajpat Rai, in a deceitful manner, alienated the entire land measuring 18 kanal 1 marla in favour of Sh. Om Parkash – defendant No.2 and Sh. Harbans Lal Jain – defendant No.3 who are none else but closely connected with the family of Sh. Madan Lal Singla.

Another submission made by counsel is that the land was sold at throwaway price and the sale consideration was never passed over to Sh.

Lajpat Rai. It is argued that as the entire transaction with regard to sale of land of Sh. Lajpat Rai is based upon misrepresentation, deceit and taking advantage of dominating position of Sh. Madan Lal Singla being the son-in-law of Sh. Lajpat Rai, the sale deeds in question are liable to be set aside and so also the judgments and decrees passed by the Courts. In support of his contention, he has relied upon judgment of this Court **Harmesh Kumar and others Vs. Maya Bai and another, 2006(2) ICC 517**, based upon the principle of non est factum means documents envisaged by the plaintiff is entirely different in character than the ones he actually executed. Further reference has been made to judgment of this Court **Bai Singh and another Smt. Gejo and another, 1988(2) RRR 507** wherein power of attorney was executed by an illiterate village woman appointing mukhtiar-i-am to manage land with authority to alienate the same. It was held that there was no evidence that authority to alienate was consciously given.

Counsel representing the respondents has supported concurrent findings recorded by the Courts whereby challenge to the sale deeds executed by Sh. Madan Lal Singla on the basis of power of attorney dated 10.04.1991 has been rejected by the Courts. It is argued with vehemence that perusal of the power of attorney leaves no manner of doubt that Madan Lal Singla was not only given the authority to deal with the land in question by giving it on mortgage, alienating the same, receiving earnest money on the basis of agreement, getting the sale deed registered, handing over the possession, receiving the sale price, getting mutation sanctioned but also was authorised to receive money from any Court, treasury, bank after signing the acknowledgement in token thereof. It is

further argued that averments raised in the plaint have not been proved. Sh. Lajpat Rai passed away before he appeared in the witness box. In addition, it is argued that there is no evidence on record that either the land was sold at less price or sale consideration was not passed on to the owner. Further argued that even if the sale consideration was not passed on to the owner, at best, he could take recourse to appropriate remedy seeking recovery from his agent but the same cannot constitute a ground for setting aside the sale deeds duly executed by the Attorney who was empowered to sell the land in question. Counsel would further argue that power of attorney was executed in April 1991 but the sale deeds were executed in September 1993, more than 2½ years subsequent to execution of the power of attorney. According to counsel, had it been true that Madan Lal Singla wanted to grab the land, there was no reason for him to wait for more than 2 years to alienate the land in question when otherwise his wife was the only class I heir of deceased Lajpat Rai and entitled to at least half share on the basis of Will, admittedly executed by the deceased.

I have heard counsel for the parties, perused the paper-book and the records.

Perusal of the power of attorney, admittedly, executed by Sh. Lajpat Rai and got registered with the Sub Registrar Patiala leaves no manner of doubt that the Attorney holders namely Sh. Madan Lal Singla and Sh. Shanti Parkash, Advocate were given wide powers qua management and alienation of the land in question including right to get the sale deed registered and receipt of sale consideration. As has been rightly argued by counsel for the respondents, they were also given the power to receive payment from any Court, treasury or bank on behalf of

Lajpat Rai and to execute a receipt in token thereof. In the first para (un-numbered) of Power of Attorney, Sh. Madan Lal Singla and Shanti Parkash, Advocate, could exercise the powers given to them either jointly or separately. No such condition was incorporated in the power of attorney that Sh. Madan Lal Singla would be entitled to deal with only half share out of half share of Sh. Lajpat Rai in land measuring 51 kanal 15 marlas. In this view of the matter, it is difficult to accept contention of the appellant that Sh. Lajpat Rai never intended to give power to Sh. Madan Lal Singla to deal with the entire land owned by Sh. Lajpat Rai or he intended to give him power only in respect of half share out of land measuring 25 kanal 12 marlas. Not only this, Sh. Lajpat Rai did not appear in the witness box to substantiate the allegations raised in sub paras (a) to (o) of para 12. Meaning thereby that the allegations could not be converted into proof. There cannot be any dispute that there is lot of difference between alleging something and proving the same. As the allegations raised in the plaint did not cross the bridge to convert into proof, findings recorded by the Courts cannot be faulted with much less to say that the same suffer from perversity warranting intervention in the Regular Second Appeal. In this view of the matter, contentions raised by counsel for the appellant are not meritorious and liable to be rejected.

The judgments relied upon by counsel for the appellant have got no bearing on the facts of the case at hand as they have been rendered in view of peculiar facts and circumstances dealt with in the cited judgments. As has been discussed hereinbefore but at the cost of repetition, clear, categoric and specific authority given to Sh. Madan Lal Singla in view of power of attorney dated 10.04.1991 does not admit of an

exception much less to record a finding that he was not authorized to alienate the suit land. In this view of the matter, concurrent findings recorded by the Courts are liable to be affirmed and ordered accordingly.

For the foregoing reasons, the appeal fails and is dismissed with costs.

MAY 23, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no