

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

RSA No. 2568 of 2015 (O&M)

Date of decision : August 23, 2018

Smt. Lado

.....Appellant

Versus

Rajender Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ramender Chauhan, Advocate
for the appellant.

LISA GILL, J.

The plaintiff – appellant is aggrieved of judgment and decree dated 16.12.2011 passed by the learned Civil Judge (Junior Division), Charkhi Dadri as well as judgment and decree dated 09.09.2014 passed by the learned Additional District Judge, Bhiwani.

Brief facts are that the plaintiff – appellant filed a suit for declaration to the effect that she is the owner in possession of the suit property as detailed in the plaint by virtue of having inherited it from her father - Rati Ram. She further claimed that the defendants had no concern with the suit property, therefore, they be restrained from alienating or encumbering the suit land in any manner. The appellant – plaintiff pleaded that she inherited the suit land from her father. Respondent No. 1 – Rajender Singh is her real brother. He came to her house in DC Colony, Bhiwani on 28.05.2004. While telling her that their joint land had to be divided amongst them, he took her thumb impressions on some documents for this purpose. It is further stated that the appellant had no knowledge about the contents of

the said documents. When she came to the Court compound, Bhiwani for some other work on 06.07.2004, she came to know that respondent No. 1 had in fact got her thumb impressions affixed on a General Power of Attorney (for short – 'GPA'). The said GPA was, accordingly, cancelled by the appellant on 07.07.2014. She, however, came to know on 01.08.2004 from the office of Halqa Patwari, Bhiwani that the suit land had been transferred by defendant No. 1 in favour of his son – respondent No. 2 vide release deed dated 07.06.2004 on the basis of GPA. Hence, the suit was filed.

Joint written statement was filed by the respondents who are none other but the real brother and nephew of the appellant. Preliminary objections were taken. The claim of the plaintiff was denied. It was stated that the GPA had been duly executed by the plaintiff out of her own free will and consent. There is no question of any fraud or misrepresentation. No replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- 1) Whether release deed dated 07.06.2004 is illegal, null and void and same is outcome from fraud and misrepresentation and not binding on the rights of the plaintiff? OPP.
- 2) Whether plaintiff is also entitled to a decree for permanent injunction as prayed for? OPD.
- 3) Whether present suit is not maintainable in its present form? OPD
- 4) Whether plaintiff has no cause of action to file the present suit? OPD
- 5) Whether plaintiff is estopped to file the present suit by her own act and conduct? OPD
- 6) Relief.

It is relevant to note that the respondents were proceeded against exparte on 19.12.2009. Exparte evidence was led by the plaintiff.

Learned trial Court on appreciation of evidence on record dismissed the suit filed by the plaintiff - appellant. Appeal preferred by the present plaintiff - appellant was also dismissed by the learned Additional District Judge, vide judgment and decree dated 09.09.2014. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that the appellant is an illiterate lady. GPA dated 28.05.2014 (Ex. P1) was executed without having any knowledge of the contents thereof. When she came to know about the fraud committed by the respondents she immediately cancelled the GPA though admittedly after execution of the release deed dated 07.06.2004. It is further contended that the defendants, in this case, did not even choose to contest the matter. After filing of the written statement, they were proceeded against exparte. Therefore, in this situation averments of the appellant in her plaint should be accepted to be correct and duly admitted by the respondents. Thus, both the learned courts below have grossly erred in dismissing the suit filed by the appellant – plaintiff. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 16.12.2011 by the learned Civil Judge (Junior Division), Charkhi Dadri and judgment and decree dated 09.09.2014 passed by the learned Additional District Judge, Bhiwani be set aside.

Heard learned counsel for the appellant. I have also perused the record of this case, which was requisitioned.

There is no dispute regarding the suit property belonging to Rati Ram i.e. father of the appellant and respondent No. 1. The plaintiff –

appellant alleged that the GPA dated 28.05.2004 (Ex. P1) was obtained from her by misrepresentation and fraud. The said GPA was cancelled vide deed dated 07.07.2004 (Ex.P3). I have carefully perused Ex. P3, the cancellation deed dated 07.07.2004. It is mentioned therein that the registered GPA dated 28.05.2004 was executed by her in favour of respondent No. 1/Rajender Singh affording him all rights in respect to her property. However, she now did not have any confidence upon Rajender Singh as he was not looking after her property in a proper manner, neither did he act according to her wishes, therefore, she wished to revoke the GPA. GPA dated 28.05.2004 (Ex. P1) is a registered document. Paradoxically stand of the appellant is that this document is based on fraud, concealment of true facts and misrepresentation. Therefore, release deed dated 07.06.2004 (Ex.P2) executed by respondent No. 1 in favour of respondent No. 2 is also null and void. However, as per the cancellation deed dated 07.07.2004 (Ex.P3), there is no such mention of fraud, misrepresentation etc. by her brother Rajender. To the contrary, it is mentioned that she has no faith in him any longer whereas GPA (Ex.P1) was executed by reposing complete faith in her brother. Thus, execution of the GPA with full knowledge of its contents is admitted by the appellant. There is no evidence on record to prove fraud, concealment of fact or misrepresentation, which ultimately led to cancellation of the registered GPA (Ex.P1).

Contention of learned counsel for the appellant that once the respondents were proceeded against *exparte* before the learned trial Court (the said respondents were duly represented before the learned Additional District Judge, Bhiwani), averments of the appellant – plaintiff should be accepted as gospel truth is untenable, unacceptable, hence rejected. It is a

settled position that the plaintiff has to prove his/her own case and stand on his/her own legs. Merely because the respondents were proceeded against exparte before the learned trial court cannot by itself be a ground to allow the plaintiff's suit. In the facts and circumstances of this case, both the learned courts below have rightly held that the evidence on record does not indicate GPA dated 28.05.2004 (Ex. P1) to be vitiated due to fraud, misrepresentation etc.

Correct and concurrent findings of fact have been rendered by both the learned Courts below, on a proper appreciation of evidence on record which calls for no interference by this Court.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

No other argument has been addressed.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in judgment and decree dated 16.12.2011 passed by the learned Civil Judge (Junior Division), Charkhi Dadri as well as judgment and decree dated 09.09.2014 passed by the learned Additional District Judge, Bhiwani which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 23, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No