

RSA Nos.6941 & 6942 of 2016 (O&M)

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

Date of decision : 05.12.2018

1.

RSA-6941-2016 (O&M)

Gian Singh

... Appellant

Versus

Balbir Singh and others

... Respondents

2.

RSA-6942-2016 (O&M)

Gian Singh

... Appellant

Versus

Karam Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Malkeet Singh, Advocate
for the appellant.

AMIT RAWAL, J.

CM-18007-C-2016 IN RSA-6942-2016

For the reasons stated in the application, the delay of 37 days in
refiling the appeal is condoned.

CM stands disposed of.

MAIN CASES

This order of mine shall dispose of two regular second appeals
bearing **RSA No.6941 of 2016** titled as **“Gian Singh V/s Balbir Singh and**

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others” and **RSA No.6942 of 2016** titled as **“Gian Singh V/s Karam Singh and others”** filed at the instance of the appellant-plaintiff against the judgment and decree of the lower Appellate Court, whereby the suit which was decreed by the trial Court, has been dismissed.

The plaintiff asserted that Lachhman Singh was owner of land measuring 23 kanals 16 marals. He had five sons and one of the son predeceased him. He executed a registered Will dated 28.10.2003 bequeathing his share in equal distribution to all the sons and widow. Karam Singh/defendant No.1 prevailed upon Lachhman Singh and obtained a registered general power of attorney and on the basis of the aforementioned General Power of Attorney (hereinafter referred to as 'GPA') , transferred the land, in dispute vide transfer deed dated 05.04.2004 in favour of defendant No.2/Balbir Singh. The general power of attorney bore the thumb-impressions of Lachhman Singh, whereas he was in habit of appending his signatures.

The trial Court decreed the suit and as noticed above, the lower Appellate Court reversed the findings.

Learned counsel for the appellant has assailed the judgment and decree of the lower Appellate Court on the following ground:-

1. The GPA did not envisage the power to transfer.
2. The Will bore the signatures, where GPA had thumb-impressions.
3. Lachhman Singh was in India, therefore, there was no need to execute the power of attorney.
4. Lachhman Singh was used to reside with plaintiff No.2 in U.K.

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In such circumstances, he could not have executed GPA. The agent-Karam Singh had breached the trust by executing transfer deed depriving the right of other son, therefore, there is gross illegality and perversity.

I am afraid the aforementioned arguments are not sustainable as it has come on record that one Hiba Nama dated 23.06.2004 (Ex.D2), after registration, was also executed by Lachhman Singh. It also bore the thumb-impressions. He was, in the year 2004, concededly i.e. at the time of execution of the documents, was 90 years' old and signed with trembling hands. There may be many factors despite person in India is not prohibited to execute the GPA in favour of agent to perform the duties.

On going through the contents of GPA, attorney was given power to transfer, alienate, exchange, mortgage etc. The transfer, if without consideration, cannot be taken out from the purview of sale. The plaintiff has not assailed the gift deed, aforementioned, bearing thumb-impressions. All these factors weighed in the mind of the lower Appellate Court, but the trial Court was swayed away with the fact that once Lachhman Singh had already executed a registered Will, therefore, there was no occasion for him to execute the GPA. The Will is enforceable only after the demise. Bequeather, during lifetime, can always deal with property in any manner. It is a matter of record that Lachhman Singh died on 10.06.2005 and during his lifetime, he did not initiate any criminal proceedings against Karam Singh/defendant No.1.

In this view of the matter, I do not find any illegality and perversity in the judgment and decree of the Lower Appellate Court, much

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less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, both the appeals are dismissed and the appeal bearing RSA No.6941 of 2016 is also dismissed on account of limitation.

05.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**