

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 665 of 2015(O&M)

Date of Decision: May 22, 2018

Gurmail Kaur

---Appellant

vs.

Hardeep Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.K.Shukla, Advocate, for the appellant

Rekha Mittal, J.

CM No. 1936-C of 2015

Prayer in this application is for condoning delay of 84 days in refiling the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 84 days in refiling the appeal stands condoned.

Disposed of accordingly.

RSA No. 665 of 2015

The present appeal directs challenge against judgment and decree dated 16.5.2012 passed by the Additional Civil Judge (Senior Division), Patiala whereby suit filed by the appellant/plaintiff was dismissed and judgment and decree dated 5.5.2014 passed by the Additional District Judge, Patiala whereby appeal was only partly accepted and accordingly suit was partly decreed.

Gurmail Kaur sought declaration that she is owner in possession of land measuring 17 bighas 15½ biswas situated in village Seona, Tehsil and District Patiala as per jamabandi for the year 2000-01, detailed in head note of the plaint. Prayer was made for permanent injunction restraining the defendants from interfering in her peaceful possession over the suit land and also alienating the the suit land or any part thereof and raising any construction therein or changing nature of the same. Further declaration was sought that power of attorney No. 1028 dated 1.7.2004 registered on 8.7.2004 before the Sub Registrar, Patiala alleged to have been executed by the appellant in favour of Hardeep Singh defendant is wrong, illegal, null and void, result of fraud and consequently the registered sale deeds executed by him and mutations sanctioned on the basis of sale deeds are wrong, illegal, null and void and not binding upon the appellant.

Briefly stated, case of the appellant/plaintiff is that as the registered power of attorney No. 1028 dated 1.7.2004 registered on 8.7.2004 is illegal, null and void, sale transactions entered into by defendant No. 1 in favour of defendants No. 2 to 18 are not binding against the appellant. It is averred that defendant No. 1 sometimes put his signatures in Punjabi and sometimes in English. He has changed his father's name and residence also in some of the sale deeds as Balkar Singh and Gurdial Singh, resident of Manjit Nagar, Bhadson Road, Patiala. Defendant No. 15 got sale deed dated 12.5.2006 executed and registered in his favour qua plot measuring 1 biswa out of suit land from Rajinder Singh son of Satya Singh, alleged attorney of the appellant. There is no such power of attorney No. 2810 dated 7.8.2004 registered in the office of Sub Registrar, Patiala, therefore, sale deed dated 12.5.2006 is illegal, null and void and does not confer any right in favour of the vendee.

Defendant No. 14 (Pardeep Mehta) filed the written statement, denied material averments raised in the plaint and prayed for dismissal of the suit. The other defendants did not put in appearance and were proceeded against ex parte.

The trial court framed the following issues for determination:-

1. Whether the plaintiff is owner and in possession of suit property ?
OPP
2. Whether the power of attorney bearing No. 1028 dated 1.7.2004 registered on 8.7.2004 having executed by the plaintiff in favour of defendant No. 1 is illegal, null and void, fraud and misrepresentation and sale deeds executed on the basis of said power of attorney are illegal, null and void and without consideration and not binding upon the rights of the plaintiff ?OPP
3. Whether the plaintiff is entitled to relief of declaration, as prayed for ?OPP
4. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for ?OPP
5. Relief

Later, defendant No. 14 also absented from the proceedings and was proceeded against ex parte vide order dated 23.4.2012.

In her ex parte evidence, Gurmail Kaur appeared in the witness box and examined Inder Kumar, Registration Clerk PW2.

The learned trial court answered issues No. 1 to 4 taken up jointly against the plaintiff/appellant and as a result, suit filed by the appellant was dismissed ex parte with costs.

As has been noticed hereinbefore, appeal filed by the appellant was partly allowed. Sale deeds Ex. P 13 to P15, P17 and P18 executed in favour of defendants No. 5, 12, 13, 16 and 17 respectively were ordered to be set aside being beyond 30 biswas of land in respect whereof, power of attorney No. 1028 dated 1.7.2004 was alleged to be executed by the appellant in favour of Hardeep Singh son of Shamsher Singh on the basis whereof, previous sale deeds Ex. P5, P8, P9, P10 and P11 in favour of defendants No. 3, 6 7, 8 and 9 respectively were

upheld and so also sale deed Ex. P12 to the extent of 6 biswas of land in favour of defendant No. 11 but sale to the extent of remaining 4 biswas in favour of defendant No. 11 was set aside being beyond 30 biswas of land owned by the plaintiff/appellant. The appellate Court further held that sale deeds Ex. P6, P7 and P16 executed in favour of defendants No. 4, 5 and 15 respectively cannot be set aside.

Counsel for the appellant would argue that as per power of attorney bearing No. 1028 dated 1.7.2004 Ex. P4, the same was executed in favour of Hardeep Singh son of Shamsher Singh but in some of the sale deeds purported to be executed by Hardeep Singh, he has mentioned name of his father as Gurdial Singh resident of Manjit Nagar in sale deeds Ex. P8 and P5. In sale deed Ex. P6, he has mentioned his father's name as Balkar Singh resident of Manjit Nagar, Patiala. It is argued with vehemence that the very fact that Hardeep Singh used different father's name and address of Manjit Nagar, Patiala in clear contradiction to his father's name as Shamsher Singh and resident of Deep Nagar, Patiala in the power of attorney Ex. P4 and sale deeds Ex. P5, P11 to P15, P17 and P18 is a strong telling circumstance that power of attorney Ex. P4 is the result of fraud practised by said Hardeep Singh upon the appellant, therefore, sale deeds Ex. P5 to P12 are also liable to be set aside.

Another submission made by counsel is that in the sale deeds Ex. P6 and P7, Hardeep Singh has not only changed father's name being Balkar Singh in Ex. P6 and Gurdial Singh in Ex. P7, he even changed particulars of the power of attorney being power of attorney No. 1828 dated 22.7.2004 in Ex. P6 and 1128 dated 8.7.2004 in Ex. P7 when as a matter of fact, no such power of attorneys, reference whereof has been made in Exs. P6 and P7 were executed by the appellant in favour of Hardeep Singh son of Shamsher Singh. Further argued that as the appellant never executed any power of attorney in favour of Rajinder Singh son of Staya Singh, executant of sale deed dated 12.5.2006 in favour of Bawa

Singh defendant No. 15 in respect of 1 biswa of land vide sale deed Ex. P16, the said sale deed has been wrongly upheld by the court in appeal.

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

The appellant has challenged power of attorney No. 1028 dated 8.7.2004 on the ground of fraud. She has clearly averred that the said power of attorney bears attestation of her son-in-law namely Bahadur Singh. Despite there being no contest by the defendants, the trial court refused to accept plea of the appellant that the power of attorney Ex. P4 is either the result of fraud or the same is liable to be set aside. The findings recorded by the trial court negating plea of the appellant in respect of power of attorney Ex. P4 have been affirmed by the court in appeal meaning thereby that the courts have recorded concurrent findings rejecting claim of the plaintiff/appellant that the registered power of attorney Ex. P4 is the result of fraud played upon her. The appellant for the reasons best known, did not examine Bahadur Singh, her son-in-law, who admittedly has appended his signatures on the power of attorney, a registered document. The mere fact that Hardeep Singh in certain sale deeds has mentioned his father's name as Gurdial Singh and one of the sale deeds as Balkar Singh is not sufficient to substantiate plea of the appellant that power of attorney Ex. P4 is the result of fraud. The sale deeds have come into existence subsequent to execution of the power of attorney. The first sale deed dated 10.8.2004 executed by Hardeep Singh on the basis of power of attorney in question contains the same address of Hardeep Singh as has been mentioned in the power of attorney itself. Counsel for the appellant has failed to point out any materials on record to show that consistent findings recorded by the courts negating plea of the appellant that power of attorney Ex. P4 is the result of fraud suffer from perversity and liable to be interfered with in the regular second appeal. In this view of the matter, findings recorded by the courts rejecting claim of the appellant that power of

attorney Ex. P4 is the result of fraud or liable to be set aside on any score whatever are ordered to be affirmed.

As per plea of the appellant/plaintiff, sale deeds Ex. P5 to P18 have been executed by Hardeep Singh son of Shamsher Singh, the power of attorney holder as per power of attorney Ex. P4 but he has changed his father's name and address in certain sale deeds as pointed out hereinbefore. As the appellate court has affirmed findings of the trial court that power of attorney Ex. P4 was executed by the appellant authorizing Hardeep Singh to sell land measuring 30 biswas and she is bound by the same, the appellate court has rightly upheld the sale deeds executed upto 30 biswas of land and the same are Exs. P5, P8 to P11 and to the extent of 6 biswas out of 10 biswas sold vide sale deed Ex. P12. The first appellate court has set aside the sale deeds Ex. P13 to P15, P17 and P18 executed by said Hardeep Singh on the basis of same power of attorney Ex. P4 being beyond his authority as the power of attorney was given only in respect of 30 biswas of land.

This brings the court to sale deeds Ex. P6 and P7 executed by Hardeep Singh and P16 executed by Rajinder Singh. So far as sale deed Ex. P16 executed by Rajinder Singh is concerned, Rajinder Singh son of Satya Singh has not been impleaded as a defendant, therefore, the appellant was not competent to assail the sale deed executed by Rajinder Singh in favour of Bawa Singh on the basis of power of attorney No. 2810 dated 7.8.2004. This apart, appellant examined Inder Kumar, Registration Clerk PW2 but nothing has been put to the witness that no such power of attorney bearing No. 2810 dated 7.8.2004 in favour of Rajinder Singh son of Satya Singh exists in the records of concerned registering authority. In this view of the matter, findings recorded by the court in appeal that sale deed Ex. P16 cannot be set aside are liable to be affirmed and ordered accordingly.

Coming to sale deeds Ex. P6 and P7, sale deed Ex. P6 finds

reference to power of attorney No. 1828 dated 22.7.2004. It is none of the plea of the appellant that no such power of attorney No. 1828 dated 22.7.2004 was executed by her or no such power of attorney actually exists in the records of registering authority, Patiala. PW2, the witness examined by the appellant is conspicuously silent that there is no record available in respect of power of attorney No. 1828 dated 22.7.2004 in favour of Hardeep Singh. Similarly, in sale deed Ex. P7, there is reference to power of attorney No. 1128 dated 8.7.2004. Again, there is no plea raised by the appellant that no such power of attorney was executed by her or no such power of attorney exists in the records of the registering authority. Statement of PW2 is also silent with regard to non-existence of record pertaining to power of attorney No. 1128 dated 8.7.2004. In this view of the matter, the court in appeal has rightly held that sale deeds Ex. P6. P7 and P16 cannot be set aside on the basis of averments raised in the plaint and evidence adduced by the appellant.

No other point has been raised.

For the foregoing reasons, findings no merit, the appeal fails and accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

May 22, 2018

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No