

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

**RSA No.893 of 2014 (O&M)
Date of Decision: February 01, 2018**

Gurbachan Singh and others ...Petitioners

Versus

Harbans Kaur and others ..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S.Aulakh, Advocate
for the petitioners.

Mr. M.K. Dogra, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

The brief facts that are necessitated for judicious adjudication of the present regular second appeal are to the effect that one Joginder Singh (since deceased) now being represented by his legal heirs claiming to be son of one Fauja Singh @ Fauja Ram, son of Buta Ram filed a suit against defendants seeking declaration to the effect that the plaintiff being the legal heir of Fauja Singh @ Fauja Ram, r/o Village Bandala Nau, Tehsil Zira, District Ferozepur is owner of the land measuring 79 kanals and 03 marlas detailed in the suit as per jamabandi for the years 1994-95 situated in village Bandala, Tehsil Zira and that the sale deed dated 7.2.1992 (herein after referred as 'first sale deed') alleged to have executed by defendant No.1 Gurbachan Singh in favour of defendants No.2 to 7 Jugraj Singh, Gurmukh Singh, Jora Singh @ Jorawar Singh, Jand Singh, Assa Singh and Gurbax Singh and another sale deed regarding land measuring 07 kanals and 02 marlas alleged to have executed by Jand Singh in favour of

defendants No.8 to 11 were illegal against law and did not vest any right title and interest with the beneficiary and consequential relief of possession of the said land. It is pertinent to refer here that present subject matter pertains to first sale deed.

The claim as canvassed is that the land was originally owned by Central Government and was allotted to deceased Fauja Singh @ Fauja Ram and due to his inability to manage the land he is alleged to have authorised through power of attorney defendant No.1 Gurbachan Singh to maintain and manage the same with a rider not to sell the land. It is further alleged that on 27.12.1989 Fauja Singh @ Fauja Ram died in village Wattu, Tehsil Muktsar and plaintiff claimed to be the only son and legal heir of deceased and, thereby, led claim to the property detailed herein and when he failed to get any relief from the revenue authorities led to the filing of the present suit. The defendants filed written statement contesting the claim of the plaintiff besides taking plea of suit being time barred, plaintiff having no locus standi to file suit, thus being not maintainable as plaintiff did not happen to be legal heir of deceased Fauja Singh @ Fauja Ram claiming that a mutation No.413 was duly entered in revenue records, as a consequence to the alienation claiming that General Power of Attorney was registered in the office of Sub-registrar, Zira on the basis of which this alienation was given effect and denied the date of death of Fauja Singh @ Fauja Ram. Defendant No.12 took the plea that though Fauja Singh @ Fauja Ram was original owner of the land and upon his death his legal heirs Gulab Kaur, (widow), Santo, Banso, Palo, Dialo and Nihalo being daughters and three sons Joginder Singh, Inder Singh and Lakha inherited his estate as deceased died

intestate. Thus, claimed that all the legal heirs were entitled to be the owner in equal share of 79 Kanals and 03 marlas land of the deceased. The plaintiff reiterated his stand through replication and following issues were framed:-

1. Whether the plaintiff being legal heirs of Fauja Singh @ Fauja Ram son of Buta Ram is owner of the land as mentioned in the head note of the plaint? OPP
2. Whether the alleged sale deed dated 7.2.1992, alleged to have been executed by defendant no.1 in favour of defendants no.2 to 7 and alleged sale deed of land measuring 7 kanals 2 marlas executed by Jand Singh in favour of defendants no.8 to 11 is illegal against law and liable to be set aside? OPP
3. Whether the plaintiff is entitled for declaration as prayed for? OPP
4. Whether the plaintiff is entitled for relief of possession as prays for? OPP
5. Whether the suit is time barred? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Relief.

Heard learned counsel for the parties. At the very onset, learned counsel for the two sides have pressed upon the questions as to whether the suit was time barred as well as the fact as to the death of Fauja Singh @ Fauja Ram, effect of the alleged power of attorney and consequent sale deed in question. The plaintiff examined three witnesses, whereas, the defendants examined eight witnesses. The trial Court of learned Additional Civil Judge, (Senior Division), Zira through judgment dated 13.11.2009 dismissed the suit of the plaintiff with costs. Consequent upon appeal, through impugned judgment dated 13.12.2013, the Court of learned Additional District and Sessions Judge, Ferozepur allowed the appeal and decreed the suit of the

plaintiff holding that sale deed dated 7.2.1992 alleged to have executed by defendant No.1 in favour of defendants No.2 to 7 and that second sale deed in respect of 07 kanals and 02 marlas executed by Jand Singh, defendant No.5 in favour of defendants No.8 to 11 were illegal and, thus, set aside and mutation Nos.411 and 413 sanctioned on the basis of above sale deeds were also set aside with consequential relief of possession of the said land. During the course of submissions, it is not displaced or disputed by any of the side that the land originally was owned by Central Government which was allotted to deceased Fauja Singh @ Fauja Ram, ordinarily r/o Zira regarding which mutation No.109 was sanctioned in his favour and it is also not the bone of contention that General Power of Attorney Ex.D1 dated 18.5.1970 was executed by deceased. The most contentious issue is over the death of Fauja Singh @ Fauja Ram. The claim of learned counsel for the appellants that deceased Fauja Singh @ Fauja Ram did not die on 27.12.1989 could not be legitimately proved by any tangible evidence as is there in the impugned findings that the Court below has considered oral testimony so sought to be led by defendants comprising of DW1 Santo who had admitted that deceased died on 27.12.1989 at village Wattu, Tehsil Muktsar and even DW2 Mohinder Singh in his cross-examination accepted the fact as to entry regarding death of deceased was made by Chowkidar of the village Wattu after two days of the death and the contesting appellant Gurbachan Singh in his cross-examination had admitted that he did not know about death of Fauja Singh @ Fauja Ram and accepted that at the time of execution of power of attorney the deceased was 70 years of age. More so, it was land bestowed by Central Government to persons of

scheduled caste category and when this witness admitted that he was *Jatt* while deceased belonged to *Mazhabi Sikh* Caste and could not even displace the fact whether deceased died in village Bandala or village Wattu nor could detail relatives of the deceased certainly puts his testimony under cloud. Not much benefit can be drawn out of deposition of DW4 Gurmit Singh, who had only seen deceased 20-25 years prior to the sale deed Ex.D2 which was executed on 07.02.1992 and even DW7 Dalip Singh accepts the death of deceased in village Wattu. Rather the un rebutted documentary proof as to the death of deceased comes through his death certificate Ex.P4 which is issued by Additional District Registrar, Birth and Death, Muktsar and shows date of death of deceased as 27.12.1989. Learned counsel for the appellants could not rebut the contentions of learned counsel for the respondents by what evidence he is able to undo the effects of Ex.P4. Thus, in the light of the same, it irrevocably established beyond any reasonable doubt that deceased died on 27.12.1989.

The subject matter of present dispute before this Court revolves around sale deed dated 07.02.1992 alleged to be executed on the basis of power of attorney of Fauja Singh @ Fauja Ram which is a registered document registered on 18.5.1970, so once a principal has died power of the agent to act on behalf of principal ceased to hold good. Section 182 of the Contract Act, 1872 defines that an Agent is a person employed to do any act for another, or to represent another in dealings with third persons and Section 186 of this Act provides that authority of an Agent may be expressed or implied and which terms are defined in Section 187 of the Act. As is there and so is the contention that power of attorney Ex.D1 which was

executed on 18.5.1970 and the established death of Fauja Singh @ Fauja Ram to be on 27.12.1989 shows that on the date of death the power of attorney ceases to hold good and, therefore, an Agent could not execute sale deed on 7.2.1992 much after the death of principal for which this Court seeks reliance on 2002(4) RCR (Civil) 666 Rajinder Kumar vs. State of Punjab . Since relation of principal and agent is a fiduciary relationship, any such act upon extinction of this authority to the Agent by the principal ceases to be there and, therefore, any act done in the name of the principal by the agent after the death of principal would have no affect on the property of the deceased. The trial Court in his judgment had thrown off to the winds the pedigree table produced by Smt Santo DW1 along with her affidavit Ex.DW1/A when there was no testimony or evidence contrary to it certainly runs contrary to the canons of law and how the Court has held that pedigree table produced by this witness is not authenticated certainly in the absence of any evidence otherwise could not have been taken in that manner.

The Court below has taken due care of evidence and facts and has come to a justifiable conclusion that Power of Attorney Ex.D1 executed by Fauja Singh @ Fauja Ram in favour of defendant No.1 stood revoked with the death of Fauja Singh. Thus, the conclusion drawn to this effect by the Court below does not need to be disturbed.

Furthermore, the very onus to prove issue No.5 whether the suit was time barred was placed on the defendants. Learned counsel for the appellants could not bear out any evidence oral or documentary to show that the suit of the plaintiff was time barred when it is the stand of the

plaintiff taken in the plaint that the cause of action arose to him against the defendants about six months prior to the filing of suit which is dated 24.3.1998 and there is no rebuttal to this evidence by the appellants-defendants. Since onus of this issue was placed upon defendants/appellants, learned counsel for the appellants could not bear out any evidence to prove this issue. Learned trial Court while adjudicating this issue No.5 has merely on the premise that since execution of sale deed was a notice to world at large and was executed on 7.2.1992 the suit was barred by limitation and rather has sought to think as if onus lays upon the plaintiff to prove this issue. The plaintiffs have categorically stated as to the knowledge of the sale deed and consequent leading to filing of the suit and which needs to be sufficiently disproved by the defendants and who were supposed to prove issue in his favour regarding which no semblance of evidence has come forth in the testimony of defendants-appellants. Thus, the suit is certainly within the prescribed period of limitation.

No other point was raised by the learned counsel for the two sides.

In the light of what has been detailed and discussed above, no cause to show indulgence by this Court is made out. The appeal being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 01, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No