

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

**RSA No.5478 of 2017 (O&M)
Date of Decision.29.08.2018**

Baldev Singh

.....Appellant

Vs

Hari Singh (deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Baltej Singh Sidhu, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.14543-C of 2017

The application for impleading the legal representatives of deceased-respondent No.1 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.5478 of 2017

The appellant-plaintiff has not been successful before the Courts below in claiming relief of declaration and permanent injunction by setting aside the sale deed dated 12.03.2013 purportedly executed by Hari Singh (since deceased)-defendant No.1 and Sukhdev Singh-defendant No.2 in favour of beneficiaries i.e. sons of Hardev Singh and Babu Singh.

Originally the suit was filed on 01.05.2013 against Hari Singh, vendor, Sukhdev Singh and other brothers including beneficiaries of suit property on the premise that Hari Singh at the time of execution of sale deed was 95 years of age and other brothers i.e. Hardev Singh and Babu Singh got executed a power of attorney

from Hari Singh and Sukhdev Singh on 07.03.2013 at Bathinda whereas the sale deed was executed at Gidderbaha on 12.03.2013 for a consideration of ₹30,70,000/- which has not been proved to have been paid to the vendors. It was stated that the suit property at the hands of Hari Singh was ancestral as he inherited the same from his father Arjun Singh and Arjun Singh from his father Rup Singh, therefore, being fourth generation in lineage, plaintiff had a right by birth.

Defendants No.1 to 8 contested the suit and denied the nature and character of the property to be ancestral. It was averred that Hari Singh was owner of self-acquired property and he could deal with the property in any manner. The sale deed was for a valuable consideration.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration fully detailed in the head-note of the plaint? OPP*
- 2. Whether the GPA dated 07.03.2013 is illegal, null and void?*
- 3. Whether the plaintiff is entitled to permanent injunction? OPP*
- 4. Relief.”*

The plaintiff examined himself as PW1 and brought on record documents Ex.P1 to P16, Ex.PA and affidavit Ex.PW1/A.

On the other hand, defendants examined Darshan Singh as DW1, Baljeet Singh as DW2, Gurpreet Singh as DW3, Gursewak

Singh as DW4, Gurcharan Singh as DW5 and Rajvir Singh as DW6 and tendered into evidence documents Ex.D1 to D11.

The trial Court on the basis of evidence brought on record, dismissed the suit and the findings of fact and law arrived at by the trial Court were reiterated in appeal by the lower Appellate Court.

Mr. Baltej Singh Sidhu, learned counsel appearing on behalf of the appellant has given up the plea with regard to nature and character of the property being ancestral but raised plea with regard to fraud having been played upon Hari Singh and Sukhdev Singh. He submitted that ingredients as incorporated under Order 6 Rule 4 CPC had been proved to the hilt. The oral testimony vis-a-vis health of Sukhdev Singh had not been shattered, though no medical record qua his health was brought on record. The defendants have miserably failed to prove payment of ₹30,70,000/-, much less, execution of GPA from Hari Singh and Sukhdev Singh at Bathinda as the suit property was situated at Gidderbaha. Even the General Power of Attorney was executed on 07.03.2013 and the sale deed was executed and registered on 12.03.2013. No doubt, the suit was filed on 01.05.2013 but immediately thereafter Hari Singh died on 10.06.2013. The defendants, who had taken stand in the written statement that the property at the hands of Hari Singh was self-acquired, are none else but sons of Hardev Singh and Babu Singh being beneficiaries, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellant, appraised

the paper book and of the view that there is no force and merit in the submissions of Mr. Sidhu, for, once the plea of nature and character of the property has been given up by the appellant-plaintiff, a third party cannot be permitted to raise plea of fraud as Sukhdev Singh from the date of filing of the suit and till now, has not died. It is only Hari Singh, who died after three months of execution of the document. During all this period, he did not aver that any fraud was committed. In such circumstances, the other son who was disgruntled by act of the father and brother, could not lay claim as the sale deed has been executed with regard to portion of the land owned by Hari Singh and Sukhdev Singh and the nature of the property was not proved to be ancestral, therefore, the submissions of Mr. Sidhu cannot be accepted.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2018
Pankaj*

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No