

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No.5508 of 2017 (O&M)

Date of Decision: December 10, 2018

Vishwa Mitter

...Appellant

Versus

Balwinder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Premjit Kalia, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.14519-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 9 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.5508 of 2017

Appellant-plaintiff has not been successful in seeking declaration to be owner/co-sharer in the land by laying challenge to the mutation bearing No.418 entered on the basis of the exchange of land to be null & void, forged and fabricated with consequential relief of permanent injunction restraining the respondent-defendants from alienating and transferring the suit property.

Plaintiff alleged that earlier the suit property was under the ownership of father and sister. Mutation of inheritance of Maya Ram and

Budho was sanctioned in his name, which was reflected in the jamabandi for the year 1987-88 and, thus, he was a co-sharer. Plaintiff, being resident of Uttar Pradesh, had given the land to defendant Nos.1 and 2 on lease. However, in November, 2011 they refused to pay the lease amount and acquired the knowledge that a General Power of Attorney (for short "GPA") executed in favour of defendant No.2 dated 14.07.1992 had been misused as the mutation on the basis of the exchange aforementioned was effected, which was cancelled and the suit was immediately filed.

Defendants opposed the suit and alleged that the exchange and the mutation were on the basis of the power assigned in the GPA, *ibid*, which was in respect of the land situated at Village Kotli Koka.

Plaintiff, in support of the aforementioned pleadings, examined himself as PW-1 and tendered into evidence power of attorney Ex.P1 and jamabandi Ex.P2, whereas the defendants examined Hardev Singh as DW-1 and Muktar Singh DW-2 and brought on record sale deed dated 26.05.1997 Ex.D1, another sale deed dated 28.05.2010 Ex.D2, general power of attorney dated 14.07.1992 as Ex.D3, jamabandies Ex.D4 to Ex.D11.

Plaintiff in rebuttal tendered jamabandi Ex.PX.

Mr. Premjit Kalia, learned counsel representing the appellant-plaintiff submitted that the aforementioned exchange was lacked by any prudence, for, land given back in exchange had not seen the light of the day. In other words, the defendants failed to lead evidence and produce on record the portion of land allegedly transferred in favour of the plaintiff in lieu of the exchange received from the plaintiff on the basis of the GPA. No doubt, mutation was effected on 08.06.1993 but filing of the suit in 2012 cannot be said to be barred by law of limitation.

I am afraid that the aforementioned argument is not sustainable, for, the GPA (Ex.P1) read out in vernacular, reveals that power of mortgage, sale and gift was given to the agent. The onus heavily laid upon the plaintiff to establish that the exchange was bad in law. The ingredients of fraud have also not been proved. In the absence of the same, the defendants even if had no defence or had been proceeded ex-parte, the suit could not have been decreed. Even the proof of lease money in 2011 has not seen the light of the day, thus, the cause of action accrued in 2012 was a figment of imagination as the mutation was effected on 08.06.1993.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact and law arrived by the courts below, which are based on appreciation of oral and documentary evidence. No ground for interference is made out. Resultantly, the appeal is dismissed.

December 10, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No