

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

RSA No.662-2017 (O&M)
Date of decision:-16.10.2018

Kuwar Pal

.....Appellant

versus

Tejpal and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Y.S. Tyagi, Advocate for the appellant.

TEJINDER SINGH DHINDSA, J.(ORAL)

Plaintiff-appellant is in second appeal before this Court having remained unsuccessful in both the Courts below.

Briefly noticed appellant herein as also others being the legal heirs of Dhan Singh (since deceased) filed a suit for declaration with consequential relief of permanent injunction on the pleadings that they are owners in possession of agricultural land measuring 108 kanals which came to their share situated within the revenue estate of Village Wazirpur, Tehsil and District Gurgaon. It was pleaded that the plaintiffs were still in cultivating possession of the suit land. They became aware that defendant No.1 on the basis of a forged General Power of Attorney bearing Vasika No.2176 dated 26.09.1989 has sold the suit land to defendants No.2 to 10 vide different sale-deeds bearing Vasika No.6527 dated 07.11.1989 to Smt. Kusum Kumari; Vasika No.7060 dated 27.11.1989 to Ravi Parkash Aggarwal; Vasika No.7061 dated 27.11.1989 to Smt. Seema Aggarwal; Vasika No.8851 dated 15.01.1990 to Sh. Prem Nath Khanna and Smt. Mini

Khanna; Vasika No.4289 dated 06.07.1994 to Smt. Indrani Malhotra; Vasika No.1530 dated 17.05.1987 to Smt. Priyadarshni Gupta; Vasika No.2140 dated 23.05.1994 to Parkash Khaitan; Vasika No.982 dated 29.04.1994 to Haldibari Tea Association Limited; Vasika No.1529 dated 12.05.1987 to Priyadarshni Gupta and Vasika No.2140 dated 23.05.1994 to Parkash Khaitan.

A stand was taken that the plaintiff had never appeared before the Sub Registrar to execute and register the afore-noticed General Power of Attorney in favour of defendant No.1. Accordingly relief of declaration alongwith permanent injunction was sought to the effect that GPA bearing Vasika No.2176 dated 26.09.1989 and the sale-deeds on the basis of afore-mentioned GPA be declared null and void. It is further prayed that defendants be restrained from dispossessing the plaintiff from the suit property.

Defendants No.1 to 7 chose not to appear despite service and were proceeded exparte. Defendants No.8 and 9 duly appeared and filed their written statement taking a stand that the GPA in question is perfectly valid and was executed in favour of defendant No.1. The sale-deeds are based on such valid GPA and the suit has been filed just to extort money from the defendants.

Suit filed by the plaintiff was dismissed by the Trial Court vide judgment dated 11.02.2016 and the judgement of the Trial Court stands affirmed vide decision dated 02.11.2016 passed by the learned District Judge, Gurgaon.

It has been argued by counsel that the GPA in question was a result of fraud played upon the plaintiff/appellant by

defendants/respondents and he came to know of the same subsequently. Further argued that since the defendants/respondents did not interfere in the peaceful possession of deceased Dhan Singh till filing of the suit as such no cause of action had arisen to file a suit and as such the same has to be construed to be within the period of limitation.

Having heard counsel for the appellant at length and having perused the records of the case that had also been requisitioned, this Court is of the considered view that there is not merit in the instant appeal.

Suit was instituted in the year 2009. A cancellation deed in respect of the GPA in question has been adduced on record by the plaintiff-appellant himself as Ex.P-10. Ex.P-10 would reflect that such document was executed on 13.06.1990 and Dhan Singh is stated to have died in the year 2012. Clearly, Dhan Singh was very much in the knowledge of the existence of the such GPA in the year 1990 itself. The suit has seen the light of delay after a period of 18 years.

No cogent and convincing evidence has been led on record that till the date of filing of the suit deceased Dhan Singh was in possession of the suit land. No independent/respectable person of the village was examined to testify such fact. Mere bald statement of the plaintiff-appellant would not be sufficient to prove the factum of possession.

That apart presumption of truth is attached to the record of Jamabandies ever-since the execution of the sale-deeds in favour of the vendees. Such presumption is certainly rebuttable but no cogent and convincing evidence has been led in such regard.

In the considered view of this Court the appellant has been non-suited by the Courts below by assigning valid and cogent reasoning and on

due appreciation of evidence.

No interference in the matter is called for.

Appeal is dismissed.

Pending application(s) if any shall also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

16.10.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No