

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-42-2001 (O&M)
DATE OF DECISION: 08.07.2019

SHAKUNTLA DEVI

...APPELLANT..

VERSUS

MALKIAT SINGH AND ORS.

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjeev Patiyal, Advocate,
for the appellant.

RAMENDRA JAIN, J. (ORAL)

CM-7467-C-2019

Prayer in this application under Section 151 CPC has been
made for listing the case on an early actual date

Heard.

For the reasons mentioned in the application, same is
allowed and is taken up today.

Main case

Unsuccessful appellant- plaintiff has preferred instant Regular
Second Appeal against judgment and decree of the appellate court
dated 17.08.2000, whereby setting aside the judgment of the trial court
dated 03.03.1997, her suit for declaration, was dismissed.

Briefly, appellant filed a suit for declaration to the effect that she was owner in possession of land measuring 61 kanals 12 marlas as per jamabandi for the year 1988-1999, situated in the revenue estate of village Beh Dullo, Tehsil Dasuya, District Hoshiarpur and that sale deeds executed by respondent-defendant No.1 in favour of respondents No.2 to 5 were without consideration and consent of the appellant and thus, were liable to be declared null and void. Alternatively relief of injunction was also sought to restrain the respondents-defendant to interfere into her peaceful possession or cutting any trees and alienating the suit land in any manner, whatsoever.

After holding trial, the trial court decreed the suit vide judgment and decree dated 03.03.1997.

Being aggrieved, the respondents-defendant preferred appeal before the appellate court, which was accepted vide judgment and decree dated 17.08.2000, dismissing the suit of the appellant.

Learned counsel for the appellant contends that GPA dated 26.12.1989 allegedly executed by appellant in favour of respondent No.1 was result of fraud and misrepresentation. Therefore, the same was liable to be set aside being illegal, null and void. Consequently, sale deeds registered in favour of respondents No.2 to 5 on the basis of aforesaid forged GPA were also liable to be set aside, because respondent No.2 was wife of respondent No.1-GPA holder, whereas respondent No.3 is his close relative and respondents No.4 and 5 were his friends. The appellate court has failed to appreciate that appellant

was an illiterate lady. Her husband was in army and the alleged GPA (Ex.D-1) was got executed fraudulently from her by respondent No. 1 in the absence of her husband for some other purposes, but later on was misused. In support of his argument, he has placed reliance upon judgment of Hon'ble Supreme Court titled as ***"Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another"*, 2011 (4) RCR (Civil) 669** as well as of Himachal Pradesh High Court, titled as ***"Hari Dutt vs. Kamal Singh and another"* 2009 (44) RCR (Civil) 297.**

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds instant appeal completely devoid of any merit for the reasons to follow:-

1. No question of law much less substantial has been raised in the instant appeal. Therefore, it is not maintainable.

2. Registered GPA (Ex.D-1) has been challenged by the appellant on the ground of fraud and misrepresentation. However, it is pertinent to mention that its execution and registration is not denied by the appellant, rather, she took the plea that the same was registered for some other purpose. Since, the appellant herself admits the execution and registration of GPA (Ex.D-1) in favour of respondent No.1, therefore, the plea taken by her that the same was based on fraud and misrepresentation has no legs to stand, inasmuch as, the ingredients of alleged misrepresentation and fraud were not proved against the respondents like a criminal charge.

3. GPA in question was executed and registered on 26.12.1989. As per jamabandi for the year 1988-89 (Ex.Px), Rai Singh was the owner of disputed land. Mutation No.536 regarding his inheritance was sanctioned in favour of the appellant. During his life time, Rai Singh had also appointed respondent No.1 as his general attorney vide registered GPA Ex.DW10/A dated 21.03.1989, authorizing respondent No.1 to execute sale deed, gift deed or to transfer his land in any manner, whatsoever. During his life time, the entire affairs of Rai Singh were managed by respondent No.1. After his death, appellant-plaintiff stepped into his shoes and she too appointed respondent No.1 as her attorney on 26.12.1989 (Ex.D1).

The factum of execution of GPA in favour of respondent No.1 was very much admitted by husband of the appellant-plaintiff namely, Ramesh Chand and its cancellation on 15.11.1990 by issuing notice. Be that as it may, in his notice, appellant did not level any allegation of fraud and misrepresentation against respondent No.1. Discrepancies pointed out by learned counsel for the appellant in the statements of DW-4 Gani Ram, DW-5 Moti Ram marginal witness and DW-1 relate to insignificant aspect of the case, inasmuch as, due execution and registration of GPA is not disputed by the appellant. Sole plea of the appellant that GPA was executed for some other purpose has no evidentiary value or legal sanctity for setting aside the GPA in the absence of any cogent and convincing evidence, more particularly, when it was scribed by a deed writer and the appellant affixed her

signature in his presence. DW5-Moti Ram categorically testified that before signing, the contents of GPA was read over to the appellant and she had signed the same after admitting its correctness. The Sub-Registrar also enquired about the correctness of GPA (Ex.D-1). No suggestion was given to DW-5, Sarpanch of the village qua alleged fraud and misrepresentation or to any of the witness. It has come in evidence that some part sale consideration was paid by respondents No.2 to 5 had passed to the appellant for marriage of her daughter. It also came in evidence that some extra sale consideration was paid to the appellant than mentioned in sale deeds.

In the given facts and circumstances, the authorities relied upon by learned counsel for the appellant, are altogether on different issue and distinguishable on facts of the present case. Therefore, no benefit of the same can be given to the appellant, inasmuch as, father of the appellant had also executed GPA in favour of respondent No.1.

In view of the discussion above, the instant appeal is dismissed.

08.07.2019*sonika***(RAMENDRA JAIN)
JUDGE****Whether speaking/reasoned
Whether reportable****Yes/No
Yes/No**