

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

(1) **Regular Second Appeal No.3800 of 2012 (O&M)**
(2) **Regular Second Appeal No.4383 of 2012 (O&M)**

Date of Decision: January 17, 2019.

Rashpal Kaur

.....**APPELLANT(s).**

VERSUS

Neermal Suri and others

.....**RESPONDENT(s).**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellant (s).

Ms. Rishma Verma, Advocate
for the respondent No.1.

SURINDER GUPTA, J.

Both the above captioned appeals have been taken up together as these belong to property of Gurbachan Singh father of appellant Rashpal Kaur and respondent No.1 Neermal Suri. While Rashpal Kaur-appellant filed suit (Civil Suit No.57 of 2009) seeking declaration of her title over the suit property on the basis of Will of her father dated 16.02.1995 and claiming the relief of permanent injunction to restrain the defendants from interfering in her possession; Neermal Suri-respondent filed suit (Civil Suit No.142/2008) claiming title of the suit property on the basis of sale deed dated 26.03.1998 executed in his favour by his father.

The Courts below held the Will dated 16.02.1995 executed by

Gurbachan Singh in favour of Rashpal Kaur as a legal and valid document.

The sale deed executed by Gurbachan Singh in favour of respondent Neermal Singh was also held to be validly executed. Gurbachan Singh died on 16.06.2000. As he had executed the sale deed dated 26.03.1998 regarding the suit property in favour of his son Neermal Suri, as such, the claim of title raised by appellant Rashpal Kaur over the suit property was discarded and the suit of respondent Neermal Singh seeking possession of the suit property was decreed.

Rashpal Kaur filed appeals against the judgment and decree passed by the lower Court, which were also dismissed. Not satisfied, she has filed the above captioned appeals, challenging the judgment and decree passed by the Courts below.

Learned counsel for the appellant has argued that the suit property was owned by Gurbachan Singh. Neermal Suri and Avtar Singh sons of Gurbachan Singh are living abroad. Brother of appellant namely Neermal Suri had never contributed for the purchase of the suit property by Gurbachan Singh. At the time of execution of alleged sale deed dated 26.03.1998, no consideration was paid, as such, it is a fake document. The Courts below have failed to look into the circumstances leading to execution of the sale deed. Due to strained relations with her husband, marriage of the appellant got dissolved by way of decree of divorce. In order to assure future of his daughter and grand children, Gurbachan Singh executed the Will dated 16.02.1995 in her favour thereby bequeathing suit property to her. She was living with her father and serving him. The Courts below have not taken note of the fact that Neermal Suri was in dominant position and sale deed in question is result of his influence over his father

Gurbachan Singh. After its execution, sale deed was kept concealed and no efforts were made to get the revenue record corrected in his name. It was disclosed by Neermal Suri after death of his father only when suit was filed by the appellant. In support of his contention, he has placed reliance on the observations of a Co-ordinate Bench of this Court in case of ***Akash Deep Vs. Surinder Dhir (RSA No.1423-2011, decided on 25.05.2011)***, wherein a sale deed got executed by exercising undue influence was ordered to be set aside.

The case of the appellant is that she was living with, serving and looking after her father. Neermal Suri was living abroad. This demolishes the plea of learned counsel for the appellant that sale deed dated 26.03.1998 was got executed by exercising undue influence over Gurbachan Singh. Execution of the sale deed was duly proved. Even the witness examined by appellant namely Bachan Singh Lamberdar, who was examined to prove the Will executed by Gurbachan Singh in favour of appellant, had identified the photograph on the sale deed (Ex.D3) as that of Gurbachan Singh. The factum of payment of consideration was also recorded in the sale deed itself. This shows that Gurbachan Singh though executed the Will regarding the suit property in favour of appellant but later on he sold this house in favour of his son Neermal Suri and at the time of his death, he was left with no interest in the suit property.

The citation referred by learned counsel for the appellant is not applicable to the facts and circumstances of the case. In that case, the vendee had relations with vendor and taking undue advantage of her unstable mental state, got executed sale deed of her property in his favour.

A criminal case was also got registered against vendee and keeping in view the facts and circumstances of the case, Co-ordinate Bench has observed that “it is settled principle that incident of fiduciary relationship raises a presumption of undue influence and the onus is on a person holding the position of confidence and trust to show that transaction is a fair one and not brought-forth by the fiduciary relationship.”

In this case, the above proposition is not applicable as the appellant herself was living with her father, taking care of him and there was no reason or occasion for his son Neermal Suri, who was living abroad, to exercise undue influence on his father. As per the appellant, her mother had died long ago and her father due to love and affection, executed Will dated 16.02.1995 in her favour, which pertains to the house in question and other properties. It appears that at later stage, father opted to sell this house leaving other properties in Will with Rashpal Kaur. Both the Courts below have looked into the entire evidence and have committed no error of law while concluding that sale deed dated 26.03.1998 executed by Gurbachan Singh is proved to be a legal and valid document.

On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in these appeals, which have no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

January 17, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***