

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

**RSA No.4119 of 2016 (O&M)
Date of Decision.21.05.2019**

Ram Sarup (since deceased) ...Appellant

Vs

Gopal Sarup @ Gopal Ram and another ...Respondents

RSA No.6984 of 2016 (O&M)

Ram Sarup (since deceased) ...Appellant

Vs

Surasti @ Saraswati (since deceased) through LRs ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.10589-C of 2016 in RSA No.4119 of 2016

For the reasons stated in the application, delay of 6 days
in filing of the appeal is condoned.

Application is allowed.

C.M. No.18075-C of 2016 in RSA No.6984 of 2016

For the reasons stated in the application, delay of 41 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.18076-C of 2016 in RSA No.6984 of 2016

Mr. Harsh Aggarwal submitted that since the sale of
property was by an attorney holder of his mother, he was not a party.

The relief claimed is for declaration and not for cancellation,

therefore, would be liable to pay only court fee and not ad valorem court fee under Section 7 (iv) (c) of the Court Fees Act.

I am in agreement with the aforementioned contention as the plaintiff was a third party and there was no prayer for cancellation of the sale deed, as it was a declaratory relief.

The application is allowed and the appellant-plaintiff is exempted from filing court fee.

Main Case

This order of mine shall dispose of two regular second appeals arising out of two civil suits. RSA No.6984 of 2016 arose out of civil suit No.179-1 of 2009 titled as 'Ram Sarup Vs. Surasti alias Saraswati (now deceased) through LRs and others' (hereinafter called the first suit) filed by the appellant-plaintiff wherein declaration of ownership on the basis of transfer deed dated 20.07.2009 and challenge to the sale deed dated 01.07.2009 has been dismissed by allowing the counter-claim.

RSA No.4119 of 2016 arose out of civil suit No.35-I titled as 'Gopal Ram vs. Ram Saroop and another' (hereinafter called the second suit) on behalf of the appellant-defendant whereby suit of the plaintiff for permanent injunction decreed by the trial Court and also affirmed in appeal.

The plaintiff Ram Sarup alleged that his mother Surasti alias Saraswati (since deceased) was owner of the land measuring 286 kanals 10 marlas. During her life time, executed a registered power of attorney dated 29.10.2003 in favour of Gopal Ram, her brother and maternal uncle of the appellant-plaintiff. The trust reposed on him

turned mala fide, resulting into sale deed dated 1.7.2009 in favour of defendants No.3 to 6 i.e. during the pendency of the suit for injunction filed by him in February, 2009. The aforementioned power of attorney was cancelled on 6.7.2009. Defendant No.1 (since deceased) transferred the entire land vide transfer deed dated 20.07.2009 Ex.P1. Defendant No.1 unfortunately died on 10.08.2009 whereas the present suit had been filed on 19.08.2009.

Defendant No.2 in the first suit and plaintiff in the second suit alleged that it was a registered power of attorney. Entire sale consideration was passed on. He was a tenant of land measuring 77 kanals 14 marlas for the more than forty years and enjoying peaceful and uninterrupted possession. Plaintiff in connivance with the Naib Tehsildar got changed khasra girdawari. It was explained that Surasti was not owner of land measuring 286 kanals 10 marlas. She sold the land measuring 36 kanals 14 marlas by way of sale deed in favour of Satpal and Sunil etc. and 2 kanals 11 marlas in favour of Suridner Kumar, Sham Lal son of Om Parkash and similarly land measuring 92 kanals 8 marlas to defendants No.3 to 6 vide sale deed dated 1.7.2009 and 7 kanals 17 marlas i.e. 1/10 share of land measuring 78 kanals 11 marlas and 6 kanals 17 marlas i.e. 1/10th share of land measuring 68 kanals 9 marlas and in all, sold 117 kanals out of 346 kanals 11 marlas i.e. 1/3rd share of Khewat No.01 and remained owner of land measuring 229 kanals 12 marlas, thus, on 20.07.2009 she was not owner of land measuring 286 kanals 10 marlas.

Plaintiff in support of aforementioned pleadings,

examined Surinder Kumar Jasuja, document writer as PW1, himself as PW2, Ramesh Dhingra, Registration Clerk as PW3 and brought on record documents Ex.P1 to P8. Defendants examined Vinod Kumar as DW1, Ram Gopal appeared as DW2, Jagdish as DW3, DW4 Inderjit and brought on record documents Ex.D1 to D19.

Defendant No.2 had also set up a counter claim by virtue of the sale deed.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant submitted that both the Courts below non-suited the plaintiff by rejecting the transfer deed Ex.P1 on the ground that the same remained unproved as it was pertaining to some other land and not subject matter of the sale deed dated 01.07.2009. As per revenue record, possession had been with the plaintiffs, therefore, injunction granted is wholly illegal and fallacious. The alleged tenancy was not proved. Though it was registered power of attorney but there was a gross misuse and breach of trust, resulting into cancellation of the same on 6.7.2009. Therefore, by virtue of transfer deed 20.07.2009, Surasti had no alienating right. Unfortunately she died, therefore, giving cause of action to claim declaration and challenge the impugned sale deed. The counter-claim was not maintainable.

In support of aforementioned contention, relied upon judgment of Hon'ble Supreme Court in **Swaran Kaur and others Vs. Jal Kaur and others 2001 (4) RCR (Civil) 739** to contend that even if the attorney envisaged power to sell but in the absence of the necessity, the Court can always examine and set aside the same.

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 replication, the alleged sale deeds referred to above by the defendants were not emphatically denied. The onus to prove the fraud and misrepresentation as per the provisions of Order 6 Rule 4 CPC lays heavily on the plaintiff. The best possible evidence i.e. bank account statement reflecting non-receipt of consideration has been withheld. One line in the cross-examination of the defendant, which was referred to during the course of hearing would not make out the case of the plaintiff as it is the plaintiff, who has to stand on his own legs. The transfer deed of 20.07.2009 was *non est* in the eyes of law, in view of the registered document dated 01.07.2009. It could have been only after setting aside of the sale deed. In other words, Surasti had no alienable right on 20.07.2009. The injunction granted qua 92 kanals 8 marlas was a necessary corollary, as the counter-claim of defendants granting a declaration was on the basis of sale deed, which has been proved through examination of testimony of witnesses. The cancellation of power of attorney on 6.7.2009 after the sale deed could not confer any ownership on mother. All these factors have been examined by both the Courts below. There is no dispute to the ratio decidendi culled out but the facts and circumstances narrated above would lead to irresistible conclusion that the ratio would not be applicable to the present case. The trial Court remained oblivious of the fact that the transfer deed was of the entire piece of land owned by the mother *de hors* of the sale deeds referred to in the written statement but it could have been rejected qua parcel of land subject

matter of the sale deed.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No