

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

**RSA No. 3434 of 2018 (O&M)**

Date of decision : September 05, 2019

Mukhtar Singh @ Mukhtiar Singh and others

.....Appellants

Versus

Sukhwinder Singh and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Veneet Sharma, Advocate  
for the appellants.

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**LISA GILL, J.**

Appellant - plaintiffs are aggrieved of judgment and decree dated 20.04.2013 passed by the learned Civil Judge (Senior Division), Tarn Taran as well as judgment and decree dated 09.08.2016 passed by the learned Additional District Judge, Tarn Taran, whereby their suit for declaration and permanent injunction was dismissed.

Appellants – plaintiffs filed a suit seeking declaration to the effect that plaintiff – appellant No. 1, to the extent of 1/4<sup>th</sup> share, besides plaintiffs No. 2 to 4, to the extent of 3/4<sup>th</sup> share are owners in possession of the property in question as detailed in the plaint. It is further prayed that the General Power of Attorney (for short – 'GPA') dated 26.10.2006 allegedly executed in favour of defendant No. 1 by the plaintiffs and sale deeds dated 09.11.2006 executed by defendant No. 1 on the basis of the said GPA dated 26.10.2006 in favour of defendant No. 2 are a result of fraud, misrepresentation, cheating, without consideration, inoperative, null and void qua the plaintiffs. Relief of permanent injunction was also sought. It is pleaded that the suit property was initially owned by Suba Singh son of Surain Singh, who sold the same to plaintiff No. 1 to the extent of 1/4<sup>th</sup>

share and plaintiffs No. 2 to 4 to the extent of 3/4<sup>th</sup> share vide sale deed 25.01.1991 for consideration. Possession of the property was delivered to them. Plaintiffs are claimed to be residing jointly on the property availing basic amenities like electricity, water supply etc., the bills of which were paid by them. It is further stated that defendant No. 1 alleging himself to be the GPA of the plaintiffs and in connivance with defendants No. 2 and 3 conspired to grab the plaintiffs' property. GPA dated 26.10.2006 is stated to be null, void and not effective qua the rights of the plaintiffs. Consequently, sale deed dated 09.11.2006 executed on the basis of the power of attorney dated 26.10.2006 is illegal, inoperative, null and void qua the plaintiffs' right. Defendants refused to admit their claim, therefore, the suit was filed.

Defendants resisted the suit. Separate written statements were filed by defendants No. 1 and 2. Defendant No. 1 denied the plea that GPA dated 26.10.2006 was never executed in his favour. It is claimed to be a genuine document on the basis of which the property was transferred to defendant No. 2 on 09.11.2006 vide registered sale deed. Subsequent, revocation of the said GPA by the plaintiffs, it is stated, amounts to an admission of the execution of GPA. Dismissal of the suit was prayed for.

Defendant No. 2 in his separate written has raised various preliminary objections. It is denied that the sale deed in favour of defendants No. 2 and 3 is not valid. It is stated that the property was agreed to be sold by the plaintiffs to defendants No. 2 and 3 for a total consideration of ₹13,50,000/- out of which initially a sum of ₹1,75,000/- was paid through bank draft and ₹25,000/- in cash. Plaintiff No. 3 deposited the bank draft in his account maintained in Tarn Taran Central Co-operative Bank. It was further agreed that full and final payment would be made on 26.10.2006 at

the time of execution of the sale deeds and delivery of vacant possession. The amount, as detailed in the written statement, was duly paid to the plaintiffs, who executed separate receipts for the same. GPA dated 26.10.2006 is stated to be valid and the sale deeds executed pursuant thereto, is also claimed to be a valid instrument. Defendant No. 2 claimed to be a bona fide purchaser of the property for consideration.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP.
2. Whether the suit of the plaintiff is maintainable in present form?OPP
3. Whether the plaintiff is estopped by his own act and conduct from filing the suit?OPD
4. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that the plaintiffs failed to prove their case on the basis of the evidence on record. Consequently, their suit was dismissed. GPA dated 26.10.2006 was held to be validly executed as were the sale deeds dated 09.11.2006. Receipt of the consideration amount by the plaintiffs was also concluded to be proved. Appeal preferred by the appellants was also dismissed by the learned Additional District Judge, Tarn Taran vide judgment dated 09.08.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned courts below have erred in fact and on law in dismissing the suit

filed by the present appellants. Evidence on record clearly shows that the GPA is an act of connivance of defendant No. 1 with defendants No. 2 and 3 to grab the plaintiffs' property. Said Power of attorney was never executed by the plaintiffs in favour of defendant No. 1. Therefore, any act done on the basis of said GPA is clearly null and void and cannot affect the rights of the plaintiffs. Moreover, the plaintiffs have revoked GPA dated 26.10.2006. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 20.04.2013 passed by the learned Civil Judge (Senior Division), Tarn Taran as well as judgment and decree dated 09.08.2016 passed by the learned Additional District Judge, Tarn Taran be set aside and suit filed by the appellants - plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have perused the file with his able assistance.

The plaintiffs have laid foundation of their suit by submitting that they never issued any GPA dated 26.10.2006 in favour of defendant No. 1, therefore, consequential sale of the property by defendant No. 1 in favour of defendants No. 2 to 3 is not binding on their rights. However, it is a matter of record that the plaintiffs have not taken a specific and definite stand in respect to the execution of the GPA. Initially, execution of the GPA is denied by the plaintiffs but subsequently they have changed their stand and have taken a plea that the said GPA was executed by the plaintiffs in favour of defendant No. 1 for the limited purpose of taking care of their land. It was never their intention to execute the said General Power of Attorney for the purpose of sale of land. The plaintiffs subsequently claimed to have revoked the said GPA on 19.12.2006 and notice in this regard was duly issued to defendant No. 1. However, it is a matter of record that the

sale deeds in this case are dated 09.11.2006 i.e. prior to the revocation of the GPA. Learned counsel for the appellants is unable to deny that specific power of alienation has been conferred upon defendant No. 1 vide GPA dated 26.10.2006. The plaintiffs have indeed failed to lead any evidence on record to prove that the said clause was incorporated as a result of any kind of misrepresentation or fraud on the part of defendant No. 1.

It is pertinent to note at this stage that the defendants have led positive evidence on record to show the receipt of the consideration amount by the plaintiffs. A sum of ₹11,25,000/- was deposited in the account of plaintiff No. 3 - Mangat Singh on 26.10.2006 and the bank statement has been proved on record as Ex. D6. PW3 Mangat Singh has revealed the detail of his account in Central Co-operative Bank, Tarn Taran and admitted that the same tallies with the document Ex.D4. The amount in question was deposited on 26.10.2006 i.e. the date on which the General Power of Attorney was executed in favour of defendant No. 1. There is indeed no merit in the argument that the said deposit is inconsequential as the sale deed in question was executed on 09.11.2006, therefore, this amount cannot be treated towards any sale consideration. Learned counsel for the appellants is unable to deny that there is no evidence to show as to why and for what reason this amount was deposited in the account of Mangat Singh by Harjiit Singh – defendant No. 3. It is to be noticed at this stage that as per the evidence on record the amount in question is proved to have been deposited in the account of Mangat Singh by Harjit Singh. Possession of the plaintiffs over the suit property has also not been proved on record. Ex.D8 is the judgment passed in an earlier suit between the plaintiffs and one Surjit Singh. Plaintiffs' suit was ordered to be dismissed and the counter claim

preferred by Surjit Singh was decreed. In the factual matrix of the case, as discussed in the foregoing paras, execution of the General Power of Attorney dated 26.10.2006 by the plaintiffs in favour of defendant No. 1 and consequent execution of sale deed dated 09.11.2006 in favour of defendant No. 2 for consideration is duly proved on record.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record. Learned counsel for the appellants is unable to point out any substantial question of law which arises for consideration in this case or any of the grounds as per Section 41 of the Punjab Courts Act, 1918, which calls for any interference by this Court in second appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 20.04.2013 passed by the learned Civil Judge (Senior Division), Tarn Taran or in judgment and decree dated 09.08.2016 passed by the learned Additional District Judge, Tarn Taran, which calls for any interference.

There is a delay of 79 days in re-filing and 103 days in filing of RSA No. 3434 of 2018. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing and filing of this appeal has been rendered academic. Applications are disposed of, accordingly.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

September 05, 2019  
rts

**(Lisa Gill)**  
**Judge**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No