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

RSA-4827-2017(O&M)

Date of decision : 26.02.2019

Bhanti Devi

... Appellant

Versus

Bhagwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate
for the appellant.

AMIT RAWAL, J.

CM- 12805 -C-2017

For the reasons stated in the application, the delay of 8 days in
filing the appeal is condoned.

CM stands disposed of.

CM-12804-C-2017

For the reasons stated in the application, the delay of 151 days
in refiling the appeal is condoned.

CM stands disposed of.

RSA-4827-2017

The present regular second appeal is directed against the
concurrent findings of fact, whereby the suit of the appellant-plaintiff for
declaration to be owner in possession of land measuring 16 kanals 9 marals,
situated at Charkhi Dadri, by laying challenge to the release deed dated
10.05.2002, on the basis of the power of attorney dated 02.04.2002 and

24.02.1992, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that as per jamabandi, she was the owner in possession of the suit property. Defendant Nos.1 and 2 were her real brother and sister, respectively. On 24.02.1994, she executed general power of attorney in favour of defendant No.2, but no right for execution of release deed was given. The aforementioned attorney was not cancelled, but by playing the fraud upon her, defendant No.2, obtained another power of attorney dated 02.04.2002, on the ground that in the earlier power of attorney, there was no power for seeking release of the suit property. The act of execution of release deed in favour of defendant No.1 was outcome of fraud and concealment.

The defendants opposed the suit by raising preliminary objection of locus standi, maintainability, limitation and on merits, it was stated that general power of attorney was duly executed, which was never cancelled.

The plaintiff examined herself as PW1 and brought on record various documents i.e. EX.P1 to Ex.P9, jamabandis, power of attorney, release deed etc. On the other hand, the defendants examined four witnesses and brought on record Ex.D-1 to Ex.D-9 i.e. release deed dated 10.05.2002, general power of attorney, jamabandis, mutation and khasra girdawaries.

Mr. Aakash Singla, learned counsel appearing on behalf of the appellant-plaintiff submitted that the contents of the power of attorneys, if read together, did not reveal any intention of the plaintiff to give power to the agent i.e. defendant No.2 for executing a release deed. The plaintiff was

resident of Rohtak and acquired the knowledge only in the year 2008, when the suit was filed. The suit cannot be said to be barred by law of limitation as per the provisions of Article 56 of the Limitation Act. The release deed was without consideration. In support of his contentions, reliance has been laid down to the ratio decidendi culled out by this Court in "Smt. Nand Kaur V/s Mastan Singh and others" 1990 CivCC 501.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Singla.

It would be apt to reproduce Article 56 of the Limitation Act, which read thus:-

Article 56		
<i>To declare the forgery of an instrument issued or registered</i>	<i>Three years</i>	<i>When the issue or registration becomes known to the plaintiff</i>

The address given in the memo of parties of the suit shows that the plaintiff to be resident of Charkhi Dadri, where the suit land is situated and also by stating, presently wife of Ramphal resident of Rohtak. No explanation has come forth how and under what circumstances, she acquired the knowledge No sane person would sit idle as the mutation of the suit land, after execution of the release deed, was effected in favour of defendant No.1.

Each and every case has to be decided on the touch stone of evidence and not as a general principle and rule, to follow the ratio with regard to interpretation of the power of attorney. There is no challenge to both the power of attorneys *ibid*, nor the same were cancelled. In such

circumstances, it was nothing, but the case of aggrandizement.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

26.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**