

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

RSA No.4473 of 2018 (O&M)

Date of Decision:12.09.2019

Rajpal and others

.....Appellants

Versus

Manoj Kumar and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Abhimanyu Kalsy, Advocate
for Mr. Manoj Kumar Palwal, Advocate
for the applicant-appellants.

LISA GILL, J.

Appellants, who were arrayed as defendants no.1 to 5, 7, 8 and 10 before the learned trial Court have filed this appeal being aggrieved of judgement and decree dated 30.05.2014, passed by the learned Civil Judge (Jr. Division), Faridabad, as well as judgement and decree dated 31.10.2017, passed by the learned Additional District Judge, Faridabad, whereby suit for declaration and permanent injunction filed by respondent no.1-plaintiff, has been decreed.

Brief facts necessary for the adjudication of the case are that respondent no.1-plaintiff filed a suit for declaration to the effect that power of attorney bearing no. 4/93 dated 22.01.1993, as well as sale deed dated 23.08.1993 and consequent mutation no. 3193 dated 19.09.2006, be declared null, void and not binding upon the right, title or interest of the plaintiff. It is pleaded that Devi Ram, father of the plaintiff was the owner in possession of the suit property, as detailed in the plaint. After the death of Devi Ram, the property devolved upon the legal representatives of Devi Ram including the

present plaintiff. At the time of death of his father, the plaintiff was a minor. Plaintiff's mother-Kasturi Devi, filed a petition under Section 7/10 of the Guardian and Wards Act 1890, seeking to be declared as the guardian of the person and property of the plaintiff, who was a minor at that time. The said suit was decreed on 05.03.1990 by the learned District judge, Faridabad. Plaintiff claimed to have attained majority on 06.07.1990.

It is pleaded that Sheoraj Singh son of Jawar Singh, defendant no.11 fraudulently obtained a power of attorney dated 22.01.1993 from Kasturi Devi (mother of the plaintiff) and on the basis of the said power of attorney, Sheoraj Singh executed sale deed dated 30.08.1993 in favour of Raj Pal Singh and others i.e. defendants no.1 to 5 (present appellants). The said sale deed, it is stated was executed without any consideration. Mutation No. 3193 dated 19.09.2006, was sanctioned on the basis of the said sale deed in a suspicious manner at the plaintiff's back at the instance of defendants no.1 to 5. Power of attorney was kept concealed from the plaintiff. A partition suit, titled as 'Devi Sahay Vs. Kasturi and others' was pending before the Court of Assistant Collector Grade-II, Ballabhgarh and was listed for *Naksha Khe* preparations. It is in this process that the plaintiff came to know of the abovesaid mutation and he obtained a certified copy of this mutation no. 3193 dated 19.09.2006 from the Halka Patwari, Dayalpur on 05.03.2007. Defendants were requested not to dispossess the plaintiff from the suit property and to get the sale deed and mutation cancelled, but to no avail. Hence the suit was filed.

Suit was resisted by defendants no.1 to 4 and 12. Defendants no.5 to 11, were proceeded *ex parte*. In the written statement filed by

defendants no1 to 4, various preliminary objections were raised. It is stated that the plaintiff's mother-Kasturi being the natural guardian of the plaintiff had validly executed the general power of attorney in favour of defendant no.6-Sheoraj Singh qua the suit property on the basis of which the sale deed was validly executed in favour of defendants no.1 to 5.

Defendant no.12-Kasturi Devi, also filed a written statement stating that father of the plaintiff namely Devi Ram was the owner of the suit property. Devi Ram died, leaving behind his legal heirs i.e., plaintiff-Manojson, Kasturi Devi-wife, Kamlesh, Sarla, Munesh-daughters. It is stated that legal representatives of Devi Ram have no right to sell specific killa number, alienate, sell, transfer or to execute any type of deeds in respect of the said property, without partition of the suit property. It is further stated that defendant no.12-Kasturi Devi was appointed as guardian of the plaintiff by the Court in respect of his share of the land. Defendant no.12 was ready to exchange 2 kanals 13 marlas out of 03 kanals as assured by defendants no.1 to 6. However, the said defendants in collusion with each other got prepared a general power of attorney allegedly by defendant no.12-Kasturi Devi, in favour of Sheoraj Singh in respect of land measuring 02 Kanals 04 Marlas. It is further submitted that at the time of execution of the said general power of attorney, plaintiff had already attained the age of majority. Remaining averments in the plaint were denied. Dismissal of the suit was prayed for.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for decree of declaration and permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD

3. Whether plaintiffs have no cause of action and no locus standi to file the present suit?OPD
4. Whether suit is bad for want of concealment of material facts by the plaintiff from the Court?OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, concluded that the plaintiff had attained majority in the year 1990 itself. Therefore, there was no question of execution of a general power of attorney by Kasturi Devi, in the year 1993 in respect to the property belonging to the plaintiff. Suit was filed well within limitation and was decreed to the effect that general power of attorney dated 22.01.1993, sale deed dated 23.08.1993 and consequent mutation, are null, void and not binding upon the right, title, interest of the plaintiff.

Appeal filed by the present appellants was dismissed by the learned Additional District Judge, Faridabad, vide impugned judgement and decree dated 31.10.2017.

Aggrieved therefrom, present appeal has been filed by appellant-defendants no.1 to 5, 7, 8 and 10.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in decreeing the suit filed by respondent no.1-plaintiff. It is submitted that the plaintiff's mother had been appointed as his guardian by the Court of competent jurisdiction. Plaintiff never remained in possession of the property in question, therefore, a suit for mere declaration and injunction is not maintainable. Moreover, the land in

question was validly transferred to the defendants by way of a registered sale deed dated 30.08.1993 on the basis of general power of attorney validly executed by Kasturi Devi in favour of Sheoraj Singh. Suit filed by the plaintiff, it is submitted is hopelessly time barred. It is thus prayed that the present appeal be allowed and the suit filed by respondent no.1-plaintiff, be dismissed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

Learned counsel for the appellants is unable to deny that date of birth of the plaintiff is 07.07.1972. Kasturi Devi, was doubtlessly, declared to be the guardian of the plaintiff by the Court of competent jurisdiction when he was a minor. Admittedly, the plaintiff attained majority on 06.07.1990. It is rightly held by the learned Courts below that date of birth of the plaintiff is proved to be 07.07.1972 as reflected in decision dated 05.03.1990 passed by the Court of competent jurisdiction. Date of birth of the plaintiff is also duly proved by DW-6-Yashvir Singh, Clerk of the Government Senior Secondary School, Faridabad, who produced the record of entry of date of birth in the admission record of the plaintiff, Ex.DW5/1 and copy of the admission form, Ex.DW-6/A.

In the given facts and circumstances of the case, sale deed executed on the basis of the general power of attorney executed by Kasturi Devi on 22.01.1993, is clearly invalid, null and void. Kasturi Devi, admittedly had no authority to execute the said general power of attorney dated 22.01.1993 after the plaintiff attained majority on 06.07.1990. Moreover, Kasturi Devi, while testifying as DW-5, has categorically

deposed that she never sold the share of property of her son and her thumb impression was obtained on plain paper to get the property of her son exchanged with some other property. At this juncture, it is relevant to refer to the testimony of DW-7-Sadasukh. During his cross-examination, DW-7 stated that no consideration passed in his presence and there was only an exchange of land. It is further a matter of record that the property in question has not been partitioned. It is a share in the property, which is stated to be transferred even by way of sale deed dated 23.08.1993. Defendant-Rajpal, who testified as DW-4, has stated that the land of Devi Ram was inherited by his wife and children and he has no knowledge regarding partition of the suit land amongst the legal heirs of Devi Ram.

Both the learned Courts below have rightly decreed the suit filed by the plaintiff and held that the general power of attorney dated 22.01.1993, sale deed dated 23.08.1993 and the consequent mutation to be null, void and ineffective qua the rights of the plaintiff. The Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

“Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappraise the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in

Second Appeal.”

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 30.05.2014 and 31.10.2017 passed by the learned Civil Judge (Jr. Division) Faridabad and learned Additional District Judge, Faridabad, respectively, are upheld.

There is a delay of 120 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

12.09.2019
s.khan

[LISA GILL]
Judge

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