

RSA Nos.998, 331 & 3154 of 2017 (O&M)

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

Date of decision : 09.05.2019

1.

RSA-998-2017 (O&M)

Bakshish Singh

... Appellant

Versus

Keemat Singh and others

... Respondents

2.

RSA-331-2017 (O&M)

Piara Singh (D) through LRs and another

... Appellants

Versus

Bakshish Singh and others

... Respondents

3.

RSA-3154-2017 (O&M)

Karnail Singh and others

... Appellants

Versus

Collector Ludhiana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate and
Mr. Abhishek Dhull, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three regular second appeals
bearing **RSA No.998 of 2017** arising out of Civil Suit No.107-A of 1994

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titled as “Bakshish Singh V/s Keemat Singh and others, (hereinafter called 'first suit') seeking declaration, possession and permanent injunction by challenge the sale deed dated 21.07.1992 executed by Keemat Singh, alleged attorney; **RSA No.331 of 2017** out of Civil Suit No.16 of 1993 titled as “Piara Singh and another V/s Bakshish Singh and others” (hereinafter called 'second suit'), claiming specific performance of agreement to sell dated 28.05.1992, executed by Bakshish Singh, in respect of land mentioned as a,b,c,d, in the headnote of the plaint; and **RSA No.3154 of 2017** out of Civil Suit No.195 of 2003 titled as “Karnail Singh and another V/s The Collector Ludhiana and others” seeking declaration by challenging the order dated 03.10.2002 passed by the Financial Commissioner, Rural Development and Panchayat, Punjab, Chandigarh, in a proceeding initiated for change of revenue entry, as the parties in all the suits are related to each other and the controversy revolves around the property, subject matter of the sale deed.

All the aforementioned suits have been dismissed by the trial Court and affirmed in appeal.

In first suit, Dalip Singh and Bakshish Singh are the real brothers. Dalip Singh had three sons and one daughter i.e. Piara Singh, Karnail Singh, Hoshiara Singh and Ishar Kaur. Hoshiara Singh had three sons i.e. Hakam Singh, Baljinder Singh and Keemat Singh. Bakshish Singh sought the declaration and possession by challenging the sale deeds dated 22.07.1992, 06.08.1992 and 10.08.1992, executed by Keemat Singh, in favour of brothers, Hakam Singh, Baljinder Singh and Paramjit Singh, on the basis of the power of attorney dated 22.06.1992, registered on

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13.07.1992. It was alleged that Bakshish Singh had no intention to execute the power of attorney in favour of Keemat Singh, but in fact, his brother Dalip Singh, wanted to execute and apprise Bakshish Singh to be witness, but it turned to be in other way.

The defendants opposed the suit and stated that it was volunteer act and registered document. The entire sale consideration was paid to Bakshish Singh.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to declaration to the effect that general power of attorney dated 22.06.1992 registered by Vasika No.2177 dated 13.7.92 is illegal, void having no force of law qua the rights of the plaintiff in disputed property and has been obtained by fraud and misrepresentation and coercion by defendant No.1 from the plaintiff? OPP*
- 2. If issue No.1 is proved in the positive, whether the sale deeds executed by defendant No.1 acting as attorney for the plaintiff are void, without consideration having no force of law and has no legal value? OPP*
- 3. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP*
- 4. Whether the present suit is liable to be stayed u/s 10 CPC? OPD*
- 5. Whether the present suit is barred under Order 2 Rule 2 CPC? OPD*
- 6. Whether the present suit is not maintainable in the present form? OPD*
- 7. Whether the plaintiffs are estopped by their act and conduct to file the present suit? OPD*

- 8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 9. Whether the defendants/vendees are bona fide purchasers with consideration without notice? OPD*
- 10. Whether the present suit has been filed by Bakshish Singh at the behest of Piara Singh and Karnail Singh? OPD*
- 11. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 12. Relief.*

It is also a matter of record that before filling the suit on 05.03.1994, Bakshish Singh had cancelled the power of attorney on 14.02.1994.

In second suit, the plaintiffs, Piara Singh and Karnail Singh, sought the specific performance of agreement to sell dated 28.05.1992, alleged to have executed by Bakshish Singh, in respect of land mentioned as a, b, c, d, in the headnote of the plaint, for a total sale consideration of ₹6,70,000/-, by challenging the sale deeds, aforementioned, executed by Keemat Singh in favour of defendant Nos.2 to 4.

Bakshish Singh, in the aforementioned suit, admitted the agreement to sell, but the other defendants contested the suit and also alleged that it was an apparent collusion between Bakshish Singh, Piara Singh and Karnail Singh. It was also alleged that the plaintiffs initiated the proceedings under Section 145 Cr.P.C. and also moved an application under Section 146 Cr.P.C., for attachment of the property, which was, on 02.07.1993, dismissed by the Sub-Divisional Magistrate.

Both the parties led extensive evidence in support of their respective cases, resulting into, dismissal of all the suits. It is, in these

circumstances, the aforementioned appeals have been filed.

Mr. Amit Jain and Mr. Abhishek Dhull, learned counsels appearing on behalf of the appellants, submitted that the attesting witnesses of power of attorney dated 22.06.1992 were Hoshiara Singh and Bagga Singh. The statement of both the witnesses are discrepant, as there was a stark contradiction. The registration after one month is also a reflection of *mens rea* as the real intention to do wrongful act at his back. No sale consideration of the aforementioned sale deed, was ever passed on, resulting into, prompt action of cancellation of the power of attorney and institution of the suit in the month of March 1994. The signatures on the power of attorney, could not be denied, for, it was explained that Bakshish Singh, in order to show respect to the brother's son, Hoshiara Singh, for the purpose of attorney, had gone to the concerned Deed Writer, for executing the power of attorney and the signatures were of Hoshiara Singh and not of Bakshish Singh.

It was next contended that once Bakshish Singh had admitted the execution of the agreement to sell, the sale deeds were liable to be set aside, as the agreement to sell was prior in time than the sale deed, but the Courts below have erroneously disbelieved the agreement as it was allegedly created in order to circumvent the act of power of attorney as well as the sale deeds. The aforementioned findings are neither here and there. There is misreading of the statements of the witnesses, thus, urges this Court for setting aside the judgments and decrees, under challenge.

I have heard learned counsel for the appellants, appraised the paper book as well as the records of the Courts below and of the view that

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there is no force and merit in the submissions of Mr. Jain, for, the cumulative reading of the aforementioned facts, revealed that Bakshish Singh, in fact, had an intention to part with the property and alleged to have executed agreement to sell in the year 1992, in favour of Piara Singh and Karnail Singh, his nephews, whereas the power of attorney and the beneficiaries of the sale deeds, are none-else, but great grand nephews. It is also a matter of record that when the suit was filed in the year 1994, Bakshish Singh was stated to be 70 years' old. The subsequent registration, on 13.07.1992, would not seriously prove the ingredients of fraud and misrepresentation as the sale deeds were also effected between July and August, 1992, whereas the suit was filed on 05.03.1994, particularly when the parties are correlated to each other and residing together. It cannot be believed that Bakshish Singh had no knowledge of same. If at all, he had not received any sale consideration, bank account reflecting non-receipt of the sale consideration, could have been brought. The matter did not rest here and created another story of filing the suit in 1993, claiming specific performance of agreement to sell of May 1992, which has been disbelieved by the Courts below, to be an afterthought. Neither the Register of the Deed Writer has been placed on record to establish that it was actually effected in May 1992. All these facts lead to an irresistible conclusion that the intention of Bakshish Singh was, for the sake of repetition, to part with the property.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees, under challenge, much less, no substantial question of law arises for

determination. No ground is made out for interference.

Resultantly, the second appeals are dismissed.

09.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned ☒ Yes/ No

Whether Reportable ☒ Yes/ No