

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : FAO No. 4564 of 2016

Date of Decision : February 04, 2020

Navita Sapra and others Appellants

vs.

General Public and another Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. P.S.Khurana, Advocate
for the appellants.

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MEENAKSHI I. MEHTA, J. :

Feeling aggrieved by the judgment dated 13.07.2015, as handed down by learned Civil Judge (Senior Division), Kurukshetra, whereby the petition, as preferred by the appellants under Section 8 of the Hindu Minority and Guardianship Act, 1956 seeking permission to sell 1/3rd share of each of appellants no.2 and 3 in the land as detailed in paras no.1(a) and (b) of the judgment was dismissed, the appellants have chosen to prefer the present appeal.

2. Bereft of unnecessary details, the averments, as canvassed by the appellants in their petition, are that Harpal Singh Sapra, the husband of appellant no.1 and father of appellants no.2 and 3 died on 18.07.2011 and

he was the owner of the land situated in Villages Bhawani Khera and Malikpur (as detailed in paras no.1(a) and (b) of the impugned judgment). After his death, mutations no.979 and 965 were sanctioned in favour of the appellants, in respect of the said land, to the extent of 1/3rd share each. Appellants no.2 and 3 were minors and they were living under the care and custody of appellant no.1 who had got no adverse interest against them. Appellant no.1 was not having sufficient funds to cater to the needs of the minor appellants and it was also not possible for her to manage the above-said land which was located in two different villages. Moreover, after the death of Harpal Singh Sapra, some anti-social elements wanted to encroach upon the land in question. Hence, appellant no.1 wanted to sell this land and intended to purchase the land situated nearby the place of her residence so that she could easily manage the same. She expected to get suitable sale consideration for the above said land and along with the shares of the minor appellants, she would also be selling her own share in this land.

3. Respondent no.2-Objector Navneet Kaur appeared before the Trial Court in pursuance to the notice issued to respondent-General Public and she contested the claim of the appellants by filing objections asserting therein that the petition was not maintainable and was filed to commit fraud with her and to sell the land in question malafidely despite the fact that a civil suit qua the same, as filed by her, was pending. The proposed sale of the said land was, in no way, beneficial to the interest of the minor appellants and rather, the sole purpose thereof was to defeat her right/share

in this land. She was the real sister of Harpal Singh. She had one more brother named Jatinder Singh. Their father Kuldeep Singh was owner of the land measuring 53 kanals 14 marlas in Village Malikpur and the land measuring 108 kanals 16 marlas in Village Bhawani Khera. After the death of their father on 02.11.2000, mutations no.825 and 573 were sanctioned in their favour to the extent of 1/3rd share each in the afore-mentioned land. However, both her above-named brothers colluded with each other and forged a General Power of Attorney dated 29.09.2001 purported to have been executed by her and on the basis of the same, they sold her share in the afore-said land of her father vide sale deeds dated 08.12.2005 and 15.12.2005 and had, thus, grabbed her share in the land illegally. In fact, she had never executed any such Power of Attorney in their favour and it did not bear her signatures. She never appeared before the Sub-Registrar nor any such record was available in the office of Sub-Registrar, Shilai, District Sirmor (H.P.).

4. The appellants filed their reply to the objections as preferred by respondent no.2 and averred therein that respondent no.2-Objector was trying to wriggle out of the said General Power of Attorney as duly executed by her. She was a greedy lady and the applications, as moved by her to Sub-Registrar, Thanesar and Economic Cell, Kurukshetra, were found to be false ones and she was well aware of the fact that the date, as stipulated for the execution and registration of the sale deed, was approaching fast and hence, she wanted to blackmail them.

5. On the basis of the pleadings of the parties, learned District Judge, Kurukshetra framed the following issues on 05.11.2012 :-

- “1. Whether petition no.1 Navita Sapra is entitled to seek permission to sell 1/3 share each of the minor petitioners namely Gaurika Sapra and Yuvraj Sapra out of the land mentioned in para no.1 of the petition as envisaged under section 8 of the Hindu Minority and Guardianship Act in view of the grounds mentioned in the petition? OPP*
- 2. Whether the present petition is not maintainable in its present form and same is an abuse of process of law? OPR*
- 3. Whether the present petition has been filed by the petitioners in order to commit fraud with the Objector Navneet Kaur? OPR*
- 4. Whether the petitioners have not come to the Court with clean hands and have suppressed the true and material facts from this Court? OPR*
- 5. Whether the sale deeds No.8896 dated 8.12.2005, 8895 dated 8.12.2005, 9204 dated 15.12.2005 and 9205 dated*

*15.12.2005 and subsequent mutations
No.901, 629, 900 and 925, respectively, are
illegal, null and void and not bindings on
the rights of the Objector? OPR*

6. Relief.”

6. Both the parties led their evidence, oral as well as documentary, in support of their respective contentions and after the appraisal and evaluation of their evidence and hearing the arguments as advanced by learned counsel for both the parties, learned Trial Court settled issue no.1 against the appellants and issue no.3 in favour of the Objector-respondent. Issue no.2 was answered against the Objector-respondent whereas issue no.4 was decided against the appellants. Issue no.5 was disposed of as having no relevance to the petition and resultantly, the petition was dismissed.

7. We have heard learned counsel for the appellants in the present appeal and have also perused the file thoroughly.

8. Learned counsel for the appellants contended that after the death of her husband, appellant no.1 was taking care of and looking after minor appellants no.2 and 3, being their mother and she was not having sufficient funds for bringing them up in a dignified and respectable manner and therefore, she wanted to sell the share of both the minor appellants, along-with her own share, in the land owned by her deceased husband and inherited by the appellants. He has also contended that the said land is

situated in two different Villages and therefore, appellant no.1 was unable to manage the same and moreover, respondent no.2 had filed the objections qua the proposed sale of the said land just to grab it as she is a greedy lady and in these circumstances, the impugned judgment is liable to be set aside and appellant no.1 be permitted to sell the said land and she would utilize the sale proceeds of the land in question for the benefit and welfare of minor appellants no.2 and 3.

9. As regards the plea of the appellants regarding paucity of the funds with appellant no.1 to raise and maintain minor appellants no.2 and 3, it is worthwhile to mention here that in para no.15 of the impugned judgment itself, learned Trial Court has categorically observed that during her cross-examination as PW-1, appellant no.1 deposed that her day-to-day expenses were being met out by borrowing money from others but she also stated that she was running a hotel and all the income and expenditure thereof was disclosed by her in her income-tax returns. However, she did not want to produce her personal income-tax return nor her Permanent Account Number. Moreover, she also deposed that the hotel had been constructed by incurring the expenses to the tune of Rs.2.5/3.0 crores and 25/30 employees were working there and she was paying Rs.2 lacs as salary to them and her hotel was surveyed by the income-tax department and a penalty of Rs.51 lacs had been imposed. The above-discussed depositions of appellant no.1 speak volumes of the fact that there was no shortage of funds with her for bearing the expenses to be incurred on the bringing up of

minor appellants no.2 and 3.

10. Further, as specifically observed by learned Trial Court in para no.16 of the judgment under challenge, respondent no.2-Objector had filed a Civil Suit against appellant no.1 and had also sought and obtained an injunction order in respect of the sale of the property that had fallen to her share after the death of her father, while alleging that both her above-named brothers committed fraud with her to grab her share in the same, meaning thereby that the property, which is proposed to be sold by appellant no.1, is under *lis* at the instance of respondent no.2-Objector but however, the appellants concealed this fact in their petition despite the fact that as further observed in the afore-said para, respondent no.2-Objector had filed the above-said Civil Suit much prior to the filing of the petition by them and during her cross-examination, appellant no.1 also admitted the factum of her being a party in the afore-mentioned Civil Suit. All these facts lead to an irresistible inference to the effect that appellant no.1 had intentionally concealed the factum of the pendency of the said Civil Suit qua the property in question with an intention to defeat the right/claim of respondent no.2-Objector in the same. It being so, her prayer for the proposed sale of this land loses its genuineness. In such circumstances, the plea of appellant no.1 regarding her facing any difficulty in managing the said land on account of the same being situated in two different Villages, pales into insignificance.

11. As a sequel to the foregoing discussion, it follows that the impugned judgment dated 13.07.2015 passed by the Trial Court does not

suffer from any infirmity, illegality or perversity and hence, the same does not warrant any interference by this Court. Resultantly, this appeal, being sans any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

February 04, 2020
monika

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