

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2951 of 2017 (O&M)

Date of Order: 27.02.2020

Satinder Singh

..Appellant

Versus

Jatinder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Khehar, Advocate,
for the appellant.

Mr. Ashok Gupta, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J.

Plaintiff-appellant has filed the present regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing the suit filed by him with following prayers:-

It is, therefore, prayed that a decree for declaration that the judgment and decree passed by the court of Shri J.S.Kular, Sub Judge II Class, Ludhiana, in Civil Suit No.215 dated 23.2.85 decided on 3.5.86 is not binding on the plaintiff having been secured by defendant no.1 by misleading defendant no.2 and mother of the plaintiff being act of fraud and breach of trust and secured with ulterior motives to defeat and defraud the rights and interests of the plaintiff and defendant No.3.

AND

Suit for possession by way of partition of the following properties

(1) 1/3rd share in Building No.B-II/1553 and B-II/1594 bounded as under:-

North : G.T.Road.

West: Kucha Sant Dass

North: Ganda Nala

South: Other owners.

Situated near Clock Tower Ludhiana

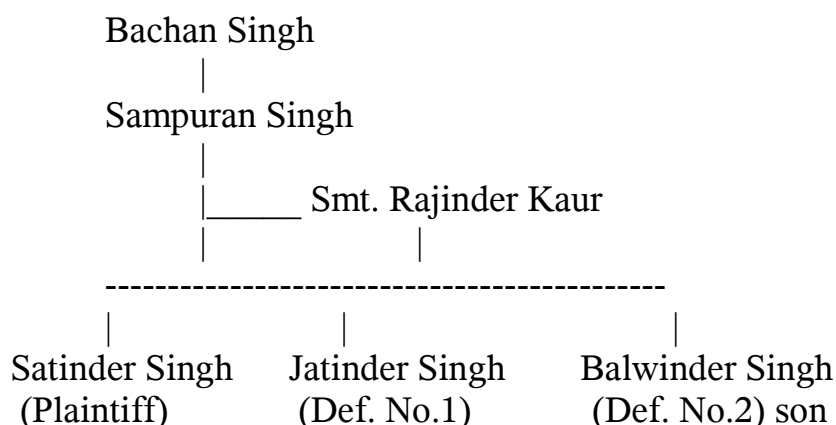
(ii) 58 2/3/131rd share of property measuring 3974 sq. yds i.e. 131 Marlas comprised of khasra no.66/19/2, 22/2 and 76/2 as per jamabandi for the years 1980-81 situated in Tarf Karabara fully described in the plan attached in red colour

AND

Decree for rendition of accoutns against defendant no.1 to render accounts regarding the income of the joint property managed by him and of the sales made by him on behalf of the plaintiff being attorney be kindly granted with costs of the suit. Any other additional or alternative relief to which the plaintiff is found to be entitled to under the law and equity be also granted to the plaintiff and against the defendants.”

Case set up by the plaintiff is that the aforesaid property has been inherited from Bachan Singh, the grand father. Sampuran Singh, father of the plaintiff had pre-deceased Bachan Singh.

A small pedigree table is being drawn to understand inter-se relationship between the parties:-



The plaintiff claims that they have inherited huge properties from their grand father and all the properties were Hindu Undivided Family ancestral properties. The plaintiff is stated to have left India in the year

1971 and started working in Canada. Since, the plaintiff was settled in Canada, he appointed his mother as his attorney on 03.10.1980. Thereafter, he appointed Jatinder Singh, defendant no.1 as his attorney on 06.06.1981. It is claimed that when the plaintiff presently visited India, he came to know that defendant no.1 had breached the faith reposed in him and had misused, misappropriated and tried to usurp the property and share of the plaintiff as well as defendant no.2. He came to know that a civil suit was filed on behalf of the plaintiff and defendant no.2 against defendant no.1. It is claimed that defendant no.1 appears to have forged the signatures of defendant no.2 and mother of the plaintiff by mis-representation and got a consent decree passed on 03.05.1986. It is claimed that the aforesaid decree is/are result of fraud as faith of the plaintiff was breached and the division of the property by way of the aforesaid decree has not been done properly as defendant no.1 got major share i.e. 3069 square yards out of the total area of 4224 square yards. Plaintiff was given only 280 square yards.

Defendants contested the suit and pleaded that in fact the proceeds from the property sold by mother have been pocketed by the plaintiff and the plaintiff and defendant no.2 have already sold major portion of the property falling to their share and hence, the judgment and decree has been acted upon.

Both the courts on appreciation of evidence concurrently recorded a finding that, although, plaintiff claims that he had cancelled the power of attorney executed in favour of the mother on execution of new attorney in favour of defendant no.1 on 06.06.1984. However, there is no evidence when Smt. Rajinder Kaur, the mother of the parties was communicated about cancellation of the attorney. The Courts also held that

the judgment and decree dated 03.05.1986 has been acted upon. The suit has also been held to be barred by limitation as the suit was filed after a period of more than 10 years from the date of the judgment and decree dated 03.05.1986.

This court has heard learned counsels for the parties at length and with their able assistance, gone through the judgments passed by the courts below.

Learned counsel for the appellant submitted that there is unequal distribution of the property and therefore, the decree is arbitrary. He while drawing attention of the Court to the statement of Jatinder Singh, defendant no.1, has submitted that it is proved that the plaintiff was not in India when the alleged family settlement took place. He further submitted that the plaintiff cannot be called upon to prove in negative that he did not receive sale consideration. Learned counsel also submitted that in view of Power of Attorney dated 06.06.1984, previous attorney executed on 03.10.1980 stood revoked as specifically recited in the Power of Attorney dated 06.06.1984 and, therefore, Smt. Rajinder Kaur could not have filed the suit which resulted in decree dated 03.05.1986.

On the other hand, learned counsel appearing for the respondents submitted that it is not disputed by the plaintiff that huge properties were inherited by the parties from their grand father. He further submitted that execution of the Power of Attorney in favour of the mother Smt. Rajinder Kaur dated 03.10.1980 is also not being disputed by the plaintiff. He further drew attention of the court to the statement of the plaintiff where he admitted that he visited India twice between 1986 to 1994. Plaintiff also admitted that mother also visited him in Canada

between 1986 to 1994. He, hence, submitted that the suit filed by the plaintiff has been rightly held to be barred by time.

This court has considered the submissions.

As far as argument of learned counsel for the appellant that there is un-equal distribution of the property, that depends upon the wish of the parties. This court cannot sit in appeal over the conscious decision taken by the parties in this regard, particularly when they are members of the same family. In the present case, execution of Power of Attorney by plaintiff in favour of his mother dated 03.10.1980 is not in dispute. This Power of Attorney was executed and got attested in Toronto, Canada. The plaintiff is residing in Canada. As per his own pleadings, he shifted to Canada in the year 1971. He had appointed his own mother as attorney. Through power of attorney, plaintiff has authorised his mother to sell, dispose of, mortgage, or deal with the property in any manner. She was further authorised to sue, defend, appear before the court and make statements. In these circumstances, plaintiff cannot claim that the mother was not authorised. No doubt, in subsequent Power of Attorney executed by the plaintiff in favour of Jatinder Singh, defendant no.1, it has been recited as under:-

“any Power of Attorney or other delegation of authority to an agent heretofore given by him is hereby revoked”.

However, such recital cannot result in revoking Power of Attorney given to the mother. This phrase used in Power of Attorney executed by the plaintiff in favour of defendant no.1 dated 06.06.1984, appears to be a standard phrase used in the attorneys at Canada. Still further, the aforesaid sentence does not result in revoking a previous Power of Attorney executed by the donor in favour of any one. The word used is

'agent'. An agent does not mean 'any agent'.

As regards next argument of learned counsel for the appellant that the plaintiff had not come to India and therefore, there is no question of settlement, although, appears to be attractive in first blush, however, on deeper scrutiny, found without substance.

Once the mother had been authorized, such settlement can be arrived at even through various channels of communication including telephone. Therefore, the presence of plaintiff in India was not a sine-qua-non for arriving at a family settlement.

Next argument of learned counsel for the appellant is also without substance because it has come on record that all the parties have been transacting in the property which had fallen to their share as per family settlement. Further, this aspect is to be examined in the context of the pleadings of the parties. Plaintiff admitted that he is settled in Canada since 1971. The suit filed on 23.02.1985 was filed not only by the plaintiff-Satinder Singh but also by Balwinder Singh. Balwinder Singh has never challenged correctness of the decree passed on 23.05.1986. Voluminous evidence has been brought on record to prove that the parties have been selling the properties which had fallen to their share.

Both the courts have also correctly held that the suit filed by the plaintiff after a period of 10 years is barred by time.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

27th February, 2020

nt

Whether speaking/reasoned

Whether reportable

**(ANIL KSHETARPAL)
JUDGE**

: Yes/No

: Yes/No