NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A No.217 of 2011

Reserved on 23.03.2021
Pronounced on 01.04.2021

1. Bahoran, S/o Late Dhaniram, aged about 48 years
2. Jahoran, S/o Late Dhaniram, aged about 35 years,
3. Arjun, S/o Late Dhaniram, aged about 32 years,
4. Bahora Bai, D/o Late Dhaniram, aged about 45 years,
5. Deep Bai, Widow of Late Dhaniram, aged about 65 years

All caste Dhuri, Occupation Agriculture, R/o Gram Bodri, Tahsil Bilha, District Bilaspur

---- Appellants

Versus

1. Bheemsen, S/o Late Dhaniram, aged about 39 years, dead (deleted)

1-A Smt kali Bai, Widow of Late Bheem Sen, aged 28 years.

1-B Kumari Meena, D/o of Late Bheemsen, aged 11 years

1-C Kumari Bharti, D/o Late Bheemsen, aged 9 years

1-D Kumari Rekha, D/o Late Bheemsen, aged 7 years

1-E Kumari Ritu, D/o Late Bheemsen, aged 5 years

1-F Kumari Netu, D/o Late Bheemsen, aged 3 years

1-G Shubam Kumar, S/o of Late Bheemsen, aged 1 year

2. Smt Titri Bai, aged about 34 years, Widow of Late Sahoran, S/o Late Dhaniram, Caste Dhuri, Occupation Agriculturist, R/o Gram Bodri, Tah Bilha, Distt. Bilaspur (CG)
3. Shri Vinod Kumar Jain, aged 52 years, S/o Latge Lakhmichand Jain, Caste jain, Occupation Business Mahabir Builders & Promoters Bilaspur, R/o Kranti Nagar, P.O Link Road, Thana Tarbahar, Tah & Distt. Bilaspur (CG)
4. Shri Devendra Kumar Jain, aged 53 years, S/o Late Karwarchand Jain, Caste Jain, Power of Attorney, R No.3, R/o Vinoba Nagar, Bilaspur Tah & Distt. Bilaspur (CG)
5. Chattisgarh Government through Collector, Bilaspur, Tah & Distt. Bilaspur (CG)

------Respondents

For Appellants:	Shri Pramod Kumar Verma, Senior Advocate along with Shri Ali Asgar, Advocate.
For Respondents No.1A to 2:	None, though served.
For Respondents No.3 & 4:	Shri Malay Shrivastava along with Shri Saurabh Sahu, Advocate.
For Respondent No.5/State:	Shri Udhaw Sharma, Government Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

C A V Judgment

1. This Appeal has been preferred by the Plaintiffs under Section 96 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the judgment and decree dated 30.08.2011 passed in Civil Suit No.20-A/2011 whereby, the trial Court has dismissed the Plaintiffs' claim for declaration of title and confirmation of their joint possession. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that the Plaintiffs have instituted a suit claiming declaration of title and confirmation of their joint possession with regard to the property in question bearing Khasra No.418 admeasuring 1.26 acres (0.510 hectares) situated at Mauza, Bodri, Tahsil Bilha, District Bilaspur and alternatively claimed for possession from Defendants No.3 &4. According to the Plaintiffs, the alleged suit property was their ancestral property and Defendant No.1-Bheemsen (since deceased now represented by his legal representatives namely Smt Kali Bai and others), who was their brother, had obtained a forged and fabricated deed of power-of-attorney without their wishes and knowledge

and executed a registered deed of sale on 10.05.2005 along with Defendant No.2-Titri Bai, who is the widow of their another brother Sahoran in favour of Defendant No.3-Vinod Kumar Jain through his power-of-attorney holder namely Devendra Kumar Jain, Defendant No.4. It is pleaded further that after knowing the said fact, a search was made before the concerned *patwari* where they came to know that the alleged ancestral property was recorded in the name of Defendant Vinod Kumar Jain, therefore, they have been compelled to institute the suit in the instant naturShiv Prasad **Versus** Ritesh Kumare.

3. Defendants No.3 & 4 have contested the claim submitting *inter alia* that by virtue of the registered deed of sale dated 10.05.2005, Defendant No.3 has acquired his valid right, title and interest over the property in question and his name is accordingly recorded in the revenue papers as well. It is pleaded further that as the alleged sale was executed by Defendant No.1-Bheemsen along with said Titri Bai based upon the duly executed power-of-attorney as executed by the Plaintiffs and therefore, the claim, as made, deserves to be dismissed.

4. After considering the evidence led by the parties, it was held by the trial Court that the property in question was the ancestral property. It held further that the alleged power-of-attorney (Exhibit P-2) was duly executed by the Plaintiffs in favour of their brother namely Bheemsen and who, in turn, along with his brother's widow namely Titri Bai, sold the property in question to Defendant No.3-Vinod Kumar Jain under the registered deed of sale (Exhibit P-1) dated 10.05.2005. As a consequence of it, the trial Court has dismissed the claim. This is the order, which has been impugned by way of this Appeal.

5. Shri, Pramod Verma, learned Senior Counsel appearing for the Appellants/Plaintiffs submits that the finding of the Court below upholding the execution of the alleged power-of-attorney dated 24.04.2005 and thereby, upholding the execution of the alleged registered deed of sale dated 10.05.2005 is apparently contrary to law. According to him, the alleged power-of-attorney was obtained by Defendant No.1-Bheemsen by playing fraud upon the Plaintiffs and therefore, the alleged deed of sale executed based upon such a forged document ought not to have been upheld. Having failed to consider the evidence in its proper perspective, the Court below has committed an illegality in dismissing the claim.

6. On the other hand, Shri Malay Shrivastava learned Counsel appearing for Respondents No.3 & 4 has supported the judgment and decree impugned as passed by the trial Court.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. The main question which arises for determination in this Appeal is as to whether the alleged deed of power-of-attorney dated 24.04.2005 (Ex.P-2), purported to have been executed by Plaintiffs in favour of their brother-Bheemsen authorizing him to alienate the property in question is a forged document ?”

9. According to the Plaintiffs, the alleged power-of-attorney (Exhibit P-2) based upon which the property in question bearing Khasra No.418 admeasuring 1.26 acres (0.510 hectares) situated at Mauza, Bodri, Tahsil Bilha, District Bilaspur was sold to Defendant No.3-Vinod Kumar Jain under the registered deed of sale dated 10.05.2005 through his power-of-attorney holder namely Devendra Kumar Jain, was obtained by their said

brother without their knowledge by playing fraud upon them. Shri Verma, learned Senior Counsel appearing for the Plaintiffs, while inviting attention to the endorsement made in the alleged Power of Attorney, contended that since the signature of Plaintiffs' brother Bheemsen alone was authenticated by the Public Notary, therefore, the legal presumption of its authenticity provided under Section 85 of the Indian Evidence Act would not be attracted as applied by the trial Court by upholding the same based upon which, the registered deed of sale (Ex.P-1) was executed in favour of Defendant No.3 on 10.05.2005. However, a bare perusal of the alleged document (Exhibit P-2) would show that it was not only executed by the Plaintiffs in presence of the two witnesses, but was duly attested and authenticated by the Notary Public as evidenced by the endorsement made therein, which was made as under:

> "I accordingly attested and authenticated the execution of the Power of Attorney under the Notaries Act."

10. In view of the aforesaid specific endorsement made by the Public Notary before the attesting witnesses, it cannot be said that it was not duly authenticated as contended by learned Counsel for the Appellants. Besides, none of its attesting witnesses was called for by the Plaintiffs in order to disprove the same. Since the alleged document was authenticated by its Notary Public, as observed hereinabove, therefore, it raises a legal presumption regarding its due execution as per the provision prescribed under Section 85 of the Indian Evidence Act, 1872, which reads as under:-

> "85. **Presumption as to powers-of-attorney**.—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed

> before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, 1[Indian] Consul or Vice-Consul, or representative 2[***] of the 3[Central Government], was so executed and authenticated."

11. A bare perusal of the aforesaid provision would thus, raise a legal presumption about the execution of the power-of-attorney provided if two conditions as specified therein are satisfied. Firstly, that is required to be executed before a Notary Public and secondly that it is duly authenticated by him. Both these conditions appear to be duly satisfied as it was not only executed before the Notary Public, but was also found to be duly authenticated by him. It is true that the presumption of its execution is rebuttable in nature but, the Plaintiffs have failed to lead any cogent and reliable evidence, much less the attesting witnesses to it in order to rebut the same. In view of that , the authenticity of it cannot be doubted.

12. Pertinently to be observed here further as reflected from a bare perusal of the averments made in paragraph-5 of the Plaint that the authenticity of the alleged Power-of-Attorney has been questioned by the Plaintiffs on the premises that since it was obtained by their said brother Bheemsen by playing fraud upon them, therefore, the registered deed of sale executed based upon such a forged document would not confer any right or title upon the said Defendant Vinod Kumar Jain. However, in order to substantiate their alleged plea of fraud, a specific plea was required to be taken that as to what kind of fraud was played upon them. However, no specific plea has been taken in this aspect. What is pleaded by them is that the thumb impressions of thiers have been obtained by their said brother Bheemsen without their wishes and knowledge. However, neither any hand-writing expert was called for nor any of its attesting witnesses

was called in order to establish the alleged fraud nor even a complaint or a report has been lodged till date.

13. According to the provisions prescribed under Order 6 Rule 4 of CPC, where fraud is alleged, necessary particulars are required to be stated in the Plaint and the allegations have to be clear, definite and express and it would not be enough to take a plea of fraud without assigning any particulars of it as observed by the Privy Council in the matter of "*Bharat Dharma Syndicate Limited vs. Harishchandra*" reported in **AIR 1937 Privy Council 146,** where, it was observed at page 147 (right column at last paragraph) as under:-

> "............In the present case, the petitioner ought not to have been allowed to proceed with his petition and seek to prove fraud, unless and until he had, upon such terms as the Court thought fit to impose, amended his petition by including therein full particulars of the allegations which he intended to prove........."

14. Yet, in the matter of *Ladli Parshad Jaiswal vs. The Karnal Distillery Co. Ltd. Karnal and others* reported in **AIR 1963 SC 1279,** it was held by the Supreme Court while interpreting the said provision at paragraph-20 as under:-

> "20. Order 6 Rule 4 Civil P. C. provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix, particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such

> influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which give adequate notice to the other side of the case intended to be set up.”

15. In the light of the aforesaid principles and in absence of full particulars regarding the alleged allegations of fraud, it is difficult to hold that the Plaintiffs' said brother Bheemsen has played any kind of fraud upon them so as to hold that the alleged power-of-attorney (Exhibit P-2) was a forged and fabricated document, based upon which, the registered deed of sale dated 10.05.2004 (Exhibit P-1) was executed in favour of Defendant No.3-Vinod Kumar Jain.

16. Consequently, I do not find any substance in this Appeal, which deserves to be and is accordingly dismissed. No order as to costs.

17. A decree be drawn accordingly.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya