

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

RSA-1597-2019 (O&M)
Decided on : 28.07.2022

Rajinder Mehta and another

..... Appellants

Versus

Darshan Lal and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. L.S.Sidhu, Advocate
 for the appellants.

Manjari Nehru Kaul, J.(Oral)

CM-4966-C-2022

Application is allowed as prayed for and annexures A-1 and A-2 are taken on record subject to all just exceptions.

Main case

Suit for declaration and permanent injunction filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 24.03.2017. The appeal preferred against the aforesaid judgment and decree was dismissed by the learned Appellate Court vide order dated 07.07.2018. The appellants-defendants being aggrieved by the concurrent findings recorded by the Courts below are, now in Regular Second Appeal before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

As per the pleaded case, the plaintiff claimed that he was owner in possession of the house as detailed in the head of the plaint, which was purchased by him vide two separate sale deeds bearing Wasika No.119 dated 12.04.1973 and Wasika No.1293 dated 20.06.1978 from Charan Kaur

and others qua which mutation also stood sanctioned in his favour. Thereafter, plaintiff raised construction of a house on suit property with his own funds. The plaintiff disinherited defendants No.1 and 2 i.e. his son and daughter-in-law respectively by issuing a notice in the public newspaper in Daily Jagran on the basis of an affidavit duly attested by Executive Magistrate, Ludhiana on 31.08.2007. In February, 2009 when the wife of the plaintiff fell ill, she requested the plaintiff to permit the defendants to live in a room in the suit property. Defendants No.1 and 2 after conniving with each other, prepared an objectionable video clip of the plaintiff with defendant No.2 and thereafter started blackmailing the plaintiff and extorting gold ornaments etc. from him. They also got one General Power of Attorney (GPA) vide Wasika No.4741 dated 22.03.2011 executed by the plaintiff in favour of defendant No.2 for property measuring 60 sq. yards. Subsequently, defendant No.2 executed a sale deed on the basis of the GPA in favour of defendant No.1 through Wasika No.15839 dated 25.03.2011. Since defendants No.1 and 2 continued extending threats to the plaintiff and indulging in extortion, the plaintiff sought the help and intervention of the panchayat as a consequence of which the defendants tendered an apology in writing and also agreed to return the sale price of house measuring 60 sq. yards (out of 125 sq. yards) of the house of the plaintiff, which had been got executed by defendant No.2 in favour of her husband i.e. defendant No.1. Defendant No.2 also issued a cheque in favour of the plaintiff, in the sum of Rs.2.5 lakhs, however, it was dishonoured on 12.12.2011. When the plaintiff approached the Patwari, he learnt that defendant No.2 had also misused the GPA by executing another sale deed through Wasika No.3981

dated 07.06.2011 in favour of defendant No.1 in respect of property measuring 65 sq. yards. It was thus, pleaded that both the sale deeds in respect of 60 sq. yards and 65 sq. yards property dated 25.03.2011 and 07.06.2011 respectively were liable to be set aside and the plaintiff be declared as owner in possession of the suit land as they had been executed by the defendants by misusing the GPA.

The defendants in their written statement claimed that the GPA dated 22.03.2011 had been executed by the plaintiff in favour of defendant No.2 and it was on the basis of the same, defendant No.2 had executed the sale deed dated 25.03.2011 for the land measuring 60 sq. yards for a sale consideration of Rs.5 lakhs, which was duly given to and received by the plaintiff. Thereafter, plaintiff again agreed to sell another 65 sq. yards of property to defendant No.1 for a sale consideration of Rs.6.25 lakhs. The said sale deeds had been executed by defendant No.2 on the request of the plaintiff himself. However, subsequently on account of some dispute between the parties, with the intervention of panchayat, a compromise was arrived at wherein the defendants agreed to pay Rs.5 lakhs to the plaintiff. Rs.1 lakh was paid in cash to the plaintiff and a sum of Rs.50,000/- was paid through cheque. A security cheque of Rs.2.50 lakhs was also handed over to the plaintiff. Thereafter, defendants made a payment of Rs.2,50,000/- in cash, however, the plaintiff did not return the security cheque and instead filed a false complaint against defendant No.2 after getting the cheque dishonoured from the bank. It was denied that the plaintiff was owner in possession of the suit property or defendants No.1 and 2 had cheated the plaintiff as alleged by him. All other allegations

levelled in the plaint that defendants No.1 and 2 had been blackmailing the plaintiff after preparing some objectionable video in their mobile phone and thereafter had been extorting money, gold etc. were categorically denied by the defendants.

Learned counsel for the appellants-defendants has vehemently argued that both the Courts below failed to appreciate that though it was alleged by the plaintiff that GPA Ex.P-5 dated 22.03.2011 had been got executed from him by the defendants No.1 and 2 after blackmailing him and showing him some video clip prepared by the defendants after allegedly intoxicating the plaintiff, however, the said video clip was not even proved before the trial Court. He submits that the plaintiff himself had admitted during his cross-examination that Ex.P5 had been voluntarily executed by him in favour of his daughter-in-law i.e. defendant No.2. Hence, in the circumstances, the plaintiff could not now turn around to challenge the sale deeds dated 25.03.2011, Ex.P-6 and 07.06.2011, Ex.P-7. While drawing the attention of this Court to the testimony of defendant No.1 – Rajinder Mehta, learned counsel submits that the trial Court should have appreciated that the GPA dated 22.03.2011 had been executed by the plaintiff in favour of defendant No.2 and it was only on the basis of that GPA, defendant No.2 had executed the sale deed dated 25.03.2011 for the land measuring 60 sq. yards for a sale consideration of Rs.5 lakhs and another property measuring 65 sq. yards for a sale consideration of Rs.6.25 lakhs for which sale deed was again executed only on the request of the plaintiff. He further submits that in fact in the income tax returns for the year 2011-12, there was an entry also regarding the purchase of the property though there was no entry

of Rs.5 lakhs, as admittedly the parties were related by blood.

Heard learned counsel and perused the relevant material available on record.

Admittedly, two copies of GPA dated 22.03.2011 i.e. Ex.P-5 and Ex.D-9 were executed by the plaintiff in favour of his daughter-in-law i.e. defendant No.2. DW-2 Chanderbir while stepping into the witness box proved on record that Ex.P-5 was the certified copy of the GPA issued by his office. He also proved on record that the another copy of the same GPA was Ex.D-9. However, strangely in Ex.P-5, the area of the house was mentioned as 60 sq. yards whereas in Ex.D-9 which was proved on record by DW-2 Chanderbir, Registration Clerk, the area mentioned was 125 sq. yards. This does raises eyebrows and creates a big question mark as the dimensions of the property are at complete variance with each other. Still further, strangely the contents of the GPA Ex.P-5 and Ex.D-9 were not only identical but it also came during evidence that Inderjit Singh, an official from the office of Deputy Commissioner had conducted an inquiry and in his report Ex.DW-3/2 it stood concluded that the power of attorney had indeed been tampered with as the area of 60 sq. yards had been converted into 125 sq. yards. In addition, even the boundaries of northern and eastern side of the house had been changed. The least that defendant No.2 could have done to demolish the case of the plaintiff was to produce the original power of attorney, which would have naturally been in her possession. However, the original power of attorney was never placed on record before the trial Court.

This Court thus, concurs with the findings recorded by the

Courts below that defendants had manipulated and tampered with the GPA, which was lying in the records of the office of Deputy Commissioner and had thereafter converted into 125 sq. yards. The defendants even failed to adduce any evidence qua the payment of Rs.5 lakhs and 6.25 lakhs to the plaintiff with respect to the execution of the sale deeds Ex.P-6 and P-7. Moreover, defendant No.2, who had executed the sale deed in favour of her husband i.e. defendant No.1, did not even step into the witness box to depose qua obtaining the amount of Rs.11.25 lakhs from defendant No.1 and then having paid the same to the plaintiff. This Court cannot also ignore the fact that cheque of Rs.2.5 lakhs, which was issued to the plaintiff, was subsequently dishonoured by the bank and on a complaint made by the plaintiff under Section 138 of Negotiable Instruments Act, defendant No.2 was convicted.

On being pointedly asked, learned counsel for the plaintiff failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by the Courts below were either contrary to record or suffered from any material illegality.

In the circumstances, this Court does not find any error in the judgments and decree passed by the Courts below, which would warrant any interference. Accordingly, the appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

28.07.2022
sonia

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