

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

RSA No.2261 of 2022 (O&M)

Date of decision: 14th December, 2022

Ram Sarup

... Appellant

Versus

Ramesh Kumar & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Paramveer Singh, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

Suit for permanent injunction filed by the appellant was dismissed with costs by the learned trial Court vide judgment and decree dated 26.09.2018 and which findings were affirmed by the learned lower appellate Court by way of judgment and decree dated 15.07.2022. The plaintiff is now before this Court challenging the concurrent findings recorded by both the Courts below.

The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus:

The plaintiff and defendant No.1, being brothers, purchased plot measuring 400 sq. yards i.e. to the extent of 43/2613 shares out of the total land measuring 1 Kanal 1 Marla 01 Sarsai land bearing Rect. No.254 Killa No.26 min comprised in Khewat No.494 Khatoni No.629,

in equal shares vide sale deed No.4943 dated 20.03.1990 for a valuable consideration. The plaintiff claimed to be the absolute owner in possession of the suit property (as detailed in para No.1 of the judgment of the trial Court) and averred that defendant No.1 had no right, title or concern with the suit property. It was also averred that the plaintiff came to know that defendant No.1 by playing a fraud and by misrepresentation, had got one General Power of Attorney (hereinafter referred to as, 'GPA') No.476 dated 20.10.1992 registered purportedly from the plaintiff, in his favour qua the suit property which thus, was illegal and void, and not binding upon the rights of the plaintiff. Still further, it was averred that as soon as the plaintiff learned about the aforesaid fake, forged and fabricated GPA, he got it cancelled vide duly registered cancellation GPA No.299 dated 03.03.1997 before the Sub Registrar, Jind. Subsequently, defendant No.2 got mutation bearing No.10956 dated 30.04.2013 sanctioned qua the suit property, in his favour, without the knowledge of the plaintiff. Therefore, since the GPA stood cancelled on 03.03.1997 and the defendants were fully aware about the same, defendant No.1 had no right, title or interest in the suit property. It was still further averred by the plaintiff that in the given facts and circumstances, the sale deed had been registered in contravention to the directions of the Financial Commissioner-cum-Principal Secretary to Govt. of Haryana, vide memo No.1258-STR-2-2006/3994 dated 28.04.2006. The plaintiff also reserved his right to file

a criminal complaint against the defendants for committing fraud and cheating by fabricating the aforesaid GPA. Having been left with no other efficacious remedy, the suit in question was instituted by the plaintiff.

Upon notice, defendant No.1 appeared and filed his written statement wherein, besides taking preliminary objections, it was submitted on merits that the plaintiff and defendant No.1 had entered into a family settlement in the year 1992 in the presence of respectables and family members whereby the ancestral house (Haveli) was given to the plaintiff and half share of the plot measuring 400 square yards i.e. the suit property was given to the defendant. After one month of the said family settlement, the plaintiff got the GPA in question registered in favour of defendant No.1 on 20.12.1992, which was later on fraudulently cancelled by the plaintiff in the year 1997 without defendant No.1 being put to notice qua the same.

The defendants, while refuting the pleaded case of the plaintiff, also averred that the plaintiff was posted as Lab Assistant, Govt. Senior Secondary School, Julana and being an educated and clever person, in his full conscience, had executed the GPA in favour of defendant No.1, and that too in the presence of witnesses. He still further averred that defendant No.1 sold the suit property to Pushpa wife of defendant No.2, Surinder, vide sale deed No.3900 dated 28.09.2012.

Despite service of summons, defendant No.2 failed to appear and was proceeded against ex-parte before the trial Court on 15.11.2014. Defendant Nos.3 and 4 appeared and filed their joint written statement wherein they refuted the claim of the plaintiff.

On the basis of material and other evidence led, the courts below concurrently held that the plaintiff was neither able to prove his possession over the suit property nor that the sale deed no. 3900 dated 28.09.2012 executed in favour of the defendant no.2 was invalid. Hence, this appeal.

Learned counsel appearing for the plaintiff has vehemently argued that the findings recorded by the courts below were patently erroneous and contrary to the evidence led. He has submitted that since the suit property was an open land, the possession would have to go with the title; both the Courts below failed to appreciate that the ownership as well as possession of the plaintiff over the suit property stood duly proved from the sale deed No.4943 dated 20.08.1990 (Mark C) as well as from the mutation (Ex. P2) sanctioned in favour of the plaintiff. He submits that there was no material on record from which it could be shown that the defendants had ever come into possession of the suit property. It has further been argued that the sale deed No.3900 dated 28.09.2012 executed by defendant No.1 in favour of defendant No.2 was illegal and void as the defendant no. 1 had no right/title to alienate the suit property as the GPA bearing no. 476 dated 20.10.1992

(Ex. D4) was duly cancelled by the plaintiff vide cancellation deed no. 299 dated 03.03.1997. Learned counsel has still further argued that since no sale consideration was paid or promised to be paid by defendant No.2 to the plaintiff, the said sale deed (Ex. D2) would be invalid in the eyes of law and no title could be said to have passed therefrom. Thus, in the absence of any valid title coupled with the fact that there was nothing on record to show that the defendants ever came into possession of the suit property, the courts below erred in dismissing the suit of the plaintiff. In support, learned counsel has placed reliance upon **‘Kewal Krishan vs. Rajesh Kumar & others’ 2022(1) RCR (Civil) 207** and **‘T.V. Ramakrishna Reddy vs. M. Mallappa & another’ 2021 AIR (SC) 4293**.

I have heard learned counsel for the appellant and perused the relevant material on record.

The plaintiff instituted a simplicitor suit for permanent injunction and founded his claim on the sale deed No.4943 dated 20.03.1990 (Mark C), whereby he acquired title of the suit property as well as its possession. The defendant no. 1 in his written statement, raised a specific plea that the plaintiff entered into a family settlement with him in the year 1992 whereby he was given half share of the plaintiff i.e. the suit property out of the joint plot measuring 400 sq. yards. Subsequently, in furtherance of the family settlement the

plaintiff executed a GPA No.476 dated 20.10.1992 (Ex D4) in favour of defendant No.1 qua the suit land.

Though the plaintiff has alleged that the said GPA was an outcome of fraud and misrepresentation, however, during his cross-examination he admitted that the said GPA was executed in the office of Sub Registrar, Jind, by him in favour of defendant No.1 out of his own free accord. Therefore, the version of the plaintiff stands belied from his deposition. It was averred by the plaintiff that defendant No.1 was intimated by him about the cancellation of the GPA and a copy of the cancellation deed supplied, however, the factum of the defendant being intimated about the cancellation of the GPA could not be proved by the plaintiff by leading any cogent evidence. Still further, the cancellation deed neither bears the signatures of the defendant No.1 nor is there any recital to the effect that notice of cancellation was given to defendant No.1. Furthermore, the contents of the cancellation deed nowhere read that the GPA was a result of fraud and misrepresentation. Rather, it was simply stated therein that the GPA was executed as the plaintiff was unable to look after the suit property due to his professional engagements. Therefore, in the circumstances, the courts below rightly held that the GPA had not been validly cancelled as neither defendant No.1 nor defendant No.2 had any knowledge qua the same.

Admittedly, no police complaint was ever moved by the plaintiff against the defendant No.1 for forging and fabricating the said GPA. Furthermore, the plaintiff nowhere in his deposition has specifically denied the family settlement arrived at between him and defendant No.1, which undoubtedly lends credence to the pleaded case of the defendants. When all these facts and circumstances are seen in their entirety, it is discernible that the plaintiff had concealed certain material facts and had not approached the court with clean hands. Hence, on this ground alone, the plaintiff does not deserve the equitable relief of injunction.

It would also be relevant to point out here that the plea raised by the learned counsel that the sale deed was executed without payment of any sale consideration is beyond the pleadings of the plaintiff and certainly cannot be raised at this stage. As has been rightly argued by learned counsel for the plaintiff that since the suit property is a vacant plot, the possession has to be established in context of title. However, the plaintiff has failed to establish the same whereas on the other hand the defendant no. 1 has led ample evidence to prove that the title of the suit property along with its possession had been transferred in favour of defendant no. 2 vide sale deed no. 3900 dated 28.09.2012 (Ex. D2). Therefore, in these circumstances even the case laws relied upon by learned counsel for the plaintiff would not come to his rescue.

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 both the courts below were either contrary to the record or suffered from any material illegality.

As a sequel to the above, this court does not find any error in the concurrent findings recorded by the courts below. Accordingly, the instant appeal being devoid of any merit is dismissed in limine.

(MANJARI NEHRU KAUL)
JUDGE

December 14, 2022

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No