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

**RSA-4830-2019 (O&M)
Reserved on 11.05.2022
Date of decision : 17.05.2022**

Hem Raj (deceased) through LR

.....Appellant

versus

Jagjit Kaur and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raj Kumar Rana, Advocate for
Mr. G.S. Kaura, Advocate for the appellant.

ALKA SARIN, J.

CM-13777-C-2019

For the reasons stated in the application, the delay of 1213 days in refiling the appeal is condoned. CM disposed off.

CM-13778-C-2019

This is an application for bringing on record the first class heirs of the plaintiff, Hem Raj, who is stated to have died on 22.03.2016 i.e. after the decision by the lower Appellate Court but before filing the present regular second appeal. The applicant is one of the son's of the plaintiff, Hem Raj, and is seeking to pursue the present regular second appeal while the other Class 1 heirs have been impleaded as proforma respondents.

CM allowed subject to all just exceptions only for the purpose of pursuing the present regular second appeal. No rights in the suit land shall accrue in favour of the applicant by being permitted to pursue the present

regular second appeal. Amended memo of parties is already on the record.

RSA-4830-2019

The present regular second appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for declaration and permanent injunction.

Brief facts relevant to the present *lis* are that the plaintiff filed a suit for declaration to the effect that he is owner in possession of land measuring 13 Bigha 3 Biswa and that the sale deed dated 10.06.2008 executed by defendant No.2 in favour of defendant No.1 is fraudulent, forged, without consideration and not binding upon the plaintiff and is liable to be set-aside and for permanent injunction restraining the defendants from interfering or forcibly dispossessing the plaintiff from the suit land and from alienating the same. It was averred that the plaintiff is owner in possession of the suit land, defendant No.2 is his grandson and defendant No.1 is his daughter-in-law. The plaintiff has 2 sons and 3 daughters and the suit land is ancestral property of the plaintiff. It was further averred that the defendants allegedly in connivance with each other including father of defendant No.2 i.e. the son of the plaintiff namely Kuldeep Singh managed to get registered a forged GPA in the name of defendant No.2 from the plaintiff on the pretext that they had to obtain some loan for construction and renovation of their house on 24.04.2008. The contents of the GPA were neither disclosed by the deed writer nor by the Sub-Registrar, Derabassi at the time of registration. On the basis of the forged GPA, defendant No.2 executed a sale deed dated 10.06.2008 in favour of his mother defendant No.1 without any consideration with the intention to deprive the rights of the plaintiff over the suit land and that if the said sale deed is not set aside then the other son and

daughters of the plaintiff would also be deprived of their share in the suit land. Mutation No.2640 sanctioned on the basis of the said sale deed is also wrong and illegal and is liable to be set-aside. It was alleged that the plaintiff came to know about the ill designs of the defendants in October 2009 when he visited the Halqa Patwari to get a copy of the Jamabandi and then the plaintiff immediately got the GPA cancelled vide cancellation deed dated 05.11.2009.

Defendant No.1 appeared and filed written statement raising preliminary objections pertaining to concealment of true and material facts by the plaintiff. It was submitted that the plaintiff along with his other son Avtar Singh came to the house of defendant No.1 and expressed their intention to sell the suit land. In March 2008 the plaintiff along with Avtar Singh came to the house of defendant No.1 and informed them that he wanted to give the share of the husband of defendant No.1 to him and also wanted to sell the suit land. It was agreed that the plaintiff would sell the suit land to the defendant No.1 for a consideration of ₹32,87,000/-. Since the defendants were not having ready cash with them at that time, defendant No.1 took a loan of ₹15 Lacs from Ranjit Singh and ₹14 lakh from Karam Singh while the remaining amount was available with them. It was further stated that the defendants paid the entire sale consideration to the plaintiff in the presence of Kuldeep Singh and the plaintiff handed over the entire amount to his son, Avtar Singh, and executed GPA in favour of defendant No.2 as the defendants did not have sufficient amount for purchase of stamp papers and other expenses for the execution and registration of the sale deed. The amount of consideration was received by plaintiff on 20.04.2008 and he executed the GPA on 24.04.2008. Thereafter, the defendants arranged

money for execution of the sale deed and on the basis of the GPA defendant No.2 executed the sale deed in favour of the defendant No.1. It was also averred that the plaintiff had concealed the fact that he himself purchased the stamp papers for execution of the power of attorney and on his instructions the GPA was drafted by Mr. Kirti Kumar Sonik, Advocate and that the plaintiff himself produced the said GPA before the Sub-Registrar, Derabassi for its registration and after admitting the contents of the GPA the plaintiff had thumb-marked the document. It was further stated that on 10.06.2008 defendant No.2 met the plaintiff and informed him about registration of the sale deed on which the plaintiff, out of joy, gave ₹500 to defendant No.2 for purchasing sweets. After the plaintiff came to know that the suit land was going to be acquired @ ₹1,50,00,000/- per acre, the plaintiff and Avtar Singh started demanding ₹50 lakh more in the year 2009 and a local political leader, who was a former Sarpanch of village Chhat, started instigating the plaintiff and Avtar Singh against the defendants. Defendant No.2 filed a separate written statement but on similar lines as defendant No.1.

From the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court ? OPD
5. Whether the suit of the plaintiff is bad for non-joinder of necessary parties ? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
7. Relief.

The Trial Court, vide judgment and decree dated 16.11.2013, dismissed the suit of the plaintiff. All the issues were decided against the plaintiff. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff which was dismissed vide judgement and decree dated 27.01.2016. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing the suit of the plaintiff. According to him, the alleged transaction by the grandson (defendant No.2) in favour of his mother (defendant No.1) was without consideration as the defendants could not prove the source of money. It was also argued that the GPA was fraudulently got executed and registered and could not be held to be genuine document and that the plaintiff was made to believe that he had to sign some documents for the defendants to avail of a loan.

Heard learned counsel for the plaintiff-appellant and perused the paper-book.

The Courts below have found that the evidence available on the record produced by the plaintiff was unreliable and contradictory. The

plaintiff's evidence was opposite to his own pleadings in the plaint. He was unable to prove that the registered GPA (Ex.P1), which bears his photograph and thumb-impression, was a forged document. PW-2, the witness to the GPA, gave an all-together different story in Court which was not even pleaded by the plaintiff. The plaintiff has also not been found to be in possession of the suit land and he could not explain how he came to be dispossessed if he did not deliver possession to the defendants after execution of the sale deed (Ex.P2). The learned counsel for the plaintiff-appellant has not been able to dislodge the factual findings recorded by both the Courts below and has simply reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

17.05.2022

Yogesh Sharma

NOTE :

(ALKA SARIN)

JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No