

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

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RSA-738-2018 (O&M)
Reserved on : 16.09.2022
Date of Decision : 18.10.2022

Bakhtawar Singh Sandhu (Deceased) through LRsAppellants

VERSUS

Hargurpal Singh Sandhu @ Hargopal Singh Sandhu & Anr.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jashandeep Singh Sandhu, Advocate for the appellants.

ALKA SARIN, J.

CM-1831-C-2018

This is an application for condonation of delay of 159 days in filing the appeal.

For the reasons stated in the application, the same is allowed and delay of 159 days in filing the appeal is condoned.

CM-1832-C-2018

This is an application for condonation of delay of 194 days in refiling the appeal.

For the reasons stated in the application, the same is allowed and delay of 194 days in refiling the appeal is condoned.

RSA-738-2018

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 26.11.2012 and 19.07.2016 dismissing his suit for declaration and permanent injunction.

The brief facts relevant to the present lis are that the plaintiff, Bakhtawar Singh Sandhu who had originally filed a suit, is the father of defendant-respondent No.1 and grandfather of defendant-respondent No.2. The suit was filed by Bakhtawar Singh Sandhu (since deceased) for declaration that the sale deeds dated 7.12.2006, 11.12.2006 and 13.12.2006 allegedly executed by his power of attorney holder defendant-respondent No.1 in favour of defendant-respondent No.2 were illegal, null and void and the mutation Nos.11140, 3672 and 7671 sanctioned on the basis of the said sale deeds were also illegal, null and void. In the suit further prayer for permanent injunction was made for restraining the defendant-respondents from alienating the suit property.

It was alleged by the plaintiff Bakhtawar Singh Sandhu in his plaint that he was owner in possession of the suit land measuring 69 kanals 19 marlas fully described in the head-note of the plaint and that rest of the land is in the name of defendant-respondent No.1 as well as Jagtar Singh son of Gurmeet Kaur, nephew (sister's son) of the plaintiff. It was further averred that the plaintiff Bakhtawar Singh Sandhu had sent defendant-respondent No.1 to USA to settle and later on he also joined defendant-respondent No.1 and was thereafter residing with defendant-respondent Nos.1 and 2. It was further averred that in December 2006 defendant-respondent Nos.1 and 2 started declaring that the plaintiff Bakhtawar Singh Sandhu has no right, title or interest in the suit land as the defendant-respondent No.1 had already sold it to defendant-respondent No.2 on the basis of an alleged power of attorney dated 04.12.2006.

It was also averred that the relations between the plaintiff Bakhtawar Singh Sandhu and defendant-respondent No.1 were not smooth and that his passport had been snatched by defendant-respondent No.1. It was further alleged that the plaintiff Bakhtawar Singh Sandhu obtained a fresh passport and came to India in the month of January 2007 and was surprised to know that two sale deeds had been executed on the basis of a power of attorney in favour of defendant-respondent No.1. It is further averred that defendant-respondent No.1 was never authorized to sell the suit land of the plaintiff Bakhtawar Singh Sandhu.

The suit was contested. The defendant-respondents stated that the plaintiff Bakhtawar Singh Sandhu had appointed defendant-respondent No.1 as his attorney on 16.10.2006 in USA upon which photographs and ID of the plaintiff Bakhtawar Singh Sandhu had been affixed and the said power of attorney was countersigned by the Assistant Consular Officer, Consulate General of India after proper verification of ID and in the presence Notary Public. It was further averred that the plaintiff Bakhtawar Singh and the defendant-respondents were living together and infact the address given in the plaint is the same as the address of the defendant-respondents. It was further averred that the relationship remained smooth between the plaintiff Bakhtawar Singh Sandhu and the defendant-respondents and they were living in the same house. It was also denied that the passport was ever snatched as alleged and further that the plaintiff Bakhtawar Singh Sandhu travelled on the same passport which he alleges to have been snatched by the defendant-respondents.

On the basis of the pleadings the following issues were framed by the Trial Court :

1. Whether there is no attorney in favour of defendants No.1 & 2 and the same is illegal, null and void, if so its effects ? OPP
2. Whether the plaintiff is entitled to declaration as to his being co-owner after setting sale deeds dated 07.12.2006, 11.12.2006 and 13.12.2006 and the mutation entered on the basis of the said sale deeds is null & void ? OPP
- 2A. Whether Jagtar Singh is legal representative of deceased Bakhtawar Singh on the basis of registered Will dated 05.02.2007 ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction ? OPD
5. Whether the defendants are bonafide purchasers for valuable consideration ? OPD
6. Relief.

The Trial Court dismissed the suit vide judgment and decree dated 26.11.2012. An appeal against the judgement and decree passed by the Trial Court was dismissed by the lower Appellate Court vide judgement and decree dated 19.07.2016. Hence, the present regular second appeal.

It is apt to note that the plaintiff Bakhtawar Singh Sandhu did not step into the witness box before the Trial Court and two witnesses, namely, Sukhwinder Kumar @ Nitta attorney of Jagtar Singh appeared as PW1 and Mohinder Singh, Deed Writer appeared as PW2. From a perusal of the judgments and decrees passed by both the Courts below, it is apparent that the

plaintiff Bakhtawar Singh Sandhu died during the pendency of the suit and hence Issue No.2(A) “*Whether Jagtar Singh is legal representative of deceased Bakhtawar Singh on the basis of registered Will dated 05.02.2007 ?*” was framed. It has come on the record that the plaintiff Bakhtawar Singh Sandhu expired on 11.10.2009 in USA. It has been noticed by the Trial Court that the suit was filed on 09.02.2007 and remained pending for the evidence of the plaintiff Bakhtawar Singh Sandhu from 05.06.2008 to 21.08.2009 and despite obtaining 5/6 effective opportunities the plaintiff Bakhtawar Singh Sandhu only got Sukhwinder Kumar examined during his life time. The said Sukhwinder Kumar is not the power of attorney holder of the plaintiff Bakhtawar Singh Sandhu. On the death of the plaintiff Bakhtawar Singh Sandhu, his nephew Jagtar Singh sought to be impleaded as his legal heir on the basis of a registered Will Ex.P/13. The Trial Court held that Jagtar Singh is not the legal heir of deceased plaintiff Bakhtawar Singh Sandhu and Hargurpal Singh Sandhu @ Hargopal Singh Sandhu, defendant-respondent No.1, was the legal heir of Bakhtawar Singh Sandhu. It was further held that the plaintiff Bakhtawar Singh Sandhu had failed to prove his claim. The suit was accordingly dismissed. The present appeal has been filed by Jagtar Singh as legal representative of Bakhtawar Singh Sandhu.

Learned counsel for the appellant has contended that the defendant-respondents played a fraud with their father who was more than 90 years of age and got the power of attorney and on the basis of the said power of attorney the sale deeds were executed, which are illegal, null and void. It was submitted that the deceased plaintiff Bakhtawar Singh Sandhu was an old man and he was residing with the defendant-respondent No.1, his son, who got the land of the plaintiff Bakhtawar Singh Sandhu transferred in the name of his own son

(defendant-respondent No.2) without any consideration. It was further submitted that no power to transfer the suit land of the plaintiff Bakhtawar Singh Sandhu was given to the defendant-respondent No.1 in the power of attorney and therefore the sale deeds executed on the strength of the said power of attorney were illegal, null and void.

Heard.

In the present case the plaintiff Bakhtawar Singh Sandhu, who was 90 years of age, filed a suit for declaration to the effect that the sale deeds executed by his son defendant-respondent No.1 in favour of defendant-respondent No.2 on the basis of the power of attorney dated 04.12.2006 alleged to have been executed by the plaintiff Bakhtawar Singh Sandhu in favour of defendant-respondent No.1 were illegal, null and void. Both the Courts below concurrently found that Jagtar Singh, who has filed the present appeal, had failed to prove his right to pursue the appeal and to prove that he was the legal representative of Bakhtawar Singh Sandhu. Jagtar Singh claimed to be the legal heir of the plaintiff Bakhtawar Singh Sandhu on the basis of a Will Ex.P/13. However, concurrently, both the Courts below found the Will to be a suspicious document and not proved. The witness to the Will, Sukhwinder Kumar @ Nitta PW1, is the same person who is the attorney of Jagtar Singh. He is also the witness on the power of attorney alleged to have been given by Bakhtawar Singh Sandhu in favour of Jagtar Singh at the time of filing of the suit. It is also an admitted fact that both the power of attorney in favour of Jagtar Singh and the Will were executed by Bakhtawar Singh Sandhu on the same date and the witnesses of both the documents are the same. The entire case as set up by the plaintiff Bakhtawar Singh Sandhu was not found to be supported by any reliable evidence. In the Will dated 05.02.2007 it has been mentioned that Bakhtawar

Singh Sandhu was residing with Jagtar Singh, however, the suit has been filed on 09.02.2007 where the address of the plaintiff Bakhtawar Singh Sandhu was given as the same as that of defendant-respondent Nos.1 and 2. The story set up by the plaintiff Bakhtawar Singh Sandhu in the suit regarding his passport having been snatched was also found to be false inasmuch as it was proved that Bakhtawar Singh Sandhu had travelled on his passport Ex.P/3 in the year 2007-2008. Ex.P/3 the original passport reveals that it was valid from 20.05.1998 to 19.05.2008 and the plaintiff Bakhtawar Singh Sandhu travelled on the said passport to India. Hence the stand taken by the plaintiff Bakhtawar Singh Sandhu stood belied. The beneficiary of the Will i.e. Jagtar Singh also never stepped into the witness box himself and only his attorney Sukhwinder Kumar @ Nitta deposed in the suit. Infact none of the original parties to the suit i.e. the plaintiff Bakhtawar Singh, his son defendant-respondent No.1 or his grandson defendant-respondent No.2 stepped into the witness box themselves. The plaintiff Bakhtawar Singh Sandhu failed to prove the case set-up by him and Jagtar Singh also failed to prove that he is the legal representative of the plaintiff Bakhtawar Singh Sandhu after his death and is entitled to pursue the case of his behalf. It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case.

In view of the discussion above, I do not find any merit in the present appeal. No question of law much less any substantial question of law arises in the present case. Taking into consideration all the facts and circumstances of the case and the evidence led, this Court is of the view that the law and facts were rightly considered and applied by the Courts below. The findings recorded by the Courts below are based on the evidence led on record. No interference would be justified in second appeal by this Court to brush aside

the concurrent findings recorded by the Trial Court and the lower Appellate Court. The regular second appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

18.10.2022

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(ALKA SARIN)

JUDGE

Whether speaking/non-speaking : Speaking

Whether Reportable : Yes/No