

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8122 of 2019

Date of Decision: 22.12.2022

Sukhmani Minar Lamba

... Petitioner(s)

Versus

Balbir Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Deepak Gupta, Advocate
for the petitioner(s).

Mr. A.S.Khinda, Advocate
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. This revision petition has been filed in order to assail the correctness of an interlocutory order dated 26.11.2019 passed by the trial Court directing the deletion of issue No.4.

2. The learned counsel representing the petitioner contends that the plaintiffs have sought the decree of possession of the suit property on the basis of Will dated 13.04.1985 along with the relief of declaration that the sale deed executed by Smt.Chinar Lamba with respect to the property of late Smt. Harjit Kaur Lamba is illegal. The caption of the suit reads as under:-

“Suit for Possession of land comprising in Khewat Khatoni No. 7/19 Khasra no. 93//22 (9-2) vide fard Jamabandi of the year 2006-2007 located in the revenue estate of Village Kamal Pur Tehsil Sultan Pur Lodhi Distt. Kapurthala, being owner on the basis of will dated 13-4-1985 executed/registered

by Dolly Lamba @ Harjit @ Harjit Kaur Lamba d/o of Balwant Singh in favour of the plaintiffs as per judgement dated 6-8-2011 of the hon'ble High Court of Calcutta which attained finality being not challenged in apex court.

ALSO

Suit for Declaration to the effect that sale deed dated 17-11-2008 executed/ registered by defendant no. 3 in favour defendants no. 1 & 2 and mutation no. 4843 on the basis of fake, forged, false and fabricated power of attorney, is null & void, result of fraud, misrepresentation, void ab-initio, illegal, not maintainable in the eyes of law and does not affect the rights, title and claim of the plaintiffs. And the same are liable to be cancelled and set aside.

ALSO

Suit for Permanent Injunction restraining the defendants from further creating any charge and alienating the suit property.”

3. In substance, the plaintiffs claim that that late Smt. Harjit Kaur Lamba died on 24.08.1986 and hence, the sale deed executed by Smt.Chinar Lamba, on the basis of the power of attorney dated 29.06.1999, does not affect their rights.

4. On appreciation of the pleadings, the trial Court has culled out the following issues:-

“1. Whether the plaintiffs are entitled to the relief of possession on the basis of will dated 13.04.1985 executed by Dolly Lamba @ Harjit @ Harjit Kaur

Lamba in favour of plaintiffs as per judgment dated 06.08.2011? OPP

2. *Whether the plaintiffs are entitled to the relief of declaration that sale deed dated 17.11.2008 executed by defendant No.3 in favour of defendants No.1 and 2 and mutation No.4843 on the basis of fake, forged and false Power of Attorney, are null and void and are not binding upon the plaintiffs? OPP*
3. *Whether plaintiffs are entitled to relief of permanent injunction, as prayed for? OPP*
4. *Whether General Power of Attorney was executed on 29.06.1999 in favour of defendant No.3 by original owner Harjit Kaur Lamba @ Dolly Lamba? OPD*
5. *Whether sale deed dated 17.11.2008 is legal and enforceable in the eye of law? OPD*
6. *Whether defendants No.1 and 2 are bonafide purchasers of the suit land? OPD*
7. *Relief.”*

5. The plaintiffs have led their evidence. Now, at the stage of defendants' evidence, on an application filed by the defendants, issue No.4 has been deleted.

6. On the one hand, the learned counsel representing the plaintiff/petitioner contends that the order passed by the trial Court deleting issue No.4 is erroneous, whereas on the other hand, the learned counsel representing the defendants/respondents submits that the issue No.2 is

comprehensive and covers issue No.4 which was initially framed.

7. At this stage, the learned counsel representing the petitioner contends that the plaintiffs did not lead proper evidence on issue No.4 as they would have led evidence in rebuttal. He submits that even if the order deleting issue No.4 is correct, still the petitioner should be granted an opportunity to lead proper evidence with regard to the date of death of late Smt.Harjit Kaur Lamba and validity of the power of attorney. The learned counsel representing the defendants has no objection thereto.

8. Keeping in view the aforesaid facts, the trial Court is directed to allow the plaintiffs to lead evidence on the facts of date of death of Smt.Harjit Kaur Lamba and validity of the power of attorney. The defendants shall be granted an opportunity to cross-examine the witnesses on the aforesaid aspects.

9. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

December 22, 2022

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No