

RSA-729-2020 (O&M)

- 1 -

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

131

**RSA-729-2020 (O&M)
Decided on : 03.11.2023**

Bishan Kaur (deceased)
through Her LR Amarjit Kaur

. . . Appellant(s)

Versus

Gurvinder Kaur and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sandeep Jasuja, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-2270-C-2020

For the reasons set out in the application, the same is allowed.
Consequently, the delay of 154 days in re-filing the accompanying appeal is
hereby condoned.

Civil Miscellaneous application stands disposed of.

RSA-729-2020 (O&M)

1. Present Regular Second Appeal (RSA) has been filed by the plaintiff – Bishan Kaur (deceased) through her LR Amarjit Kaur (appellant herein) against the concurrent findings of dismissal of suit filed by her.
2. Plaintiff filed a suit, seeking a decree of declaration that defendant No.3 - Balvir Singh (respondent No.3 herein) has sold out the land measuring 10K-8M (detailed in paragraph No.2 of the trial Court judgment), on the basis of a forged General Power of Attorney (GPA), dated 30.10.2007, to defendants No.1 & 2 (respondents No.1 & 2 herein).

Further, challenge is made to the impugned sale-deed bearing

Vasika No. 3800 dated 16.11.2007, and mutation based thereon, which is a

RSA-729-2020 (O&M)

- 2 -

consequential relief, based upon the primary relief of getting GPA dated 30.10.2007, declared as illegal.

3. Based upon the pleadings of the parties, following seven issues were framed by learned Trial Court vide its order dated 02.08.2014:-

- “1. Whether the plaintiffs is entitled to the suit for declaration as prayed for? OPP
2. Whether the plaintiffs is entitled to the suit for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in its present form? OPD
4. Whether the plaintiffs has concealed the material and patent facts from the court? OPD
5. Whether the plaintiff is estopped by her own act and conduct to file the present suit? OPD
6. Whether the plaintiffs has no locus standi to file the present suit? OPD
7. Relief.”

4. Both the Courts below reached to the conclusion that plaintiff – Bishan Kaur is mother of defendant No.3 – Balvir Singh, against whom the allegations of impersonation and forgery were levelled by her. Prime allegation is that defendant No.3 – Balvir Singh, had forged GPA dated 30.10.2007 by making someone else to impersonate as Bishan Kaur, though, she herself never appeared before the Sub-Registrar, Kanshipur (U.K.). Thus, has not affixed her thumb impression upon it.

The Ld. Courts below further reached to the conclusion that plaintiff has taken a plea of fraud by way of impersonation, but in the pleadings of the suit, plaintiff did not even disclose her relationship with defendant No.3 – Balvir Singh, who in fact, is her real son.

Ld. Courts below concluded that consciously, plaintiff has concealed even the name of her husband ‘Lachman Singh’, by projecting

herself as daughter of 'Nihal Singh s/o Bahadur Singh'. Ld. Courts below also concluded that from the wedlock of Bishan Kaur (plaintiff) and said Lachman Singh, two more sons namely; Surjit Singh and Satnam Singh, and two daughters namely; Kartar Kaur and Amarjit Kaur, were born. Even, these details were not brought on record by the plaintiff. Even, after filing of the suit on 20.08.2009, plaintiff survived for about two years and died on 23.04.2011, but to authenticate her pleadings, she never appeared before the Civil Court.

Both the Ld. Courts below, also concluded that once plea of fraud is taken by the party, onus is always heavily upon such party to discharge it, by producing required evidence beyond reasonable doubt.

5. Even, Ld. Trial Court found that the litigation appears to be collusive, as initiated by the plaintiff – Bishan Kaur, against her son i.e. defendant No.3 – Balvir Singh, because, land has been sold out to defendants/respondents No.1 & 2.

It is also well settled law that the registered document is an authenticate evidence, because, same is in the knowledge of the public, and in the present case, the impugned GPA dated 30.10.2007, and the registered sale-deed dated 16.11.2007, both are the registered documents. Thus, authenticity of both these documents cannot be doubted, without there being proving of the plea of fraud, as pleaded in the plaint.

6. The relevant findings recorded by the Ld. Lower Appellate Court in paragraphs No.15 to 20, are reproduced here-below:-

“15. Admittedly, deceased Bishan Kaur is mother of defendant Balvir Singh against whom allegations of impersonation and forgery have been levelled by her as it has been alleged that Balvir Singh had forged her general power of attorney (GPA) dated

RSA-729-2020 (O&M)

- 4 -

30.10.2007 by making someone else to impersonate as Bishan Kaur, though she never appeared before Sub Registrar, Kanshipur (UK) nor she affixed her thumb impressions upon it. Challenge to the impugned sale deed bearing wasika no. 3800 dated 16.11.2007 and mutation passed thereupon is a consequential relief which must flow once her primary relief of getting her GPA dated 30.10.2007 as illegal succeeds.

Let us examine whether sufficient evidence was led by Bishan Kaur to prove her above said plea of fraud by way of impersonation. In her pleadings, Bishan Kaur has not disclosed her relationship with Balvir Singh, though Balvir Singh is her real son. She has consciously concealed name of her husband Lachhman Singh by depicting herself as daughter of Nihal Singh son of Bahadur Singh. Though from her wedlock with Lachhman Singh, Bishan Kaur gave birth to two more sons Surjit Singh and Satnam Singh and two daughters Kartar Kaur and Amanjit Kaur, but at the time of bringing the lis, she did not mention about her progeny. Though after filing this suit on 28.02.2009, she survived for almost two years to die on 23.01.2011 but during her life time, Bishan Kaur did not appear before Civil Court to affirm her above said pleadings.

16. *In order to establish a plea of impersonation and consequentially the fraud, the plaintiff should have got produced the original G.P.A. dated 30.10.2007, but at no stage of the trial, she moved any such application requiring production of the said document from her son Balvir Singh. Sensing that Balvir Singh being real son of Bishan Kaur may not collude with her, in their written statement contesting defendants requested for production of original GPA from defendant no. 3 with an additional prayer to ask the plaintiff to furnish her specimen thumb impression for the purpose of a worthwhile examination from Forensic Laboratory. Learned counsel for the respondents has rightly explained that Science of examination of finger prints is a fairly perfect science. Had the impugned GPA not bearing her thumb impression, by merely comparing her standard/admitted thumb impressions with the disputed thumb impressions, it could have been found so, but neither the original GPA was got produced by Bishan Kaur nor it was produced despite request by defendant Balbir Singh, thus indicating that defence raised by Balbir Singh was a pretended contest.*

17. *However, in the alternative, defendants have led*

sufficient to constitute the above said document. In this regard, besides examining their attorney Amrik Singh, contesting defendants summoned and examined Parkash Singh Bisht, Registration Clerk of the office of Sub Registrar, Kanshipur District Udham Singh Nagar (Uttarakhand), who brought the original record pertaining to registration of G.P.A. dated 30.10.2007 and proved its certified copy as Ex. D1. Though it was suggested to this witness that someone else might have impersonated Bishan Kaur to get the G.P.A. registered, but instead counsel for the plaintiff should have made efforts to get thumb impression appearing on the said record allegedly pertaining to Bishan Kaur compared with her admitted thumb impressions to rule out any such impersonation, but it seems that this most indicated and relevant evidence was purposely negated.

18. *It is relevant to note that when upon death of Bishan Kaur, her daughter Amarjit Kaur applied for being impleaded as her sole legal representative vide her application dated 04.04.2011 in which she set up a registered Will bearing wasika no.282 dated 15.01.2009 by averring that in her life time, her mother Bishan Kaur had bequeathed all of her movable and immovable properties in her name, meaning thereby that another document bearing thumb impressions of Bishan Kaur had come into existence which could have been utilized for comparison purpose especially when Bishan Kaur died, but even the said document was not utilized to get her disputed thumb impressions compared.*

19. *Learned counsel for the contesting respondents has rightly urged that whatever evidence could have been produced by the contesting defendants has been led. Interestingly, though defendant Balvir Singh filed a written statement contesting the claim of the plaintiff, but at the trial, he did not appear to affirm it on oath, thus clearly establishing that he was also siding with his mother.*

On the other hand, besides making her own statement as legal heir of her deceased mother Bishan Kaur, her daughter Amarjit Kaur has stepped into witness box and has examined two oral witnesses Harbhajan Singh and Inderjit Singh, but these oral testimonies appear highly insufficient to establish her plea of fraud based upon impersonation. As per law in order to constitute fraud all the ingredients constituting the offence of fraud are required to be pleaded and proved. Our own Hon'ble High Court in Santokh Singh and another vs Sukhwinder Singh and others, 2013 (1) Civil Court

Cases 753 (P&H), has laid down that a plea of fraud in civil case has to be proved beyond reasonable doubt just like a criminal charge. Hon'ble Apex Court in Shanti Budhiya Vesta Partel & Ors. Vs Nirmala Jayprakash Tiwari & Ors, 2010 (2) Civil Court Cases, 579 (SC), has observed that when full and precise particulars of fraud are not pleaded, a plea based upon fraud must fail. In a latest judgment our own Hon'ble High Court in Darshan Singh vs Dalip Kaur and others, 2015 (1) Civil Court Cases 674 (P&H) has observed that when a defendant contends that agreement was forged and fabricated but fails to prove the same by not examining any expert to compare the disputed signatures appearing on the agreement with his standard signatures, while on the other hand a plaintiff proves the due and valid execution of the agreement, plaintiff is rightly entitled to the relief of specific performance. Our own Hon'ble High Court in Sulakhan Singh vs Smt. Pal Kaur, 2011 (2) Civil Court Cases 496 (P&H) has further laid down that in the absence of a clear evidence regarding fraud, a registered document cannot be doubted. Hon'ble Apex Court in Shanti Budhiya Vesta Patel's Case (supra) has observed that in order to make out a case of fraud or coercion, there must be (a) an express allegation of coercion or fraud and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. If coercion or fraud is alleged, it must be set out with full particulars. Hon'ble Apex Court in Abdul Rahim & Ors. Vs Sk. Abdul Zabbar & Ors. 2009(3) Civil Court Cases 037 (SC), has laid down that under Section 114 of Evidence Act 1872, a registered document carries a presumption that it was validly executed and that it is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid. Hon'ble Apex Court in Bellachi (dead) by L.R vs Pakeeran, 2009(3) Civil Court Cases 022 (SC), has held that law does not envisage raising of presumption in favour of undue influence and that party alleging the same must prove it. If the evidence led by the plaintiff is measured by the ratio of law discussed above, it would highly fall short of constituting a fraud.

20. Moreover the impugned G.P.A. is a registered document as held by our own Hon'ble High Court in Santokh Singh versus Bishan Singh 1994 (1) P.L.R. 353 that a registered power of attorney is a public document and its certified copy is per se admissible without any necessity to seek permission to lead

RSA-729-2020 (O&M)

- 7 -

secondary evidence. In Shanti Budhiya Vesta Patel' case (supra) Hon'ble Apex Court laid down that a registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following proper procedure. As such, even otherwise, the document under challenge being authentic and registered cannot be doubted merely at the oral instance of legal heirs of Bishan Kaur."

7. After hearing learned counsel the appellant (plaintiff) at length and perusing the findings recorded by the learned Courts below in the impugned judgments & decree, I do not find any substantial reason to deviate from the view point taken by the Courts below.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

Civil misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

November 03, 2023

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No