

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1857-2023(O&M)
Date of Decision: July 25, 2023

SATNAM SINGH (SINCE DECEASED) THROUGH HIS LEGAL HEIR

..... Appellant

Versus

**JASWANT SINGH SINCE DECEASED THROUGH LRS MOHINDER
KAUR, PREET MOHINDER SINGH, BIRINDER SINGH AND
HARINDER LIDDER AND ORS.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Kumar, Advocate for appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 11.01.2018 and 17.05.2022 passed by the Courts below whereby a suit for declaration as well as permanent injunction filed at the instance of respondent-plaintiff stands decreed.

2. In the present case, the respondent-plaintiff filed a suit for declaration claiming ownership over the suit property, besides challenging the sale deed dated 11.08.2011 qua the same, executed by defendant No.5 in favour of defendant Nos. 1-4 being a forged and fabricated document while stating that the respondent-plaintiff never executed any power of attorney dated 22.02.2000 qua the same as alleged by defendant No.5, in his favour.

3. In response, suit was contested on behalf of defendant Nos.2-4 claiming ownership on the basis of sale deed dated 11.08.2011

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based on power of attorney dated 22.02.2000. The trial Court vide its judgment and decree dated 11.01.2018 decreed the suit filed by respondent-plaintiff while holding the power of attorney dated 22.02.2000 to be a forged and fabricated document and based thereupon declaring the sale deed dated 11.08.2011 to be illegal, null and void.

4. Aggrieved thereof, the First Appeal was filed which also came to be dismissed vide judgment and decree dated 17.05.2022 passed by the Court of Addl. District Judge, Ludhiana.

5. Impugning the aforementioned judgments, learned counsel for the appellant submits that the sale deed dated 11.08.2011 as well as the power of attorney dated 22.02.2000 were both registered documents carrying presumption of truth and thus could not have been held to be illegal. Learned counsel further submits that the suit filed by respondent-plaintiff was not even maintainable on account of non-compliance of Order 32 Rule 15 CPC as the Court never ordered for appointment of any guardian qua the respondent who was stated to be in coma. Order 32 Rule 15 CPC is reproduced hereunder:-

“This provision states that all these rules from 1 to 14, except rule 2A, provided specifically for minors, are also applicable to persons of unsound mind, so adjudged by the court. And it is also applicable in this case. They were not adjudged as of unsound mind, but after enquiry done by the court, it appears that they are suffering from mental infirmity due to which they were unable to protect their interests.”

6. In support of the aforesaid submission, learned counsel for the appellant places reliance upon judgments passed by the Hon'ble

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Supreme Court in case of “**Raj Kumar Vs. Rameshchand 1999(2) RCR (Rent) 438**” and “**Kasturi Bai and Ors. Vs. Anguri Chaudhary, 2003(1) RCR (Civil) 765**”

7. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellant.

8. In the present case, from the statement of PW2, namely, Jaswant Rai, from the Office of Sub-Registrar Phillaur and PW4, namely, Jaswant Singh, from the Office of Sub-Registrar Ludhiana West, it has been sufficiently established on record that no such power of attorney dated 22.02.2000 was ever executed and got registered by the plaintiff in favour of defendant No.5 at vasika No.503 with the office of Sub-Registrar Phillaur. Thus, in the absence of proof of valid power of attorney, the sale deed executed by defendant No.5 in favour of defendant Nos.1-4 was rightly declared as illegal, null and void.

9. As regards the applicability of Order 32 Rule 15 CPC, it may be pointed out here that the present suit was filed on behalf of respondent No.1 through his sons, namely, Birinder Singh Sandhu and Preet Mohinder Singh Sandhu. In the plaint it was specifically mentioned that plaintiff-respondent No.1-Jaswant Singh happened to be an old man of 82 years of age, suffering from brain haemorrhage and stroke for the past many months and was paralyzed, besides being in coma, unable to speak, walk and understand. Relevant paragraph No.1 from the plaint is reproduced hereunder:-

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“That the plaintiff, Jaswant Singh is an old man of about 82 years. He is suffering with brain haemorrhage and stroke for the so many months. He is also paralyzed and is in coma. He is still hospitalized and unable to speak, walk and understand anything. He is incapable to protect his interest being physical and mental infirmity. The present suit is of urgent nature and the same is filed through his sons Birinder Singh and Preet Mohinder Singh being his next friend who are conversant with the facts of the case. They do not have any adverse interest against the plaintiff and they are entitled to file present suit as per Order 32 Rule 1 and 15 CPC.”

10. A perusal of the above paragraph shows that even specific permission was sought for the purpose of filing the suit on behalf of Jaswant Singh-plaintiff by invoking Order 32 Rule 1 & 15 CPC.

11. Nonetheless, the sons of respondent-plaintiff-Jaswant Singh were having no adverse interest against his rights. The respondent-plaintiff even died immediately after filing of the suit, in fact, even before the filing of replication and his two sons along with other legal heirs were brought on record so as to contest the suit qua the estate left by the respondent/plaintiff.

12. In view thereof, once the legal heirs of plaintiff-respondent were already on record and pursuing the rights inherited by them in his estate, from the beginning of the suit i.e. even from the stage of original pleadings, the aforementioned judgments cited on behalf of learned counsel for appellant cannot be made applicable to the facts and circumstances of the present case.

13. Equally important, the object behind Order 32 Rule 15 CPC is primarily to safeguard the rights of minors or the persons of unsound mind and therefore, the Court is under an obligation to appoint guardian

to protect their interest, however, in the present case, the plaintiff-respondent though alleged to be under Coma being paralytic and unable to speak, walk and understand on account of he suffering of brain haemmorrhage and stroke, once having been granted the passing of decree in his favour, though post his death in favour of his legal heirs, cannot be put to disadvantageous position by setting aside the same for want of compliance of Order 32 Rule 15 CPC which in a way would itself defeat the very purpose of the provision itself. Thus, in the peculiar facts and circumstances of the present case, the decree granted in favour of respondent-plaintiff cannot be disturbed merely for non-compliance of procedure laid down under Order 32 Rule 15 CPC as the same would cause serious prejudice to his substantial rights rather than advancing the cause of justice.

14. Accordingly, finding no merits in the present appeal, the same is dismissed.

25.07.2023
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(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

