

^{120(a)} **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-1043-2020 (O&M)
Decided on:-21.09.2023**

Inder Singh and another

....Appellants..

VS.

Amit Pal

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Namish Sodhi, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

CM-3395-C-2020

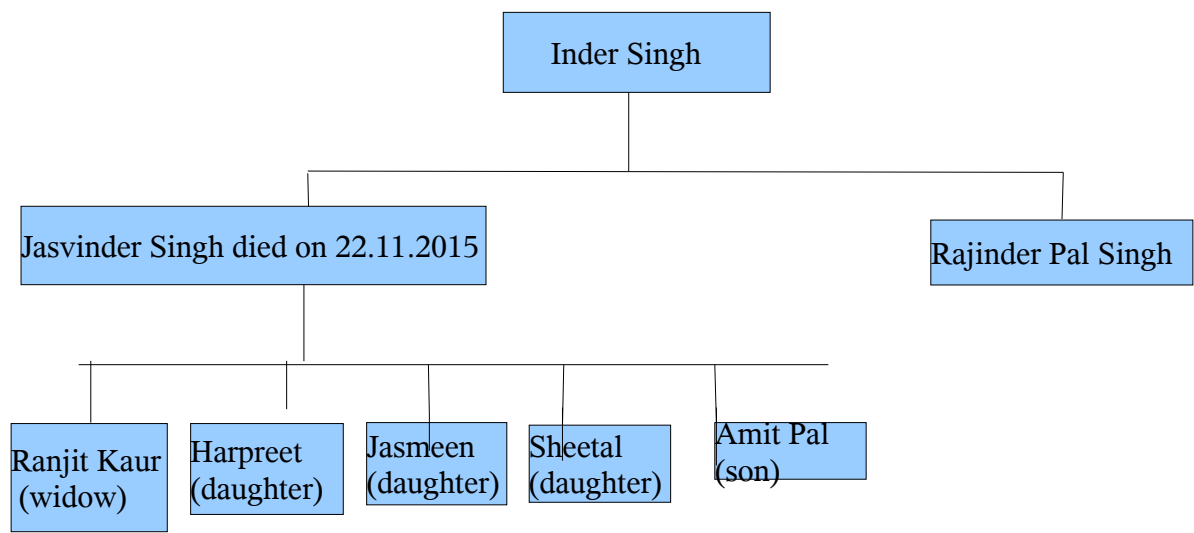
Prayer in this application is for condonation of delay of 100 days in re-filing the appeal.

Having heard learned counsel for the applicants-appellants and gone through the contents of the application, duly supported by an affidavit, sufficient cause has been made out for the purpose of condoning the delay of 100 days in re-filing the appeal. Accordingly, delay of 100 days in re-filing the appeal is condoned. Application is allowed.

Main case

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 13.12.2018 and 01.05.2019 passed by both the Courts below, whereby a suit for declaration with consequential relief of permanent injunction filed at the instance of respondent-plaintiff, has been decreed.

2. Admittedly, the parties are closely related to each other. The short pedigree table is formulated hereunder:-



3. Claiming himself to be owner/co-sharer in the property in dispute i.e. House No.3E-21-A, BP NIT, Faridabad, measuring 300 Sq. yards having been inherited from his deceased father, namely, Jasvinder Singh to the extent of 30 sq. yards each, respondent-plaintiff filed a suit for declaration assailing the General Power of Attorney (for short, “GPA”) No.877 dated 27.02.2012, allegedly executed by him in favour of his grandfather, namely, Inder Singh-appellant No.1/defendant No.1, besides challenging the sale deed No.6742 dated 09.09.2013, whereby the aforementioned Inder Singh alienated the suit property in favour of his uncle, namely, Rajender Pal Singh i.e. appellant No.2/defendant No.2. It has been further pleaded that no such GPA dated 27.02.2012 was ever executed by respondent-plaintiff in favour of his grand-father-Inder Singh and thus, respondent-plaintiff was owner in joint possession of the suit property to the extent of his share i.e. 30 sq. yards having been inherited from his father-Jasvinder Singh, who happened to be owner to the extent of ½ share along with appellant No.2-defendant No.2 by virtue of registered sale deed dated

14.03.2005, besides claiming injunction for restraining appellants-defendants from alienating or transferring the suit property in any manner.

4. Upon notice, appellants-defendants appeared and filed their joint written statement while submitting that the GPA dated 27.02.2012 was a registered document, validly executed by respondent-plaintiff in favour of Inder Singh-appellant No.1 and based thereupon, respondent-plaintiff, transferred his share qua the property in question, in favour of Rajinder Pal Singh i.e. appellant No.2.

5. The trial Court vide judgment and decree dated 13.12.2018, decreed the suit filed by respondent-plaintiff holding the GPA dated 27.02.2012 as well as the sale deed dated 09.09.2023 to be illegal and void documents. Aggrieved thereof, the appellants-defendants filed first appeal, however, the same was dismissed vide judgment and decree dated 01.05.2019.

6. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants submits that in the present case, the respondent being the plaintiff was to stand on his own legs and was to prove his case as regards the forgery or fabrication of the GPA No.877 dated 27.02.2012 and the sale deed dated 09.09.2013. He also submits that no evidence at all was produced on record, so as to establish any kind of forgery in the aforementioned two documents and thus, the suit filed at the instance of respondent-plaintiff was liable to be dismissed.

Learned counsel for the appellants further submits that a simple suit for declaration filed at the instance of respondent-plaintiff was not maintainable, as in the present case, sufficient evidence was brought on

record by the appellants-defendants so as to establish their exclusive possession over the property in question. He also submits that GPA No.877 dated 27.02.2012 as well as the sale deed No.6742 dated 09.09.2013 were a result of family settlement, entered into between the parties and thus, there was no question of fraud having been played upon respondent-plaintiff by appellants-defendants. No other argument was addressed by learned counsel for the appellants.

7. I have heard learned counsel for the appellants and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellants.

8. In the present lis, the case set-up by the respondent-plaintiff in his plaint was that no such GPA No.877 dated 27.02.2012 was ever executed by him in favour of his grand-father-Inder Singh. It was specifically pleaded that the said GPA, on the basis of which, sale deed No.6742 dated 09.09.2013 (Ex.P-1) were executed by appellant No.1 in favour of appellant No.2, was forged and fabricated document. In this regard, though besides their own deposition, undoubtedly, no other evidence has been led by the respondent-plaintiff, however, in view of the fact that the appellants-defendants on their own in the cross-examination of the respondent-plaintiff who appeared as PW-1 put a specific suggestion that he signed on blank papers for the purposes of execution of GPA in favour of appellant No.1. Once, the case set up by appellants-defendants was that the signatures of the respondent-plaintiff were obtained on blank papers and thereafter, GPA was executed thereupon, the entire burden shifted upon the appellants-defendants to establish on record the valid execution of GPA dated 27.02.2012 and that

too, with free consent & knowledge of the respondent-plaintiff.

9. Moreover, the original GPA No.877 dated 27.02.2012, allegedly executed by respondent-plaintiff in favour of appellant No.1 was never produced on record by the appellants-defendants, so as to make an effort to prove the same. None of the marginal witnesses to the GPA in question was examined, thus, depriving the respondent-plaintiff of an opportunity to cross-examine them on the validity of the document. In the facts and circumstances of the present case and in view of the case set up by appellant No.2/defendant No.2 of he deriving title in the suit property based on the sale deed dated 09.09.2013 having been executed in his favour by appellant No.1-defendant No.1, emanating right from GPA dated 27.02.2012, the entire burden was upon him to have proved the valid execution of the GPA dated 27.02.2012. On the contrary, only attested copy of GPA No.877 dated 27.02.2012 issued by the office of Sub-Registrar, Faridabad was tendered in evidence and that too, in the statement of counsel.

10. As regards, the submissions made on behalf of the appellants-defendants regarding the plea of family settlement having been entered into between the parties and the GPA dated 27.02.2012 being an outcome thereof, the same is devoid of merits as neither any such family settlement was ever pleaded by the appellants-defendants in their written statement nor any such suggestion was ever put to PW-1 i.e. respondent-plaintiff in his cross-examination. Thus, in this view of the matter, the plea raised on behalf of the appellants-defendants regarding execution of any family settlement between the parties was rightly declined by the Courts below.

11. Lastly, I do not find substance in the submission made on

behalf of the appellants as regard the non-maintainability of simple suit for declaration filed at the instance of respondent-plaintiff. Admittedly, the suit property measuring 150 Sq. yrd of area owned by Jasvinder Singh formed part of built-up shop being its half share jointly owned by him along with his brother appellant No.2/defendant No.2, namely, Rajender Pal Singh and thus, the respondent-plaintiff having inherited the same to the extent of his entitlement as per natural succession, become co-sharer in the same after the death of his father on 22.11.2005 and could not have been non-suited for not having claimed separate possession as the remedy of filing a suit for separate possession by way of partition is always available with him post declaration of his title in the joint property with the setting aside of GPA dated 27.02.2012 and the sale deed dated 09.09.2013 as null and void. It is well settled that the possession of one co-sharer is possession of others *inter ouster* was established which is not made out in the present facts and circumstances, therefore, the respondent-plaintiff is deemed to be in joint possession of the suit land with the appellants-defendants and can pray for separate possession by seeking petition thereof. Moreover, the appellants-defendants were required to press for a specific issue qua the maintainability of simple suit for declaration in the absence of any prayer for relief of possession at the earliest during trial itself by relying upon Section 34 of the Specific Relief Act, 1963, however, no such effort was ever made in this regard as per records, thereby dis-entitling them to press for non-suiting the respondent-plaintiff on this account.

12. In view of the discussion made herein-above, finding no illegality or perversity with the concurrent findings of fact recorded by the

Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

13. Pending applications, if any, stand disposed of.

21.09.2023
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No

(HARKESH MANUJA)
JUDGE