

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

**RSA-1045-2020 (O&M)
Decided on:-21.09.2023**

Inder Singh and another

....Appellants..

VS.

Ranjeet Kaur and another

....Respondents.

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-3397-C-2020

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

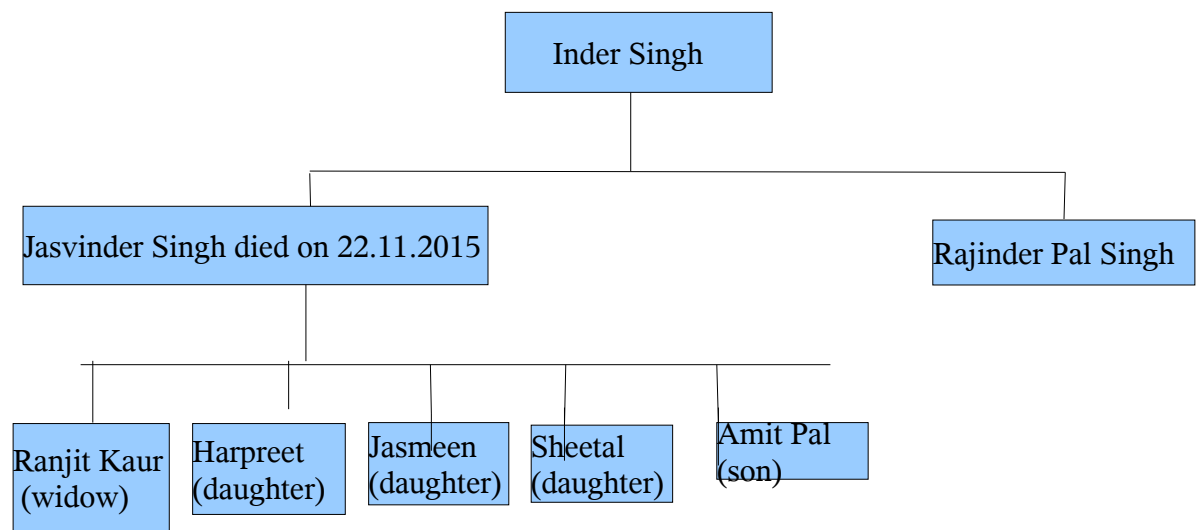
Having heard learned counsel for the applicants-appellants and gone through the contents of the application, duly supported by an affidavit, sufficient cause has been made out for the purpose of condoning the delay of 100 days in re-filing the appeal. Accordingly, delay of 100 days in re-filing the appeal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

Main case

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 05.09.2018 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 respondents-plaintiffs, has been decreed.

RSA-1045-2020 (O&M)

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



3. Claiming themselves to be owners/co-sharers in the property in question having been inherited from deceased-Jasvinder Singh (husband of respondent No.1-Ranjeet Kaur and father of respondent No.2-Sheetal), respondents-plaintiffs filed a suit for declaration assailing the General Power of Attorney (for short, “GPA”) No.333 dated 27.01.2007, allegedly executed by them in favour of Inder Singh-appellant No.1/defendant No.1 (father-in-law of respondent No.1 and grand-father of respondent No.2), besides challenging the sale deed No.2757 dated 28.05.2007, whereby the aforementioned Inder Singh alienated the suit property in favour of Rajender Pal Singh-appellant No.2/defendant No.2 (brother-in-law of respondent No.1 and uncle of respondent No.2). It has been further pleaded that no such GPA dated 27.01.2007 was ever executed by respondents-plaintiffs in favour of Inder Singh-appellant No.1/defendant No.1 and thus, respondents-plaintiffs were owners in joint possession of the suit property to the extent of their share i.e. 30 sq. yards each having been inherited by them from deceased-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 27.01.2007 was a registered document, validly executed by respondents-plaintiffs in favour of Inder Singh-appellant No.1 and based thereupon, respondents/plaintiffs, transferred their shares 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 05.09.2018, decreed the suit filed by respondents-plaintiffs holding the GPA dated 27.01.2007 as well as the sale deed dated 28.05.2007 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 respondents being the plaintiffs were to stand on their own legs and were to prove their case as regards the forgery & fabrication of the GPA No.333 dated 27.01.2007 and the sale deed dated 28.05.2007. He also submits that no evidence at all was proved on record, so as to establish any kind of forgery in the aforementioned two documents and thus, the suit filed at the instance of respondents-plaintiffs was liable to be dismissed.

Learned counsel for the appellants further submits that a simple

suit for declaration filed at the instance of respondents-plaintiffs 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.333 dated 27.01.2007 as well as the sale deed No.2757 dated 28.05.2007 were a result of family settlement, entered into between the parties and thus, there was no question of fraud having been played upon respondents-plaintiffs by appellants-defendants. No other arguments have been 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 respondents-plaintiffs in their plaint was that no such GPA No.333 dated 27.01.2007 was ever executed by them in favour of Inder Singh-appellant No.1-Defendant No.1. It was specifically pleaded that the said GPA, on the basis of which, sale deed No.2757 dated 28.05.2007 (Ex.P-4) 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 respondents-plaintiffs, however, in view of the fact that the appellants-defendants on their own in the cross-examination of the respondent No.1-plaintiff No.1 who appeared as PW-1 put a specific suggestion that both of them signed on blank papers for the purposes of execution of GPA in favour of appellant No.1. Once, the case set up by the appellants-defendants was that the signatures of the respondents-plaintiffs

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 27.01.2007 and that too with free consent & knowledge of the respondents-plaintiffs.

9. Moreover, the original GPA No.333 dated 27.01.2007, allegedly executed by respondents-plaintiffs 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 respondents-plaintiffs 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 28.05.2007 having been executed in his favour by appellant No.1-defendant No.1, emanating right from GPA dated 27.01.2007, the entire burden was upon him to have proved the valid execution of the GPA dated 27.01.2007. On the contrary, only photocopy of said GPA was available on file as Mark A.

10. As regards, the submissions made on behalf of the appellants-defendants regarding the plea of family settlement entered into between the parties and the GPA dated 27.01.2007 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 even any such suggestion was ever put to PW-1 i.e. respondent No.1-plaintiff No.1 in her 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 respondents-plaintiffs. 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 respondents-plaintiffs having inherited the same to the extent of their entitlement as per natural succession, became co-sharers in the same after his death 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 them post declaration of their title in the joint property with the setting aside of GPA dated 27.01.2007 & the sale deed dated 28.05.2007 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 respondents-plaintiffs are 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 respondents-plaintiffs on this account.

RSA-1045-2020 (O&M)

--7--

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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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No