

¹²⁰ IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1039-2020 (O&M)

Decided on:-21.09.2023

Inder Singh and another

....Appellants..

VS.

Harpreet 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-3387-C-2020

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

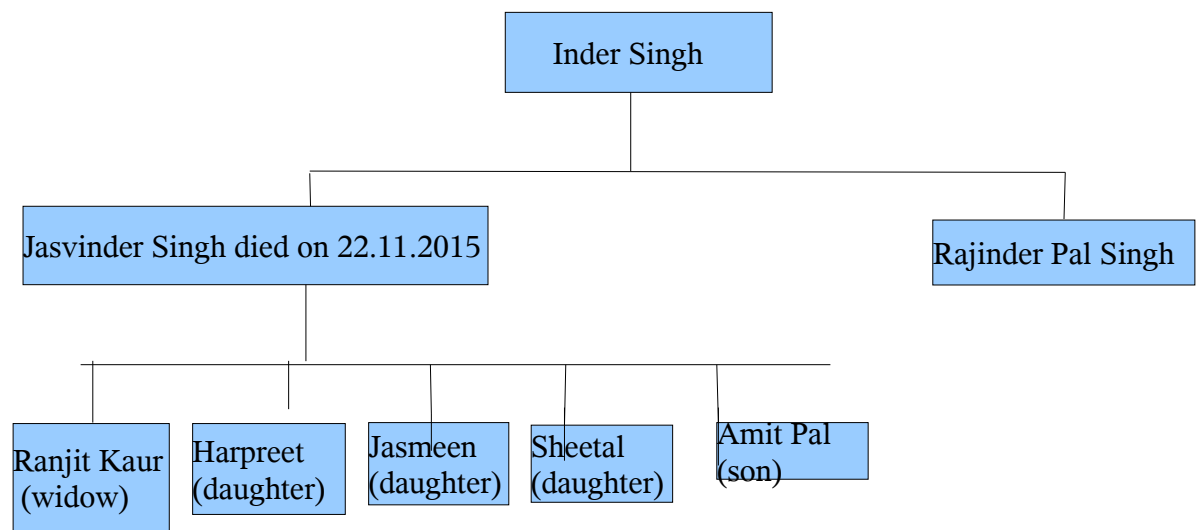
Having heard learned counsel for the applicants-appellants and gone through the contents of the application, duly supported by an affidavit, sufficient cause has been made out for the purpose of condoning the delay of 100 days in re-filing the appeal. Accordingly, delay of 100 days in re-filing the appeal 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 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-1039-2020 (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 dispute i.e. House No.3E-21A, BP NIT, Faridabad, measuring 300 Sq. yards having been inherited from their deceased father, namely, Jasvinder Singh to the extent of 30 Sq. yards each, respondents-plaintiffs filed a suit for declaration assailing the General Power of Attorney (for short, “GPA”) No.A-4/346 dated 29.08.2009, allegedly executed by them in favour of their grandfather, namely, Inder Singh-appellant No.1/defendant No.1, besides challenging the sale deed No.12133 dated 20.10.2009, whereby the aforementioned Inder Singh alienated the suit property in favour of their uncle, namely, Rajender Pal Singh i.e. appellant No.2/defendant No.2. It has been further pleaded that no such GPA dated 29.08.2009 was ever executed by respondents-plaintiffs in favour of their grand-father-Inder Singh 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 their 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 29.08.2009 was a registered document, validly executed by respondents-plaintiffs in favour of Inder Singh-appellant No.1 and based thereupon, respondents/plaintiffs, transferred their respective 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 the respondents-plaintiffs holding the GPA dated 29.08.2009 as well as the sale deed dated 20.10.2009 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.A-4/346 dated 29.08.2009 and the sale deed dated 20.10.2009. 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 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.A-4/346 dated 29.08.2009 as well as the sale deed No.12133 dated 20.10.2009 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 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 respondents-plaintiffs in their plaint was that no such GPA No.A-4/346 dated 29.08.2009 was ever executed by them in favour of their grand-father-Inder Singh. It was specifically pleaded that the said GPA, on the basis of which, sale deed No.12133 dated 20.10.2009 (Ex.P1) 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 respondents-plaintiffs who appeared as PW-1 and PW-2 put them 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 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 29.08.2009 and that too with free consent & knowledge of the respondents-plaintiffs.

9. Moreover, the original GPA No.A-4/346 dated 29.08.2009, allegedly executed by respondents-plaintiffs in favour of appellant No.1 was never produced on record by the appellants-defendants. Although, an effort was made through DW-4 SI Anoop Singh, who deposed that the original GPA formed part of the investigation initiated at the instance of the mother of respondents-plaintiffs, still, neither any application was moved before the Courts below for production of original record of investigation nor even the certified copy thereof was tendered in evidence, so as to make an effort to prove the same. None of the two 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, the same was never even put to the respondents-plaintiffs in their cross-examinations thereby affording them any opportunity to controvert the same. 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 20.10.2009 having been executed in his favour by appellant No.1-defendant No.1, emanating right from GPA dated 29.08.2009, the entire burden was upon him to have proved the valid execution of the GPA dated 29.08.2009. On the other hand, in order to rebut the case of the appellants-defendants, the respondents-plaintiffs proved on record an application Ex.PX, submitted by them to the office of Sub-Registrar

Shahnagar where the GPA dated 29.08.2009 was allegedly registered, for obtaining its certified copy where upon it was replied that no such document was registered with this office & the application was returned.

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 29.08.2009 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 and PW-2 i.e. respondents-plaintiffs in their 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 regards 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 alongwith 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 29.08.2009 & the sale deed dated 20.10.2009 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.

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

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No