

111.

2024:PHHC:001221

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

RSA No.1926 of 2018 (O&M)

Date of decision: 10.10.2023

Harminster Kaur

.... Appellant

Versus

Surinder Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sandeep Arora, Advocate, for the appellant.

GURBIR SINGH, J.

CM-5314-C-2018

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 893 days in filing the appeal.

For the reasons mentioned in the application, same is allowed and delay of 893 days in filing the appeal is condoned.

RSA-1926-2018

1. This regular second appeal has been filed against the judgment and decree dated 20.02.2015 passed by learned Additional District Judge, Fast Track Court (Ad hoc), Jalandhar whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 07.11.2022 passed by learned Civil Judge (Junior Division), Jalandhar, has been dismissed.

2. The brief facts of the case are that the appellant-plaintiff (hereinafter called, "plaintiff") filed a suit, through her attorney, for

declaration to the effect that the plaintiff is the owner in possession of land, as mentioned in the head note of the plaint, and the alleged sale deed dated 09.12.1996 executed on the basis of Power of Attorney dated 06.12.1996 is the result of fraud, collusion of respondents-defendants No.1 and 2 (hereinafter called, “defendants) with each other and without consideration, and further prayed for permanent injunction restraining the defendants from taking forcible possession, transferring or alienating the suit property in any manner. The plaintiff pleaded that her husband Kuldeep Singh (since deceased) was the owner of suit property. He expired on 08.03.2005 and after his death, plaintiff inherited the suit property. In February, 2008, she came to know that there is an alleged sale deed dated 09.12.1996 in favour of Surinder Kaur-defendant No.1 regarding the suit property which was got executed by defendant No.2-Sarup Singh, who is husband of defendant No.1, on the basis of alleged Power of Attorney dated 06.12.1996. It was further pleaded that husband of the plaintiff, namely, Kuldeep Singh was permanent resident of Village Garhi Baksh, Sub-Tehsil Bhogpur, Tehsil and District Jalandhar, but in the alleged Power of Attorney on the basis of which sale deed was executed in favour of defendant No.1, Kuldeep Singh (since deceased) had been shown as resident of Avtar Nagar, Jalandhar. The said sale deed was executed after three days of the execution of alleged Power of Attorney before the Sub-Registrar-cum-Naib Tehsildar at Bhogpur whereas the Power of Attorney had been got registered at Jalandhar. Kuldeep Singh was a Sikh gentleman, but in the alleged Power of Attorney, there exists a photograph of a Hindu gentleman. In the said Power of Attorney, one Raghbir Singh son of Karam Singh has been cited as a witness and he had

been shown a resident of Avtar Singh, but no house number had been mentioned. The land, in question, is still joint with other co-sharers. In the sale deed, sale consideration has been shown as only Rs.29,000/-, whereas the value of the land is many times more. The physical possession of the suit land is with the plaintiff and her children.

3. The defendants did not contest the suit and remained ex-parte.

4. In support of the case, the plaintiff herself stepped into the witness-box as PW1 and got examined Malinder Singh, Member Panchayat, as PW2, who fully corroborated the version of the plaintiff. Plaintiff also examined Gurpreet Singh, President of Avtar Nagar Society as PW3.

5. After appreciating the evidence on record, the trial Court vide ex-parte judgment and decree dated 07.11.2012 dismissed the suit since the plaintiff failed to prove her case. In appeal, the plaintiff also filed an application under Order 41 Rule 27 CPC for producing Handwriting and Fingerprints Expert, which application was allowed and the said expert was examined as PW4, who produced his report as Ex. PW4/A along with photographic chart Ex.PW4/B. However, her appeal was also dismissed vide ex-parte judgment and decree dated 20.02.2015.

6. Aggrieved against the aforesaid judgments and decrees of both the courts below, the plaintiff-appellant has approached this Court.

7. Learned counsel for the appellant has argued that Kuldeep Singh (since deceased) never executed Power of Attorney in favour of respondent-defendant No.2, namely, Sarup Singh. Even if said Power of Attorney was given, same was given for better management of property. The amount of

consideration mentioned in the sale deed is quite less. Kuldeep Singh, during his lifetime, remained in possession of the suit property and after his death, plaintiff-appellant along with her children are in possession of the suit property. Moreover, Handwriting and Fingerprint Expert was examined, who gave the report PW4/A that there was slight divergence between the signatures of Kuldeep Singh on the passport with the disputed signatures on the Power of Attorney.

8. I have heard the submissions of learned counsel for the appellant and have gone through the paper book.

9. The Power of Attorney Ex.P2 is a registered document. The presumption of truth attaches with a registered document. The Power of Attorney was executed on 06.12.1996. Kuldeep Singh died in the year 2005. During his lifetime, he did not challenge the Power of Attorney and the sale deed which was executed on the basis of said Power of Attorney. Plaintiff did not examine the witnesses of the sale deed and of the Power of Attorney to prove that these documents were not executed by her husband Kuldeep Singh. Except the oral testimony, there is no document which proves the physical possession of the plaintiff over the suit property. It has been rightly held by the court below that comparison of signatures is not a perfect science. The court below has rightly not placed reliance on the report of Expert who always gives report in favour of the party who engages him.

10. No substantial question of law arises for consideration in this regular second appeal.

11. Since there are concurrent findings of facts recorded by both the courts below, this Court does not find any reason to interfere in the well reasoned judgments and decrees of the courts below. Accordingly, present appeal is dismissed.

(GURBIR SINGH)
JUDGE

October 10, 2023
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No