

RSA-1087-2020 (O&M)

256

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

RSA-1087-2020 (O&M)

Date of decision: January 11, 2023

Roop Singh

....Appellant

versus

Nirapdeep Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vaibhav Sehgal, Advocate for the appellant.

ARUN MONGA, J. (ORAL)

CM-3490-C-2020

For the reasons stated in the application, the same is allowed.

Photocopy of impugned judgments/ decrees and grounds of appeal are taken on record, subject to all just exceptions.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant-appellant is in second appeal before this Court assailing the trial Court judgment and decree dated 28.10.2016, as upheld by learned First Appellate Court vide its judgment and decree dated 27.08.2019.

3. Briefly stated, facts as noticed by Courts below are that plaintiffs purchased the land in question vide sale deed executed and registered in their favour by Sital Singh son of Sh. Baldev Singh alias Davinder Singh through his General Attorney Gurpal Singh at vasika No.12754 dated 16.01.2008. On the

RSA-1087-2020 (O&M)

basis of said sale deed, mutation No.700 was also sanctioned in their favour. Plaintiffs purchased the said property alongwith electricity motor of 3 HP (Khattano.151). Electricity connection was transferred from the name of ex-owner, namely, Sital Singh in the name of plaintiff no.1. Plaintiffs leased the land to Mr. Dhand, who was running a brick kiln at Sahnewal, Distt. Ludhiana. Defendant in collusion with revenue officials subsequently got mutation No.700 declared as disputed and also got the same referred to Court of Assistant Collector First Grade-cum-SDM, Ludhiana (East) and got the same cancelled. Two other mutations i.e., mutations No.702 and 722 were also cancelled. Plaintiffs thereafter filed an appeal before the Collector Ludhiana, on 17.10.2009, which was dismissed on 22.01.2010. Defendant was allegedly interfering in the peaceful possession of the plaintiffs after dismissal of the latter's appeal.

4. Upon notice, defendant appeared and filed written statement taking preliminary objections that plaintiffs were not in possession of the suit property and as such, the suit for declaration simplicitor without seeking the relief of possession was not maintainable under Section 34 of Specific Relief Act. It was further averred that power of attorney in favour of Gurpal Singh was forged and fabricated document. Gurpal Singh was neither competent to execute the sale deed nor the sale deed executed by said Gurpal Singh conveyed any rights or title to the plaintiffs. The property in the hands of Gurpal Singh was Joint Hindu Ancestral Coparcenary property and he had no right or necessity to alienate the same. Gurpal Singh is nephew of Sital Singh and by misusing the relations he prepared the said forged and fabricated power of attorney. On merits, defendants denied all the averments alleged by plaintiffs in the plaint.

5. Replication to the written statement was filed reiterating the facts as contained in the plaint.

6. Based on the rival pleadings, following issues were framed:

- “1. *Whether the plaintiffs are entitled to declaration as prayed for? OPP.*
2. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP.*
3. *Whether the plaintiffs are not in possession of suit property? OPD.*
4. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.*
5. *Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, trial Court decided issues No.1, 2, 3 & 4 in favour of the plaintiffs and against the defendant and decreed the suit of the plaintiffs vide impugned judgment and decree dated 28.10.2016.

9. Feeling aggrieved against the said judgment and decree dated 28.10.2016, the defendant preferred first appeal, which was dismissed vide judgment and decree dated 27.08.2019.

10. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

11. In its judgment, the learned First Appellate Court, *inter alia*, observed:

“28. *It is not in dispute that Sital Singh was **not** (sic) owner of the suit property and he, thus, got every right to sell the same as per his own wish and desire, which he did by appointing his general power of attorney holder. The testimony of PW-6 Gurmit Singh data entry operator crystal clearly proved the authenticity of power of attorney projected by plaintiffs/respondents as he has clearly stated that the power of attorney was registered by the Sub-Registrar after*

thoroughly verifying and identifying the executant of the power of attorney and witnesses and thus, no doubt can be raised on the power of attorney Ex.P2 and therefore the appeal of defendant/appellant carries no weightage.

29. *Besides, it is staunch plea of appellant/defendant that the suit property is joint Hindu family ancestral property but this plea has again not seen the light of the day and no concrete evidence has been led on record by the defendant/appellant that property is ancestral property. No excerpt is proved on record regarding the suit property nor any revenue official is examined by the appellant/defendant to prove that the nature of the suit property was ancestral. Under such circumstances, the judgments relied upon by learned counsel for the appellant/defendant are of no help to the case of appellant/defendant.*

30. *The plea of defendant/appellant that the power of attorney is forged and fabricated has not been fully established by defendant/appellant and inquiry proceedings placed on record by the defendant/appellant does not create any effect on the case of plaintiffs/respondents. Even if PW-5 Gurmail Singh did not step in the witness box for his cross-examination but his incomplete statement again does not influence the case of plaintiffs/respondents, which is duly established on the strength of other evidence led on record as discussed above, by the plaintiffs/respondents. Thus, the learned lower court rightly decided the suit, while decreeing the suit of the plaintiffs/respondents.*

31. *Thus, the cumulative effect of all what has been said and discussed above, no infirmity is found in the findings recorded by the learned lower court which are based on proper appreciation of evidence and documents on record and cannot be said to be perverse or illegal so as to warrant interference in this appeal. Sequely, the impugned judgment and decree is affirmed and appeal is dismissed. Decree sheet be prepared. Lower court record along with copy of this order be sent back and appeal file of this Court be consigned to the record room."*

12. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the judgments passed by the Courts below are without jurisdiction, these have been passed in hot haste, are based on conjectures and surmises, are contrary to law and evidence on record.

13. Having perused the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no

RSA-1087-2020 (O&M)

substance in the submissions that the impugned judgments were passed in hot haste or that the same are based on conjectures and surmises.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending application(s), if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No