

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

SAO-58-2023 (O&M)

Date of decision: 14.12.2023

Kuldeep Singh

....Appellant

Versus

Virender Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S.Swaich, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The plaintiff challenges the correctness of the remand order passed by the First Appellate Court whereby the trial court has been directed to decide the matter afresh, after framing proper issues in accordance with Order XIV Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed. The appellant filed a suit for declaration to the effect that he is the sole owner of the suit property and the release/transfer deed dated 10th March, 1963 executed by defendant no.2, the elder brother of the plaintiff, in favour of defendant no. 1, the plaintiff's son is illegal, null and void. It is the case of the plaintiff that he executed a general power of attorney in favour of his elder brother Sh.Anang Pal on 10th February, 1981. Subsequently, on the basis of that

power of attorney Sh. Anang Pal transferred the plaintiff's property in favour of Sh.Virender Singh son of Sh.Kuldeep Singh (the plaintiff-appellant).

3. From the pleadings of the parties, the trial court culled out the following issues for adjudication:-

“i) Whether the plaintiff is owner in possession of the land in question on the grounds mentioned in the plaint? OPP.

ii) Whether the release deed No.1002 dated 10.03.2003 executed by the defendant No.2 in favour of defendant No.1 as general power of attorney and mutations No.5342 & 1418 are illegal, null & void and liable to be set aside on the grounds mentioned in the plaint? OPP.

iii) Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP.

iv) Whether suit is not maintainable in the present form? OPD.

v) Relief.”

4. Thereafter, on 24th August, 2015, the following additional issues were culled out:-

“i) Whether plaintiff has no locus standi to file the present suit? OPD.

ii) Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD.

iii) Whether plaintiff is estopped from filing the suit by his own act & conduct? OPD.

iv) Whether plaintiff has not come to the Court with clean hands? OPD.

v) Whether suit of the plaintiff is hit by Order 2 Rule 2, Order 23 Rules 1 & 4, and, Section 11 CPC? OPD.”

5. The trial court decreed the suit on 25th January, 2016. Sh. Virender Singh filed the appeal. The First Appellate Court, after re-appreciating the entire evidence came to the conclusion that the trial court shall be directed to decide the matter afresh after culling out proper issues in accordance with Order XIV Rule 1 CPC. The First Appellate Court has recorded various reasons in paras 19 to 22 for remanding the case back to the trial court, which read as under:-

“19. After above discussion of the pleadings, the issues framed on 20.03.2014, the additional issues framed on 24.08.2015 and the findings given by learned trial court, this court has come to the conclusion that matter is totally hotch-potch, mainly on account of improper framing of the issues. Pleadings of the plaintiff, through his plaint as well as replication is clearly indicating that GPA [General Power of Attorney No. 203 dated 10.02.1981 (Exh.P9)] was not executed by the plaintiff with a free will. Learned trial court through impugned judgment has also so held that same was the result of misuse of fiduciary relations by the defendant No.2. But, no issue is running framed qua genuineness of said GPA whereas it is very much under challenge and is the core document of the case.

20. Likewise, there is no issue at all over the aspect of ‘fraud’. In absence of such an issue, learned trial court is not supposed to comment that plaintiff is the victim of fraud. Like a criminal trial, fraud is required to be specifically proved in a civil suit by leading cogent evidence regarding thereto. The evidences in a civil litigation are, however, led as per issues framed in the given case. In absence of appropriate issues parties can’t be permitted to lead evidence on a given topic. The party asserting fraud in civil proceedings has to be proved the same. The term of opposite party to rebut such an assertion will come only thereafter. In the case in hand, defendants have been labelled as fraudsters without their knowledge

that there is such a case against them because it is only the issues of the case which makes clear to the parties that what is going to be proved in the matter. Fraud is not a routine formal assertion in the legal jurisprudence. It goes to the root of the matter and changes the equations drastically, hence, issues regarding thereto cannot be ignored. In other words, issue over the 'fraud' has always been considered as a foundational pillars of a civil litigation. Unfortunately, in the matter in hand, aspect of fraud has been decided without there being a specific issue over it. Pleadings of the plaintiff is asserting fraud at two levels, one at the time when Power of Attorney dated 10.02.1981 was executed between plaintiff & defendant No.1 and, at the second stage when on basis of said GPA, defendant No.2, without taking plaintiff in confidence, got release-deed dated 10.03.2003 executed of $\frac{3}{4}$ portion of landed properties measuring appropriate 24 $\frac{1}{2}$ acres belonging to plaintiff, in favour of defendant No.1 who was even not born when GPA was prepared and when even concept of release- deed was not propounded by the government alienation of landed property between blood relatives. Thus, one issue regarding misuse of fiduciary relations while GPA dated 10.02.1981 was executed, was to be framed with onus over the defendant No.2 being in dominating position and, two separate issues regarding fraud/sibling jealousy/ conspiracy were required to be framed with onus over the plaintiff, one for execution of Power of Attorney dated 10.02.1981 and the other for execution of release-deed dated 10.03.2003.

21. Not only it, plaintiff is asserting suit land as his self acquired property and defendants are asserting same as the ancestral property or the property purchased out of proceeds of sale of ancestral properties. Learned trial court hold suit land to be the self acquired property owned by plaintiff and that defendants failed to prove its genesis from the income of the joint family, but surprisingly, there is no issue running framed nor onus thereof running fixed over any particular party to the litigation. Had there been a specific issue that

land in question is the self acquired property of plaintiff, only thereafter it could have been stated that defendants have failed to prove their assertions that genesis of suit land is from income of the joint family, but it is not the case. If parties have led some evidence in a particular direction without there being a specific issue covering said angle, then same cannot be held as fit for the court to give a finding over the same, and if such a finding is being given, then same will definitely create a confusing state.

22. So is the position regarding the plea of third party interests, which are running created much prior to filing of the written-statement. Defendants have given every required detail of the persons who are the subsequent purchasers on basis of two sale deeds. At the time of framing issues, care of these subsequent purchasers was also required to be taken as fate of the case was necessarily going to affect their rights, but neither any issue based over the doctrine of lis-pendens nor regarding the fate of the rights of the subsequent purchasers was framed. Learned trial case has held the release-deed No.1002 dated 10.03.203 is not sustainable in the eyes of law and not binding upon the rights of plaintiff and, consequently, all subsequent transactions were held to be non-est in the eyes of law including the mutations of two sale-deeds in favour of subsequent purchasers, but learned trial court failed to see whether subsequent purchasers are bonafide or not. Had there been an appropriate issue regarding this angle of the case, the subsequent purchasers have then not been caught unaware.”

6. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook alongwith the relevant record produced by him.

7. Learned counsel representing the appellant contends that the appellate court shall have framed the additional issues and decided the matter in accordance with law. He further submitted that

issue no. 1(i) & (iii) framed on 20th March, 2014 are sufficient to decide the case. He relies upon decision rendered in **Ramathal and others vs. K.Rajamani (dead) through LRs and another 2023 AIR (SC) 3978** to contend that the first two issues would cover fraud as well as the issue with regard to the absence of the power to transfer under the General Power of Attorney.

8. This Court has considered the submissions made by the learned counsel representing the appellant. As per Order XIV Rule 1 CPC, the court is required to cull out the material proposition arising between the parties. Each material proposition affirmed by one party and denied by other shall form the subject matter of a distinct issue. On reading of the observations made by the First Appellate Court, it is evident that the trial court, while decreeing the suit, arrived at a conclusion in a haphazard manner. The trial court neither framed any distinct issue with regard to fraud nor with regard to the fact that whether the property is self acquired or ancestral. Moreover, the trial court also failed to take into consideration that the property has been sold in favour of the subsequent purchasers.

9. Order XLI Rule 23 A CPC enables the Appellate Court to remand the case back to the trial court if a case fulfills the following two requirements; firstly the First Appellate Court sets aside the findings of the court below and secondly, the re-trial is considered necessary. In this case, the First Appellate Court has not

remanded the case back to the trial court without examining the merits of the case. In para 19, the First Appellate Court has held that the trial court has arrived at the conclusion haphazardly without framing proper issues arising for adjudication.

10. With respect to argument of the learned counsel representing the appellant that issue no. 1(i) and (ii) framed on 20th March, 2014 shall cover the entire dispute, it may be noted that these issues are not in consonance with Order XIV Rule 1 CPC. In fact, the court, while framing the issues is required to identify the difference between the stand taken by the parties on each material proposition so as to give opportunity to the parties to lead their evidence in respect of their claims.

11. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere in exercise of appellate jurisdiction.

12. Hence, dismissed. However the trial court is requested to make sincere endeavours for the expeditious disposal of the case, preferably, within a period of next nine months from today, positively.

13. All the pending miscellaneous applications, if any, are also disposed of.

14.12.2023

rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No