

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1792-1991
Reserved on: 26.04.2024
Pronounced on: 06.05.2024
2024:PHHC: 062643

SARWAN KUMAR AND OTHERS

.... APPELLANTS

Vs.

SMT. SHINGARI THROUGH LRs.

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. P.K. Ganga, Advocate, for the appellants.

Respondent already *ex parte*.

DEEPAK GUPTA, J.

1.1 Defendants of the suit are before this Court in this Regular Second Appeal, against the judgment of first appellate court.

1.2 Civil Suit No.245-C-1984, filed by sole plaintiff Smt. Shingari (*now respondent through her LRs*) seeking decree of declaration regarding suit property against defendants Sarwan Kumar and others (*now appellants*) was dismissed by the trial Court vide judgment dated 29.10.1988. However, appeal (CA N: 39-CA of 1989) filed by said plaintiff - Smt. Shingari was allowed by the First Appellate Court of Id. Additional District Judge, Sirsa vide judgment and decree dated 09.08.1989, thus decreeing the suit.

2. Trial Court record has been called and perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 Plaintiff - Smt. Shingari had executed a registered General Power of Attorney dated 29.10.1979 (Ex.P3 / Ex.DW3/A) in favour of defendant No.6 - Giana Ram. As per plaintiff, by way of the said GPA, she had only authorized Giana Ram to pursue the mutation proceedings and the

pending litigation. Said Giana Ram was not authorized to sell or transfer the suit land owned and possessed by the plaintiff. However, based upon the GPA dated 29.10.1979, said Giana Ram suffered a decree dated 28.03.1984 in favour of his sons-defendants No.1 to 5 (*now appellants*) in Civil Suit No.215 of 1984 on the basis of purported family settlement. It was further pleaded by the plaintiff that GPA dated 29.10.1979 had been canceled by her by way of a cancellation deed dated 21.04.1984 (Ex.P4) and besides, she had appointed her husband Birbal to be her GPA. She prayed for a decree of declaration that she is the owner in possession of the suit land and that judgment and decree dated 28.03.1984 passed by Id. Sub Judge Ist. Class, Sirsa in Civil Suit No.215/1984 titled as 'Sarwan Kumar and others Vs. Smt. Shingari through her attorney Giana Ram', was wrong illegal & void and not binding upon her rights, being result of fraud and misrepresentation besides the collusion between defendants No.1 to 5 of this case on the one hand and defendant No.6-Giana Ram on the other hand.

3.2 The stand taken by the defendants No.1 & 2 in their written statement was that a legal and valid decree dated 28.03.1984 has been passed in their favour on the basis of the family settlement and that decree dated 28.03.1984 in their favour had already been passed prior to the cancellation deed dated 21.04.1984.

3.3 Defendant No.6-Giana Ram in his separate written statement, also controverted the stand of the plaintiff, denied any fraud and pleaded that he was holding a valid power of attorney given by the plaintiff regarding the suit land.

3.4 Following issues were framed for adjudication: -

1. Whether the judgment and decree dated 28.3.84 passed by Sh. B.K.

Gupta, Senior Sub Judge, Sirsa based on fraud and misrepresentation, malafide and liable to be set aside as alleged? OPP.

2. Whether the suit has been not properly valued? OPD
3. Whether the suit has been not signed or verified by the plaintiff as alleged? OPD.
4. Whether the plaintiff has no locus-standi to file the present suit? OPD.
5. Whether the plaintiff is estopped by her own act and conduct? OPD
6. Whether the suit of the plaintiff is barred by order 23 Rule 3 and 3(A) of CPC? OPD.
7. Whether the suit is barred by limitation? OPD
8. Whether the alleged decree cannot be repudiated price as alleged? OPD
9. Whether the suit of the plaintiff is not maintainable in the present form? OPD(Minor defendant)
10. Whether the plaintiff has no cause of action to file the present suit? OPD (Minor defendant).

3.5 Trial Court decided issue No.1 against the plaintiff by holding that impugned judgment and decree dated 28.03.1984 was valid and devoid of any fraud or misrepresentation. Issues No.2, 3 & 7 were disposed of as not pressed for. Issues No.4 & 6 were decided in favour of the defendants. The finding on issue No.8 was returned in favour of the defendants on account of finding on issues No.1, 4, 5 & 6. On issue No.9, the suit was held to be not maintainable. On issue No.10, plaintiff was found to have no cause of action. Consequent to all these findings, suit was dismissed on 29.10.1988.

3.6 In the appeal filed by the plaintiff, although the First Appellate Court held that a valid GPA dated 29.10.1979 was executed by the plaintiff-Smt. Shingari in favour of defendant No.6-Giana Ram and that the same was cancelled on 21.04.1984, whereas judgment and decree in favour of defendants No.1 to 5 had already been suffered by Giana Ram on 28.03.1984 in Civil Suit No.215 of 1984, but at the same time, held that by way of the

GPA dated 29.10.1979 (Ex.P3), Giana Ram was not given the authority to transfer the land in favour of his sons or anybody else by suffering a decree. With this finding on the main controversy, the judgment and decree of the trial Court was set aside. Suit was decreed. Plaintiff was held to be owner in possession of the suit land.

4. Assailing the aforesaid judgment and decree passed by the First Appellate Court, it is contended by ld. counsel before this court that plaintiff Smt. Shingari closely related to defendant No.6-Giana Ram, executed GPA in his favour and that during the subsistence of that power of attorney, Giana Ram had entered into many transactions on behalf of plaintiff-Smt. Shingari and incurred expenses and liabilities and therefore, there was nothing unnatural or illegal in case, said Giana Ram suffered decree on behalf of plaintiff Smt. Shingari in favour of his sons i.e. the appellants. Ld. counsel contends that finding of the First Appellate Court to the effect that Smt. Shingari had not authorized Giana Ram to suffer the decree, is based on surmises and conjectures and not warranted under law. Prayer is made to set aside the judgment and decree of the First Appellate Court and to restore that of the trial Court and to dismiss the suit of plaintiff, by accepting this appeal.

5. During pendency of this appeal, as respondent No.2-Giana Ram expired and his LRs were already on file, so, his name was deleted vide order dated 16.03.2023. LRs of respondent N:1-plaintiff were also brought on record.

6. Ld. counsel appearing for the respondent-plaintiff has drawn attention of this Court towards registered power of attorney dated 29.10.1979 (Ex.P3) so as to contend that Giana Ram was never authorized by the plaintiff to transfer her property in favour of anybody by suffering a decree. His further

contention is that for the sake of arguments, even if it is assumed that general powers had been given to Giana Ram to deal with the suit land belonging the plaintiff, the land belonging to plaintiff-Smt. Shingari being herself occupied property in her hands, no right or title could be created in favour of the defendants-appellants, without registration. Prayer is made for dismissal of the appeal.

7. I have considered submissions of both the sides and have appraised the record.

8. Execution of GPA dated 29.10.1979 (Ex.P3) by plaintiff-Smt. Shingari in favour of defendant No.6-Giana Ram is not in dispute. Although later on, Smt. Shingari canceled this deed by way of a registered cancellation deed dated 21.04.1984 (Ex.P4), but the impugned judgment and decree dated 28.03.1984 in Civil Suit No.215/1984 had already been passed, as suffered by Giana Ram on behalf of Smt. Shingari-plaintiff in favour of his sons-defendants No.1 to 5/appellants and as such, the cancellation deed Ex.P4 will not in itself have any effect upon the decree dated 28.03.1984.

9. However, the question is as to whether Giana Ram was authorized to transfer the suit property belonging to Smt. Shingari by suffering the decree in favour of his sons by way of GPA dated 29.10.1979.

10. A perusal of the GPA dated 29.10.1979 (Ex.P3) would reveal that Smt. Shingari was in litigation regarding her property with her paternal uncle-Devi Lal. She had appointed Giana Ram to be her General Attorney so as to deal with the mutation proceedings pertaining to the partition of the joint land, to move necessary application in this regard, get the mutation attested, to sell or to get the land cultivated, to pay the land revenue or to do necessary *pairavi* of the litigation and to appoint lawyers etc.

11. No doubt that the words '*bay*' i.e. to sell is specifically mentioned in the GPA (Ex.P3), which means that Giana Ram was authorized even to sell the suit land belonging to Smt. Shingari, but by suffering the decree dated 28.03.1984 (Ex.P1 & P2), Giana Ram did not sell the land and rather, he transferred the suit land in favour of his sons by admitting some purported family settlement. The word '*sale*' is defined under Section 54 of the Transfer of Property Act, 1882 to mean transfer of ownership in exchange for a price paid or promised or part paid and part promised. Besides, such transfer in case of tangible immoveable property of the value of ₹100 and upwards can be made only by registered instrument.

12. In the present case, by suffering the decree dated 28.03.1984 in favour of his sons, on the basis of purported family settlement on behalf of Smt. Shingari, Giana Ram transferred the property but did not sell it because, suffering of the said decree, did not amount to sale. Had it been a sale, there must have been some sale consideration, which is not so. The contention of ld. counsel for the appellants to the effect that Giana Ram had to bear expenses and liabilities, while dealing with the money transactions on behalf of Smt. Shingari, is not based on any cogent evidence.

13. Apart from above, the suit property, in the hands of plaintiff-Smt. Shingari, being a female, was non-ancestral in her hands, in which defendants No.1 to 5-appellants i.e. sons of Giana Ram did not have any antecedent right or title. As such, no transfer/alienation, by whatever mode, could be made, without getting the transaction registered in accordance with law.

14. Consequent to the aforesaid discussion, it is held that ld. First Appellate Court did not commit any error in holding that judgment and decree

dated 28.03.1984 passed in Civil Suit No.215 of 1984, as suffered by Giana Ram, acting as GPA of Smt. Shingari, in favour of defendants No.1 to 5-appellants, is null and void and not binding on the rights of the plaintiff/respondent-Smt. Shingari. Ld. First Appellate Court has rightly decreed the suit. This Court does not find any illegality in the said well reasoned judgment passed by the First Appellate Court so as to call for any interference.

As such, present appeal is hereby dismissed with costs.

06.05.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>