
(2015) 12 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : RSA Nos. 4062 and 4063 of 2013 (OandM)

Manjeet Inder Pal Singh and Others

APPELLANT

Vs

Kartar Singh and Others

RESPONDENT

Date of Decision : 28-12-2015

Acts Referred:

Evidence Act, 1872 — Section 114, 68, 78(6)
Succession Act, 1925 — Section 63(c)

Citation : (2015) 12 P&H CK 0164

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : H.S. Baidwan, Advocate, for the Appellant; B.S. Bhalla, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—This order of mine shall dispose of two Regular Second Appeals bearing Nos. 4062 and 4063 of 2013.

2. Appellant/defendants No. 1 to 5, 8 and 9 are in Regular Second Appeal against the judgment and decree dated 01.08.2013 passed by the Additional District Judge, Ludhiana, decreeing the suit in toto filed by the respondent-plaintiff, in essence, the trial Court decreed the suit vis-?-vis the property being sold on the basis of sale deeds but upheld the validity of the Will dated 22.01.1981.

3. It would be apt to give brief facts of the matter. As per the averment in civil suit bearing No. 222 of 14.06.1985 instituted by Kartar Singh husband of Joginder Kaur, a declaration has been sought to the effect that he is the sole heir of deceased Joginder Kaur who died on 11.08.1981 by succeeding to her both movable and immovable property including 1/2 share in house No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana, land measuring 44 kanals 6 marlas bearing different khasra numbers, to the shares numbering 500 held by the deceased Joginder Kaur in M/s. Chaudheri International Private Limited, 303, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi and the land measuring 155

kanals 10 marlas bearing different khasra numbers sold by Thakur Singh vide sale deed dated 09.05.1972 on the basis of the registered GPA dated 02.09.1963 executed by Joginder Kaur in favour of Thakur Singh and further sale deeds in respect of land measuring 75 kanals 7 marlas executed by Surinder Singh out of aforesaid land measuring 155 kanals 10 marlas in favour of his brother's wife Harpal Kaur wife of Sukhwinder Pal Singh vide sale deed dated 13.01.1984 and sales made by defendant No. 1 relating to house No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana in favour of defendant No. 2 vide sale deeds dated 16.02.1983, 21.2.1983 and 1.03.1983 (half share in the house) and further sale deed by defendant No. 2 in favour of defendant No. 6 now represented by her successors defendants No. 6(i) to 6(ix) of the one half share in the house vide sale deeds dated 03.08.1983, 18.08.1983, 10.10.1983 and 12.10.1983, sales made by defendant Karanjit Singh relating to the house No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana (now compromised), alleged Will dated 22.01.1981 executed in favour of defendants No. 3 and 4 is forged and fictitious and suit for possession of the aforementioned building No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana and of the land measuring 44 kanals 6 marlas situated at village Sahibazapura, Tehsil Jagraon and for possession of land measuring 155 kanals 10 marlas on the premise that house No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana and flat in Delhi 303, Ansal Bhawan, 16, Kasturba Gandhi Marg were in ownership of Kartar Singh and Joginder Kaur to the extent of 1/2 share and remaining land, i.e., 44 kanals 6 marlas, 155 kanals 10 marlas was exclusively owned by Joginder Kaur.

4. It was pleaded that Thakur Singh, brother in law, Sukhwinder Pal Singh, Manjit, Inder Pal Singh, as well as, Karanjit Singh son of Sukhwinder Pal Singh committed fraud with Kartar Singh after the death of Joginder Kaur, who died on 11.08.1981 and after his re-marriage in 1982, half share of house No. B-XIX-1195(170-1) Sarabha Nagar, Ludhiana was sold by fabricated and forged Will dated 02.01.1981 of Joginder Kaur by Karanjit Singh and land measuring 44 kanals 6 marlas was mutated in the name of Karanjit Singh and on the basis of the aforementioned Will, Thakur Singh also sold land measuring 155 kanals 10 marlas to Sukhwinder Pal Singh to his son, through bogus transactions. It was stated that Kartar Singh was married to Joginder Kaur in the year 1960. He was a poor person and was living at Hong Kong with his wife and used to send money from Hong Kong. The plaintiff purchased the huge land in his own name and in the name of his wife and for the management of land, attorneys were given by the plaintiff and his wife in the years 1963 and 1965 to defendant No. 1-Thakur Singh. The land was only purchased in the name of Joginder Kaur as she had no source of income. Ansal Bhawan was given on rent to M/s. Chaudheri International Private Limited and the tenants were paying rent to the plaintiff and 500 shares of the same company were purchased in the name of Joginder Kaur and plot No. (170-1) Sarabha Nagar, Ludhiana was purchased in equal share vide sales deed dated 21.02.1979 and 21.03.1979. The construction raised thereon was by the funds sent by the plaintiff. Since no child was born, Joginder Kaur

suggested for re-marriage of the plaintiff and he used to live with defendants at Jagraon whenever, he used to come India. On 11.08.1981, Joginder Kaur was examined in hospital by the doctor, whether she could bear any child. During routine check up, she breathed her last and died on operation table on 11.08.1981. After acquiring knowledge of the aforementioned, sale deeds, by virtue of Will and power of attorney, suit, aforementioned was filed on 14.06.1985.

5. The defendant-appellants contested the suit that Will dated 22.01.1981 was valid and confirmed by the plaintiff in the High Commission of Hong Kong on 02.02.1982. The plaintiffs had entered into compromise on 14.11.1982 which was witnessed by Sant Sardar Partap Singh and Dwarka Nath Raina. Thakur Singh was a man of status and Lambardar since 1987. He got substantial land from his father-in-law. Not only Joginder Kaur, plaintiff himself also gave a registered power of attorney dated 11.05.1963 and on 20.03.1965 to Thakur Singh. As per the Will of Joginder Kaur, 1/2 share of Kothi No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana and land was given to Karanjit Singh, whereas, 1/2 of Ansal Bhawan and 500 shares to Maneshar Singh. The sale proceeds of the properties were paid to Joginder Kaur. It was also objected that the suit was barred by law of limitation. It was also stated that Kartar Singh had contracted second marriage.

6. Since the parties were at variance, the trial Court framed as many as 09 issues including the issue of relief.

7. The trial Court on the basis of the oral and documentary evidence, partly decreed the suit by holding that plaintiff to be owner in possession of the land measuring 155 kanals 10 marlas and 1/2 share in kothi No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana and sale deed dated 09.05.1972 executed by Thakur Singh in favour of Surinder Singh and sale deeds executed by Surinder Singh in favour of Jagjivan Kaur and Harpal Kaur, dated 10.01.1983 and 13.01.1984, sale deeds executed by Thakur Singh in favour of Sukhwinder Pal Singh dated 16.02.1983, 21.02.1983 and 01.03.1983 and further defendant No. 2, Sukhwinder Pal Singh in favour of defendant No. 6, dated 03.08.1983, 18.08.1983, 10.10.1983 and 12.10.1983, declared them as null and void, whereas, the Will could not be proved forged and fabricated.

8. Since both the parties were aggrieved of the aforementioned judgment and decree, two civil appeals bearing Nos. 22 of 05.03.2005 titled as Kartar Singh v. Thakur Singh and others and 22 of 05.03.2005 titled as Kartar Singh v. Thakur Singh and others were filed by them. The lower Appellate Court allowed the civil appeal No. 22 of 2005 and decreed the suit in toto by setting aside the Will dated 22.01.1981 and dismissed the appeal filed by the appellants bearing No. 22 of 05.03.2005. It is in these circumstances two Regular Second Appeals have been filed.

9. Mr. Harpal Singh Baidwan, learned counsel appearing on behalf of the

appellant-defendants No. 1 to 6, 8 and 9 submits that both the Courts below have committed illegality and perversity in setting aside the Will by holding that one of the attesting witnesses to the Will, namely, Manjit Singh Rikhi, has not been able to prove the execution of the Will. The other witness to the Will had died. Manjit Singh Rikhi was suffering from a cancer and accordingly, a Local Commissioner was appointed to get his statement recorded, whereas, the trial Court has not read the statement of the aforementioned witness who candidly deposed, as per the provisions of Section 63(c) of the Indian Succession Act, much less, the appellant-defendants have discharged the onus, as per the provisions of Section 68 of the Indian Evidence Act.

10. Joginder Kaur after execution of the registered GPA dated 02.09.1963, remained alive for 09 years and died in the year 1981. The execution of the Will in the year 1981, at the age of 45-50 was not unknown, for the fact that by that time, biologically and scientifically in those years, she could not bear the child.

11. The lower Appellate Court, being the last Court of facts and law, has not referred to the cross examination of Manjit Singh Rikhi as from the cross examination, the respondent-plaintiffs have demolished their own case and proved the case of the appellant-defendants.

12. Both the Courts below have not assigned any reasons in not believing the document, Ex. D1, i.e., certificate dated 02.02.1981 given by Kartar Singh where he had acknowledged to execution of the Will dated 22.01.1981.

13. Though the handwriting expert examined by the parties to the lis, have toed to the lines of their clients but the fact remains that Will only pertains to 44 kanlas 6 marlas of land, 1/2 share in the flat in Delhi and 1/2 share of regarding house in Sarabha Nagar, Ludhiana. The Will was attested by Manjit Singh Rikhi, resident of 5/13 Shanti Niketan, New Delhi and Mr. Khazan Singh Chaudhary, resident of 10-A, Kasturba Gandhi Nagar, New Delhi who was the Director of M/s. Chaudheri International Private Limited, being also a tenant in the property owned by Kartar Singh and Joginder Kaur.

14. The trial Court found that Joginder Kaur had undergone two operations and was in a serious condition. Accordingly, by way of a Will, part of the property was bequeathed in favour of defendants No. 4 and 5. Testatrix had full love and affection for defendants No. 4 and 5 who are her real nephews. The Will was duly acted upon and the property was entered into TS-Form (Ex. D-23). Manjit Singh, had attested the Will, 25 years back. He was old and suffering from third stage of cancer and was undergoing chemo therapy. Nothing came on record that there was no love and affection between Joginder Kaur and her parental family, nor the plaintiff produced any passport to show that Joginder Kaur on the date of the execution of the Will was not in India.

15. It is immaterial whether Will is registered or not but the fact remains that it has been proved. One of the attesting witnesses of the Will was a Retired Commissioner of Income Tax.

16. Suit was liable to be dismissed being barred by law of limitation as the sale deeds are of year 1982 and the same had been challenged only after 13 years in June, 1985 and during this period, Joginder Kaur till her death in the year 1981 remained live. Even she did not challenge the same.

17. In support of his aforementioned contentions, he has relied upon the following judgments of this Court:--

"i) Jarnail Singh Vs. Gurmail Singh and Others, ;

ii) Dalip Kuar Vs. Taro and Others, ;

iii) Chanan Kaur alias Channo Vs. Pakhar Singh and Others, ;

iv) Smt. Sarbjit Kaur and LRs of Mohinder Singh since deceased and others v. Mohinder Singh and another 2008(4) RCR (Civil) 458; and

v) Smt. Rukman alias Rukmani Vs. Ujagar Singh and others--> to contend that Kartar Singh did not have locus standi to challenge the sale deed on the ground that no consideration had passed, as payment and receipt of the consideration is a matter of personal knowledge of the vendor and legal heir did not have a right to challenge the sale deed. He further submits that registered power of attorneys were never cancelled by Joginder Kaur. It is settled law that transfer by general power of attorney challenged for want of authority and consideration cannot be challenged once the sale consideration has been passed whether it is between real owner and whether money passes over to real owner or not. Once the execution of the General Power of Attorney which contains the power to sell has been proved but the defendant No. 1 has the power to sell, the same could not be challenged by filing the suit."

18. He has further drawn attention of this Court to the cross examination of Manjit Singh attesting witness to the Will, which has erroneously been disbelieved by the lower Appellate Court and even Karanjit Singh, to a specific question put to him in the cross examination, the execution of the Will, has been proved and submits that following substantial questions of law arise for determination of this Court:--

"i) Whether the sale deed of the year 1972 executed by Thakur Singh on behalf of his daughter (Joginder Kaur) as her Attorney could be set aside after a period of more than 13 years especially when for more than 9 years during her life time, Joginder Kaur did not raise any objection and it is only after her death that her husband (plaintiff-respondent No. 1) has filed the suit?

ii) Whether the sale deed of the year 1972 which was not objected to for a period of 9 years of Joginder Kaur could be set aside after her death at the instance of respondent No. 1 who has no right, title or interest in the land on the ground that there is no evidence of passing of sale consideration in view of the law laid down by this Hon"ble Court in Jarnail Singh Vs. Gurmail Singh and Others,

iii) Whether the sale deeds in question have been illegally set aside by ignoring

the fact that admittedly the Regd. Power of Attorney(s) were in operation and had not been revoked at the time of registration of the sale deeds?

iv) Whether the learned Additional District Judge has grossly erred in reversing the finding of the learned trial Court under issue No. 1 regarding the validity of the Will by not even dealing and considering the findings of the trial Court in this regard?

v) Whether the statement of the attesting witness Manjit Singh Rikhi has been misread and misinterpreted by the learned Court below?

vi) Whether in the facts and circumstances of the case Thakur Singh was granted Power of Attorneys dated 11.09.1963 (Ex. D-4), and dated 20.03.1965 (Ex. D5) by the plaintiff-Kartar Singh, vide which he was granted the power to transact and deal with the properties, which Kartar Singh possessed or may acquire in future, and the said Power of Attorneys remained intact and survived as never revoked at the time when he executed sales of properties in dispute?

vii) Whether in the facts and circumstances of the case, it is proved that the Will dated 22.01.1981 was executed by Joginder Kaur, which was attested by Manjit Singh Rikhi and Khazan Singh attesting witnesses, and vide the said Will the property No. (170-1) Sarabha Nagar, Ludhiana was bequeathed in favour of her nephew Karanjit Singh, whereas, her other properties were bequeathed in favour of Karanjit Singh and Mansher Singh?

viii) Whether in the facts and circumstances of the case, the Will dated 22.01.1981 was not shrouded with any suspicious circumstance, and the learned First Appellate Court has totally misread the facts and proved on the file by holding that the Will was not proved or that it was forged and fabricated?"

19. Even general power of attorney dated 11.09.1963 (Ex. D4) and 20.03.1965 (Ex. D5) executed by Kartar Singh himself in favour of Thakur Singh was acted upon, inasmuch as 1/2 share with regard to house in Sharabha Nagar has been sold and after challenging the same, he has compromised the matter with the subsequent purchaser. RSA Nos. 3685 and 3954 of 2013 were filed to this effect by the affected parties, have been compromised.

20. Mr. B.S. Bhalla, learned counsel appearing on behalf of the LRs of respondent No. 1 submits that the Will was surrounded by suspicious circumstances as Manjit Singh Rikhi has not deposed as per the statutory provisions of law, in essence, Will has not been proved. No explanation has come forth in executing the Will at Delhi and Joginder Kaur was only 42-43 years old and there was no likelihood that she would die. No consideration of the sale in respect of the land owned by Joginder Kaur sold in pursuance to the GPA has been passed on to Joginder Kaur. Registered POA, of the year 1980 executed by Kartar Singh has been revoked in the year 1982. There is no limitation in respect of suit claiming/ seeking declaration on the basis of the ownership. The general power of attorneys were executed for the management of the property and there was no

power to sell the property. Ingredients of the Will have not been proved. The propounder of the Will did not even speak a single word regarding the Will during his evidence. Manjit Singh Rikhi did not recognize Joginder kaur nor he knew her. He did not know whether she signed the Will in Nehru Bhawan, Ansal Bhawan or in the morning or evening. Neither did he know as to who typed the Will.

21. The alleged Will has not been scribed by a regular deed writer which are easily available in every city. No reasons have been explained by the propounder of the Will. Thus, no presumption of statute can be drawn. No reasons have been assigned in disinheriting her husband. Joginder Kaur and Kartar Singh were not in the knowledge of the execution of the sale deed dated 09.05.1972 in respect of land measuring 155 kanals 10 marlas and thus, prays that there is no illegality and perversity in the judgment and decree of the lower of the lower Appellate Court, much less, no substantial question of law arises for adjudication of the present appeals.

22. I, have heard learned counsel for the parties and appraised the paper book, record of trial Court and as well as, case law cited at bar and am of the view that the appeal is liable to be allowed for the following reasons:--

23. The lower Appellate Court being the last Court of facts and law to a specific contention raised vis-?-vis suit having been barred by law of limitation has not assigned any reasons. The relevant paragraph dealing with the contention assigning reasons reads thus:--

"29. The next contention raised by learned counsel for the appellant Thakur Singh and others that the case has not filed by the plaintiff within limitation because limitation to challenge the same deed is three years, is also not tenable. In view of the judgment Rangammal Vs. Kuppuswami and Another, , wherein the Hon"ble Supreme Court held that sale of property. Suit filed 30 years of the sale deed. Suit not barred by limitation in facts of the case. The judgment relied upon by learned counsel for appellant Thakur Singh and others 2004(2) Shimla Lal Journal 1409(supra) is not applicable in the present case because the facts of the present case are totally different from the facts of the above cited judgment."

24. As per the provisions of Article 58 of the Limitation Act, limitation to seek declaration of sale is three years. The sale deed was executed in the month of May, 1972, whereas, the suit had been filed in the year 1985 and Joginder Kaur remained live during all this period.

25. I have gone through the terms and conditions of the General Power of Attorney which provides, the power to manage, sell and alienate the property or deal with the property in any manner. It is the General Power of Attorney and not a Special Power of Attorney and registered document, the same has not been revoked. The cross examination of Manjit Singh Rikhi attesting witness to the Will, reveals that he to a specific question in cross examination, proved the execution of the Will. The relevant answers to the questions read thus:--

"Ans. I do not recollect as to who was the landlord. However, she was connected with the ownership. (Note the witness is lying on a bed at a distance of 12 feet and is to be segregated to avoid infection to him and the documents are being shown to him through his son. This is being done at the instance of Shri Malvinder Singh and Shri A. Srivastava Advocate who produced the certificates and also the medical history of illness of the witness.

She signed the will in presence of both of us as is the procedure in making the Will but I do not recollect who signed first out of us.

I had signed under the endorsement, the signatures appears to be in my hand."

26. Manjit Singh Rikhi also executed an affidavit in the year 1983 (Ex. D1/50) as Joginder Kaur wanted to ensure that there would be no problem with regard to the execution of the Will and the said witness acknowledged the factum of residence of his house and as well as, of affidavit. The relevant portion of his cross examination reads thus:--

"Q. Please tell the address of the witness given in the Will.

Reply, the addresses are correctly given in the Will.

Q. What was the Flat No. of Ansal Bhavan.

A. It was 303.

I never heard about the illness of Joginder Kaur. She was having normal health to my knowledge at time of Will. I do not recollect who other than myself and Joginder Kaur were present. We three were present when she signed the Will. We all three signed it. I do not recollect if anybody else was present. I worked in this company upto 1982 or 1983. The company must be sending returns to the Registrar of Company. I do not remember if I used to sign the returns.

I have seen affidavit Ex. 150. It appears to be in my signatures. I do not recollect who got it attested. I do not remember as to where I had signed this affidavit. The stamp paper of this document was purchased in my name. Whatever is recorded in Ex. D-150 was correctly recorded (objected to). I do not recollect who had identified me. I do not remember who attested the affidavit.

Q. Please see the affidavit Ex. D-150, tell as to whose rubber stamp is affixed on this affidavit.

A. After reading the affidavit, the witness has stated it was attested before Executive Magistrate Delhi. But I do not know him."

27. The lower Appellate Court has not assigned any reasons in not disbelieving the authenticity and genuineness of the document Ex. D1 which has been attested by Counselor of Commissioner of India, Hong Kong dated 02.02.1982, before whom Kartar Singh had acknowledged that his wife had executed a Will dated 02.01.1981. For the sake of brevity, the contents of the certificate Ex. D1 reads thus:--

"I Kartar Singh Brar s/o Late Sh. Harnam Singh Brar resident of V. Khote, Teh. Moga, District Faridkot and now resident of No. 19, 9th Floor Haven Street, Causeway, Hong Kong hereby declare by solemn affirmation, attested and signed before the Notary Public after fully understanding its contents that my deceased wife Joginder Kaur Brar executed a valid Will at New Delhi on 22.1.1981 which I full and voluntarily give my full and unqualified consent.

I further declare that I have no right, title or interest in any property held by my wife now dead. I have no objection that all the properties movable and immovable be transferred in the name of the legalities who have a valid claim to all the cash moveable and immovable property as was acquired by my late wife Smt. Joginder Kaur Brar, daughter of S. Thakar Singh Dhillon, Kothi near Power House, G.T. Road, Jagraon District Ludhiana (Punjab)."

28. Once Kartar Singh has acknowledged the factum of execution of the Will by his wife, therefore, there was no occasion for him to challenge the same. Will dated 02.01.1981 has been typed and bear the signatures of Joginder Kaur Brar, Manjit Singh Rikhi and Khazan Singh Chaudhary. Since Joginder Kaur Brar had 500 shares in the aforementioned company and Manjit Singh Rikhi was director in the company, therefore, she had a faith in them, thus, in these circumstances, got the Will executed at Delhi.

29. Affidavit dated 14.02.1983 executed by Manjit Singh Rikhi attested by Magistrate at Delhi has also been proved which shows that Joginder Kaur had executed the Will.

30. There is another aspect of the matter. The respondent-plaintiffs while putting a question to Karanjit Singh-DW2, in cross examination, rather proved the execution of the Will. The relevant portion of the cross examination reads thus:--

"My father is at Jagraon today And he is having sound health. I became the owner of my share in the said house on the basis of Will of Joginder Kaur. The said Will was not executed in my presence by Joginder Kaur. I also do not know where the said Will be written. I first time came to know about the said Will one month after the death of Joginder kaur. At the time of her again said about one month after her death when bhog ceremony was over Kartar Singh plaintiff told me about the Will but I did not see the Will on that day. We were sitting in our house at Jagraon. Besides me and Kartar Singh, Thakur Singh was also present there. I was not told at that time where the Will was. I do not remember when I first time saw the Will. The Will was shown for the first time to me by my grandfather when Kartar Singh plaintiff was also present"

31. No sane person would sit ideal/silent, in case, attorney/agent breached the trust by selling the land. The lower Appellate Court, in my view, has ignored the provisions of Sections 78(6) and 114 of the Indian Evidence Act as presumption was attached to the certified official document (Ex. D1) of a foreign country, much less, the fact that Will was duly acted upon as the property was entered into TS1 Form (Ex. D23). Even otherwise, as per the provisions of Hindu

Succession Act, husband is not entitled to succeed the estate of his wife and the suit filed by Kartar Singh was an act of aggrandization. This fact is proved, as he had compromised with the subsequent vendee in respect of half share in house No. B-XIX-1195 (170-1) Sarabha Nagar, Ludhiana and RSA Nos. 3685 and 3954 of 2013, relied in this regard, have been compromised.

32. I am fully in agreement with the ratio decidendi culled out in the aforementioned judgments cited at bar, inasmuch as that it was Joginder Kaur who during her life time could challenge the alleged act of agent, who is none else but her "Real Father", therefore, in my view, the respondent-plaintiffs did not have locus standi to challenge the sale deed on the ground that no consideration has been passed on. I am also of the similar view with regard to the sale deed executed on the basis of the power of attorney as the power of attorney aforementioned had not been cancelled/revoked.

33. Keeping in view the aforementioned observations, the substantial questions of law, as noticed above are answered in favour of the appellant-defendants and against the respondent-plaintiffs, in essence, the suit filed by the respondent-plaintiffs is dismissed.

34. Accordingly, the appeals are allowed.