

Before Viney Mittal, J

HANS RAJ & OTHERS,—*Plaintiffs*

versus

KARMI & OTHERS,—*Respondents*

R.S.A. No. 2397 of 1982

27th August, 2003

Code of Civil Procedure, 1908—Hindu Succession Act, 1956—Mutation in favour of two sons & a daughter after death of their father—Defendant No. 6 selling the share of land of the daughter in favour of his own two sons on the basis of a power of attorney executed by the daughter—Challenge thereto—Trial Court decreeing the suit of plaintiffs while holding power of attorney a fictitious document & execution of sale deed by defendant in favour of his own sons not bona fide—1st Appellate Court reversing findings of trial Court while holding that plaintiffs failed to prove the date of death of their father as prior to coming into the 1956 Act and entitling the daughter to a share in the property—Findings of trial Court that power of attorney is a fictitious document not reversed by Ist Appellate Court—Ist Appellate Court failing to read the evidence on record and dealt with the case in the wrong perspective—Sale deed executed by defendant on the basis of a fictitious document is not valid in the eyes of law—Findings of Ist Appellate Court not sustainable & liable to be set aside.

Held, that the learned trial Court had taken all the circumstances into consideration and it was thereafter that it had come to the conclusion that the general power of attorney was never executed by Smt. Karmi in favour of Mehar Singh and consequently the sale deed dated 29th January, 1974 by Mehar Singh acting as attorney of Karmi in favour of his own sons defendants No. 4 & 5 was totally without any authority and as such was illegal, bad and not binding upon the rights of the plaintiffs in any manner. The very fact that Mehar Singh chose to sell the land in dispute in favour of his own sons also create a suspicion with regard to the

bona fide of the aforesaid transaction. No amount was shown to be paid in presence of the Sub Registrar. It was claimed that Mehar Singh had already received this amount from the vendees and had even paid to Smt. Karmi. The facts speak for themselves. The intention to grab the property is writ large. Defendants No. 4 & 5 cannot be treated to be *bona fide* transferees for consideration without notice.

(Paras 18 & 19)

Further held, that the learned first appellate court merely rejected the death certificate by holding that the register of the cremation ground has not been produced. The observations made by the learned first appellate Court are wholly unsustainable in view of the fact that the bye laws of the Municipal Committee empowered and required the Municipal Committee to maintain a proper register of births, marriages and deaths. Thus, when the certificate came from the death register maintained by the Municipal Committee in the due discharge of its official records, the said entry could not have been brushed aside. Thus, it is clearly proved on the basis of the evidence on the record, including the death certificate that Labhu Ram had died on 16th June, 1956 i.e. prior to the coming into force of the Hindu Succession Act. Accordingly, Smt Karmi did not inherit any share in the property of Labhu Ram. Even if it be taken that Labhu Ram had died after coming into force of the Hindu Succession Act, as claimed by the defendants, still because of the finding that Smt. Karmi had never executed any general power of attorney in favour of Mehar Singh, the sale deed executed by Mehar Singh in favour of his sons, defendants No. 4 & 5 is no sale deed in the eyes of law being without any authority. Under these circumstances also the property could not be taken to have been purchased by defendants No. 4 & 5.

(Paras 21 & 22)

R.K. Aggarwal, Advocate, *for the appellants*.

Ramesh Sharma, Advocate for A.S. Kalra, Advocate for respondents No. 5 and 6.

JUDGEMENT

VINEY MITTAL, J.

(1) During the course of arguments, it has emerged that the following substantial questions of law arise in the present Regular Second Appeal :

- (a) Whether defendants No. 4 and 5 got any valid title under the sale deed executed by defendant No. 6 Mehar Singh (their father) on the basis of a general power of attorney alleged to have been executed by Smt. Karmi (defendant No. 1) when the trial Court had given a categorical finding that the aforesaid general power of attorney (Ex. D2) was a fictitious document and not executed by Smt. Karmi and when the aforesaid finding has not been reversed by the learned first appellate Court ?
- (b) Whether the judgment of the learned first appellate Court was not valid having not adverted at all to the document Ex. D2 the general power of attorney and also having mis-read and not read the important evidence on the record ?
- (c) Whether the judgment of the learned first appellate Court having returned the findings in a wrong perspective could be termed as judicially perverse and not sustainable in the eyes of law ?

(2) The plaintiffs are in appeal. They have filed a suit for declaration claiming that they are owners in possession of the land in dispute. A further claim for permanent injunction for restraining defendants No. 2 to 6 from interfering in the possession of the plaintiffs was made.

(3) Hans Raj and Shanti Ram—plaintiffs No. 1 and 2 and deceased plaintiff No. 3 Daulat Ram are the sons of Labhu Ram. Smt. Karmi, defendant No. 1 is the daughter of Labhu Ram. Defendants No. 2 and 3 are the daughter and son, respectively, of Smt. Karmi. Defendants No. 7 to 11 are the other co-sharers in the property. Defendants No. 4 and 5—Joginder Singh and Salwinder Singh

claimed to have purchased some land out of the land in dispute from Smt. Karmi, defendant No. 1 through her alleged attorney Mehar Singh, defendant No. 6. Defendant No. 6 is the father of defendants No. 4 and 5.

(4) The plaintiffs on the basis of the aforesaid relationship between the parties maintained that Labhu Ram was the owner of the property in dispute. He died on 16th June, 1956. The plaintiffs being his sons are the legal heirs. Since he had died prior to the coming into force of the Hindu Succession Act, therefore, their sister Smt. Karmi did not inherit any property from Labhu Ram. The plaintiffs inherited the property and came into possession. A mutation dated 12th March, 1969 was duly entered in their name as well as in the name of Smt. Karmi, though she was not entitled to get any thing by way of succession. Taking advantage of the aforesaid mutation in favour of Smt. Karmi, Mehar Singh, defendant No. 6 got a fictitious power of attorney prepared purported to have been executed by Smt. Karmi in his own favour. On the basis of the aforesaid power of attorney he executed a sale deed of 1/8th share in the land in dispute in favour of his own sons, Joginder Singh and Salwinder Singh, defendants No. 4 and 5. The plaintiffs claimed that the power of attorney in favour of Mehar Singh was fictitious document having never been executed by Smt. Karmi and as a result the sale deed executed by Mehar Singh as an attorney in favour of his own sons was illegal, bad and without authority and did not affect the rights of the plaintiffs. On the basis of the aforesaid averments, the suit was filed with the prayer as noticed above.

(5) The suit was contested by defendants No. 4 to 6 only. They admitted that the plaintiffs are the sons of Smt. Karmi, the daughter of deceased Labhu Ram. They admitted that Labhu Ram had died. However, the claim that the date of death 16th June, 1956 as claimed by the plaintiffs was not correct in as much as the aforesaid Labhu Ram died after the enforcement of the Hindu Succession Act, 1956. It was further claimed by the defendants that Karmi being the daughter of Labhu Ram and being entitled to a share in his estate had succeeded to the property and, therefore, a mutation of inheritance had been rightly entered in her favour as well. It was further claimed by the defendants that Smt. Karmi had with her own free will and consent executed a power of attorney on 21st December, 1973 in

favour of defendant No. 6, Mehar Singh. On the strength of aforesaid power of attorney, defendant No. 6 had executed the sale deed of the share of Smt. Karmi in favour of defendants No. 4 and 5 for consideration. Accordingly, it was claimed that defendants No. 4 and 5 are *bona fide* transferees for consideration without notice of any defect in the title of Smt. Karmi or power of Mehar Singh.

(6) The learned trial Court on the basis of the evidence led by the parties, held that Labhu Ram had died on 16th June, 1956 i.e. prior to the coming into force the Hindu Succession Act. On that basis, it was also held that she did not inherit any share in the property left behind by aforesaid Labhu Ram. It was further held by the learned trial court that the defendants have not been able to prove that the power of attorney Ex. D2 claimed to have been executed by Smt. Karmi on 21st December, 1973 was ever executed by her. On that basis, it was held that the aforesaid document Ex. D2 is a fictitious document and was not executed by Smt. Karmi. On the basis of the aforesaid finding, the sale deed Ex. D1 in favour of defendants No. 4 and 5 executed on 29th January, 1974 by Mehar Singh, defendant No. 6 was held to be without any authority and as such not binding upon the rights of the plaintiffs. The claim of the defendants that they were *bona fide* purchasers for consideration without notice was also rejected holding that the sale deed was executed by Mehar Singh who was the father of the vendees and as such it could not be taken that the said sale deed was ever executed *bona fide* by aforesaid Mehar Singh.

(7) On the basis of the aforesaid findings, the learned trial court decreed the suit filed by the plaintiffs.

(8) The matter was taken up in appeal by the defendants. The learned first appellate Court reappraised the evidence led by the parties. On such reappraisal, the learned first appellate Court held that it was not proved by the plaintiffs that Labhu Ram had died on 16th June, 1956 i.e. prior to the coming into force of the Hindu Succession Act, 1956. The Hindu Succession Act had come into force with effect from 17th June, 1956 and, therefore, since the plaintiffs had failed to prove that Labhu Ram had died prior to the coming into force of the aforesaid Act, therefore, it would be taken that he had died after the enforcement of the aforesaid Act. Accordingly, it was

held that Smt. Karmi was entitled to a share in the property left behind by her father Labhu Ram. No finding with regard to the genuineness or otherwise of the general power of attorney Ex. D2 was returned by the learned first appellate Court. In fact the findings recorded by the learned trial Court holding the said power of attorney to be fictitious document were not even reversed. Merely on the basis of the findings recorded by the learned first appellate Court on the basis of the right of Smt. Karmi to succeed the property of Labhu Ram, the judgment of the learned trial Court was set aside and the appeal filed by the defendants was allowed. Accordingly, the suit filed by the plaintiffs was dismissed.

(9) The plaintiffs feeling aggrieved against the judgment of the learned first appellate Court have now approached this court through the present Regular Second Appeal.

(10) I have heard Shri R.K. Aggarwal, Advocate, the learned counsel appearing for the appellants and Shri Ramesh Sharma, Advocate, the learned counsel appearing for respondents No. 5 and 6 at a considerable length and with their assistance have also gone through the record of the case.

(11) Shri R.K. Aggarwal, the learned counsel appearing for the appellants has vehemently argued that on the basis of the evidence led by the parties, the learned trial Court had come to a positive finding of fact that the power of attorney dated 21st Decemeber, 1973 (Ex. D2 claimed to have been executed by Smt. Karmi was not shown to be executed by Smt. Karmi and as such was declared to be a fictitious document. On the basis of the said finding, the learned trial Court had further held that Mehar Singh, defendant No. 6 was not shown to be authorised person to execute the sale deed dated 29th January, 1974 in favour of his own sons Joginder Singh and Salwinder Singh, defendants No. 4 and 5. According to the learned counsel the aforesaid finding has not been varied or reversed by the learned first appellate Court and still the suit filed by the plaintiffs has been dismissed holding the sale deed dated 29th January, 1974 in favour of aforesaid defendants No. 4 and 5 to be legal and valid. On that basis the learned counsel submits that the judgment of the learned first appellate Court was completely vitiated and was liable to be set aside on this short ground alone.

(12) It is further argued by the learned counsel for the appellants that the evidence on the record clearly proved that Labhu Ram father of the plaintiffs had died on 16th June, 1956, i.e. prior to the coming into force of Hindu Succession Act and as such Smt. Karmi, defendant No. 1 did not inherit any share in the estate of Labhu Ram, deceased. In support of the aforesaid argument, the learned counsel has placed his reliance upon the statement of Mehnga Ram PW1, Tulsi Ram PW2 and Hans Raj PW3 who all have stated that Labhu Ram had died on 16th June, 1956. A further reliance has been placed on the death certificate Ex. P2 issued by the Municipal Committee, Kapurthala showing the death of Labhu Ram on 16th June, 1956. The learned counsel maintains, on the basis of the aforesaid evidence, that the observations made by the learned first appellate Court that the said evidence did not prove the factum of the death of said Labhu Ram on 16th June, 1956 are based upon the mis-reading of aforesaid evidence and as such the said finding was not legally sustainable.

(13) On the other hand Shri Ramesh Sharma, the learned counsel appearing for respondents No. 5 and 6 has supported the judgment of the learned first appellate Court. Shri Sharma has maintained that the factum of the death of Labhu Ram on 16th June, 1956 could not be stated to be proved by the plaintiffs and because of that fact the learned first appellate Court was right in coming to the conclusion that the provisions of Hindu Succession Act had come into force with effect from 17th June, 1956 and, therefore by the operation of law. Smt. Karmi being the daughter of Labhu Ram, had inherited the property of Labhu Ram to the extent of her share. Shri Sharma has further submitted that although no finding had been given by the learned first appellate Court with regard to the validity of the general power of attorney Ex. D2 but still the evidence on the record was sufficient to show that the said document had been duly executed by Shrimati Karmi. On the strength of the aforesaid general power of attorney, Mehar Singh, defendant No. 6 had executed the sale deed dated 29th January, 1973 in favour of defendants No. 4 and 5 and, therefore the said sale deed was legal and valid. It is further maintained by the learned counsel that defendants No. 4 and 5 in any case were *bona fide* purchasers for consideration and without notice and as such were protected in law.

(14) I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties. In my considered view the present appeal deserves to succeed.

(15) The entire defence raised by defendants No. 4 and 5 is based upon the general power of attorney dated 21st December, 1973 alleged to have been executed by Smt. Karmi in favour of Mehar Singh, defendant No. 6. The defendants have produced three witnesses to prove the aforesaid document Ex. D2. Malkiat Singh, DW3 is the scribe of the aforesaid document. In his cross-examination he has admitted that Smt. Karmi was not known to him; that he could not say that if some other person had been produced before him to get the aforesaid document scribed. The two other witnesses are Charan Singh DW2, who is a marginal witness and DW5 Mehar Singh in whose favour the aforesaid power of attorney is claimed to have been executed. Charan Singh DW2 during his cross-examination had admitted that he had filed a case under sections 107/151 of the Code of Criminal Procedure against one Mehnga and in that case Mehar Singh had appeared as a witness for him. Beside this Charan Singh had also signed the sale deed executed by Mehar Singh in favour of his sons. He put his signatures on behalf of the vendees, namely, the sons of Mehar Singh who are the present defendants No. 4 and 5. During his cross-examination Charan Singh has admitted that the sale deed bore his signatures at mark 'X' but claimed that he had put his signatures as a marginal witness. However, in the document his presence was recorded as representing the vendees. Thus, he was not only favourably inclined in favour of Mehar Singh because of the earlier litigation in which Mehar Singh had supported him but also is interested witness because he was acting on behalf of defendants No. 4 and 5 in the sale deed.

(16) In contrast, the plaintiffs, have produced Krishan Singh, Lambardar of village Sidhwan as PW5. The aforesaid witness has stated that Labhu Ram had died 20/22 years ago and that he had not seen Smt. Karmi for the last 20 years. The power of attorney Ex. D2 was executed on 21st December, 1973. In these circumstances, it was apparent that Smt. Karmi had not been seen by any body for the last more than 20 years prior to the filing of the present suit.

(17) Even if the statements of the aforesaid witnesses are to be ignored and it is taken that Smt. Karmi was available at the time of the execution of the aforesaid document on 21st December, 1973 then the defendants were duty bound in law to produce her in support of

the said general power of attorney Ex. D2. In fact she was the best person to have supported the aforesaid document. No explanation has been given by the defendants for her non-production.

(18) The learned trial Court had taken all these circumstances into consideration and it was thereafter that it had come to the conclusion that the general power of attorney Ex. D2 dated 21st December, 1973 was never executed by Smt. Karmi in favour of Mehar Singh and consequently the sale deed dated 29th January, 1974 by Mehar Singh acting as attorney of Karmi in favour of his own sons Joginder Singh and Salwinder Singh, defendants No. 4 and 5 was totally without any authority and as such was illegal, bad and not binding upon the rights of the plaintiffs in any manner.

(19) The very fact that Mehar Singh chose to sell the land in dispute in favour of his own sons also creates a suspicion with regard to the *bona fide* of the aforesaid transaction. No amount was shown to be paid in presence of the Sub Registrar. It was claimed that Mehar Singh had already received this amount from the vendees and had even paid to Smt. Karmi. The facts speak for themselves. The intention to garb the property is writ large. By any stretch of imagination, defendants No. 4 and 5 cannot be treated to be *bona fide* transferees for consideration without notice.

(20) Coming to the question of the date of death of Labhu Ram, the plaintiffs have produced Mehnga Ram PW1, Tulsi Ram PW2 and Hans Raj PW3 who have stated that Labhu Ram had died on 16th June, 1956. Kishan Singh PW5 and Amar Singh PW7 have also stated that Labhu Ram had died 20 years prior to the date on which their statements were recorded. However, since the aforesaid two witnesses Kishan Singh and Amar Singh had not given a specific date of the death of Labhu Ram, their evidence of course is of no consequence.

(21) The plaintiffs have also relied upon the death certificate Ex. P2 issued by the Municipal Committee, Kapurthala. Ved Parkash PW4 who was working in the Municipal Committee Office, Kapurthala had proved the aforesaid certificate Ex. P2. In the aforesaid certificate Labhu Ram son of Jawala Ram is shown to have died on 16th June, 1956. Although the defendants have challenged the admissibility of the document Ex. P2 on the basis that neither the same was duly proved on the record nor was shown to be recorded under any authority or law, but I do not find that the challenge of the defendants to the

aforesaid document is valid. Under the provision of section 188 of the Punjab Municipal Act, 1911, the Municipal Committee has been authorised to frame bye-laws. Sub-section (c) of the aforesaid section deals with bye-laws for the "proper registration of birth, marriages and deaths and for the taking of a consensus". Ved Parkash PW4 has clearly stated that the death register was maintained by the Municipal Committee on the basis of the entries at the cremation ground. According to him, the usual practice was that a clerk from their office went to the cremation ground to take down the death entries recorded in the register maintained at that place. He has also proved the said document Ex. P2 by stating that it was copy from the death register. In view of the aforesaid positive statement by Ved Parkash PW4, it is clear that the death entry of Labhu Ram having died on 16th June, 1956 was clearly proved and the defendants have not been able to lead any evidence to shake the authenticity of the aforesaid document nor to show that Labhu Ram had in fact died on any other day. The learned first appellate Court merely rejected the aforesaid document Ex. P2 by holding that the register of the cremation ground has not been produced. The aforesaid observations made by the learned first appellate Court are wholly unsustainable in view of the fact that the bye-laws of the Municipal Committee empowered and required the Municipal Committee to maintain a proper register of births, marriages and deaths. Thus when the entry Ex. P2 came from the death register maintained by the Municipal Committee maintained in the due discharge of its official records, the said entry could not have been brushed aside by such observations as have been made by the learned first appellate Court. Thus, it is clearly proved on the basis of the evidence on the record, including the death entry Ex. P2, that Labhu Ram had died on 16th June, 1956 i.e. prior to the coming into force of the Hindu Succession Act. Accordingly, Smt. Karmi did not inherit any share in the property of Labhu Ram.

(22) There is another angle from which this case can be locked into. Even if it be taken that Labhu Ram had died after coming into force of the Hindu Succession Act, as claimed by the defendants, still because of the finding that Smt. Karmi had never executed any general power of attorney in favour of Mehar Singh, the sale deed executed by Mehar Singh in favour of his sons, defendants Nos. 4 and 5 is no sale deed in the eyes of law being without any authority. Under these circumstances also, the aforesaid property could not be taken to have been purchased by defendants Nos. 4 and 5.

(23) In view of the aforesaid discussion, I have no hesitation in answering question (a) in the affirmative. Accordingly, I hold that since no general power of attorney was ever executed by Smt. Karmi in favour of defendant Mehar Singh, therefore, defendants Nos. 4 and 5 did not get any title under the sale deed dated 29th January, 1974 at all. Similarly, since the aforesaid issue was not at all adverted to by the learned first appellate Court and even otherwise document Ex. P2 was brushed aside by the learned first appellate Court merely on the basis of the conjectures and also because of the fact that the learned first appellate Court had dealt with the entire case in the wrong perspective, the aforesaid questions (b) and (c) are also answered in the affirmative.

(24) As a net result of the entire discussion, the present appeal is allowed. The judgment and decree of the learned first appellate Court are set aside and that of the learned trial Court are restored. Consequently, the suit of the plaintiffs is decreed with no order as to costs.

R.N.R.

Before Satish Kumar Mittal, J

USHA RANI & OTHERS,—Appellants

versus

UNION OF INDIA & ANOTHER,—Respondents

F.A.O. No. 2558 of 1996

19th November, 2003

Railways Act, 1989—Ss. 123, 124 & 124-A—Death by accidental fall from the door of train while travelling—Tribunal rejecting claim for compensation—Deceased having a valid ticket of the day of accident—An independent witness also establishing the fact of death—Finding of Tribunal that the deceased died due to his own negligence is wholly without any basis—S. 124—A extends liability of Railways for payment of compensation to dependants of a deceased who dies on account of an 'untoward incident' in the course of working a Railway—Accidental fall from train covered by 'untoward incident' as defined in S. 123(c)/(ii)—Claim made by dependants of deceased fully covered by the provisions of S. 124-A—Appeal allowed.