

* **HIGH COURT OF DELHI : NEW DELHI**

+ **C.S. [OS] No. 260/2007**

% Reserved on:
Decided on: 10th November, 2009

Kundan Lal Gera & Anr. ...Plaintiffs
Through : Ms. Kamlakshi Singh, Adv.

Versus

Krishan Lal & Anr. Defendants
Through : Mr. Sunil Aggarwal, Adv. for
defendant no. 2

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

MANMOHAN SINGH, J.

1. This suit has been filed by the plaintiffs for declaration, cancellation of a decision dated 17th December, 2003 purported and described as 'General Power of Attorney' and permanent injunction.

2. The brief facts for deciding the present case are that the defendant no. 1 (hereinafter referred to as 'defendant') was the allottee/owner in possession of Plot No. 11, Block B-2, Mianwali Nagar, Delhi measuring 352.26 sq. yds. (hereinafter referred to as 'the suit property') by virtue of sub lease deed dated 31st March, 1991.

3. Allegedly, the suit property was sold by the defendant to the plaintiffs on 21st October, 1986 by means of execution of documents

such as power of attorney, agreement to sell, Will etc. executed in favour of plaintiff no. 2. The plaintiffs on the same date handed over sale consideration of Rs. 48000/- to the defendants through bank draft. An affidavit was also executed by the defendant on 21st October, 1986 stating that he had sold the suit property to the plaintiffs and executed the abovesaid documents. Possession of the suit property was also handed over by the defendants to the plaintiffs on 21st October, 1986.

4. As per the plaintiffs, the suit property remained unbuilt and the plaintiffs have been exercising ownership rights on the same since 21st October, 1986. A sum of Rs. 3,50,000/- was deposited by the plaintiff no. 1 to the DDA as composition fees for the suit property vide challan dated 17th October, 2001.

5. The plaintiffs in January, 2003 negotiated for selling the suit property to one Mr. Chandan Aggarwal, defendant no. 2 herein but the final deed did not materialize.

6. The plaintiffs contended that the defendant dishonestly on gaining knowledge about the said negotiations between the plaintiffs and Mr. Chandan Aggarwal executed a document purportedly described as Cancellation of General Power of Attorney on 17th December, 2003 whereby the defendant intended to cancel the registered General Power of Attorney dated 21st October, 1986 executed by the defendant in favour of plaintiff no. 1. The said Cancellation of General Power of Attorney was also registered by the defendant with the Sub Registrar, West District, Delhi.

7. Contention urged by the plaintiffs is that the said document was executed by the defendant without sending or communicating any prior notice to the plaintiffs to gain unlawfully. The plaintiff no. 1 came to know about the execution of the said document through the property broker M/s Durga Estate in February, 2004 and applied to the Sub Registrar, West District, Delhi for its certified copy which was prepared on 20th February, 2004. On contacting the defendant regarding the cancellation of the said documents, the defendant stated that the market value of the plot had increased and demanded more money if the plaintiffs want to cancel the said document.

8. The plaintiffs submit that the agreed sale consideration has been paid by the plaintiffs to the defendant through bank draft which has been accepted and encashed and the money appropriated by the defendant. The defendant also executed irrevocable documents in favour of the plaintiffs acknowledging the sale of the suit property by the defendant in favour of the plaintiffs on 21st October, 1986. The plaintiffs contend that the act of the defendant executing a cancellation of General Power of Attorney after almost 17 years of General Power of Attorney registered in favour of plaintiff no. 1 is null and void ab initio.

9. The plaintiffs thus filed the present suit seeking a decree of declaration and cancellation of the purported document described as cancellation of General Power of Attorney dated 17th December, 2003 as null and void. The reliefs sought by the plaintiffs in the plaint read as under:-

- “a) Pass a decree of declaration declaring as null and void ab initio the document dated 17.12.2003 purported and described as the “Cancellation of General Power of Attorney”.
- b) Pass a decree of Cancellation cancelling the document dated 17.12.2003 purported and described as the “Cancellation of General Power of Attorney”.
- c) Pass a decree of permanent injunction in favour of the plaintiffs and against the defendant restraining the defendant and his agents/successors and assignees from interfering in the ownership rights of the plaintiffs qua the suit property/plot no. 11, Block B-2, Mianwali Nagar, Delhi and from executing any document qua the suit property, save and except documents in favour of the plaintiffs, creating any third party rights in favour of any other than the plaintiffs.”

10. Summons were issued in the present suit on 13th February, 2007. On the same date, an ex parte ad interim order was also passed in favour of the plaintiffs restraining the defendant, his agents, successors and assignees from executing any document purporting to sell, transfer, alienate, encumber or creating any third party rights qua the suit property being Plot No. 11, Block B-2, Mianwali Nagar, Delhi. On 18th April, 2007, the defendant filed the written statement but no one appeared on behalf of the defendant after 23rd October, 2007. The defendant was thus proceeded ex-parte on 25th November, 2008 and the interim orders were made absolute.

11. During the pendency of the suit, the application being I.A. No. 6036/2007 was filed by the applicant, Sh. Chandan Aggarwal for impleadment in the present proceedings. The application was allowed and the applicant Mr. Chandan Aggarwal was impleaded as defendant no. 2. He submits that he is the owner and in possession of the suit premises as plaintiffs entered into an Agreement to Sell dated 29th January, 2003 with him pursuant to which he paid a sum of Rs. 18 lac to

the plaintiffs and in part performance of the agreement, the physical possession of the suit premises was handed over by the plaintiffs to him.

12. Mr. Chandan Aggarwal, defendant no. 2 herein contends that the plaintiffs failed to execute the sale deed in his favour who in turn filed the suit being CS (OS) No. 1525/2007.

13. The defendant no. 1 by virtue of an order dated 25th November, 2008 was directed to be proceeded ex parte. The plaintiffs thereafter led their ex parte evidence in the form of an affidavit of Mr. Kundan Lal Gera, plaintiff no. 1 herein (Exhibit PW-1/A) and have proved various documents as Ex. PW-1/1 to Ex. PW-1/10. The plaintiff no. 1 has proved on record the lease deed as Ex. PW-1/1, agreement to sell as Ex. PW1/2, registered General Power of Attorney as Ex. PW-1/3, registered Will as Ex. PW-1/4, Special Power of Attorney as Ex. PW-1/6 and the affidavit of defendant no. 1 as Ex. PW1/7 to Ex. PW1/9.

14. The learned counsel for defendant no. 2 made the statement in the court on 15th September, 2008 and on 25th November, 2008 that he has no objection to the prayer made in the suit being allowed since no relief has been sought by the plaintiff against defendant no. 2.

15. In view of the above, as the case of the plaintiffs has gone unrebutted and the plaintiffs have proved on record all documents executed on 21st October, 1986 pertaining to the sale of property being Plot No. 11, Block-B-2, Miawali Nagar, Delhi to them by the defendant and defendant no. 2 also has no objection to the prayers sought by the

plaintiffs in the plaint. The suit is decreed in favour of the plaintiffs as per prayer. Decree sheet be prepared accordingly. No costs.

MANMOHAN SINGH, J

NOVEMBER 10, 2009

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