IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) Regular Second Appeal No. 354 of 2009 (O&M)
Date of decision: 18.5.2015

Sh. Prem Singh

.. Appellant

v.

Shri Pritpal Singh and another

.. Respondents

(2) Regular Second Appeal No. 355 of 2009 (O&M)

Sh. Prem Singh

.. Appellant

v.

Shri Pritpal Singh and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate for the appellant.

Mr. Baljinder Singh, Advocate for respondent No. 2.

...

Rajesh Bindal J.

This order will dispose of RSA Nos. 354 and 355 of 2009, as the issue involved in both the appeals is common.

The facts have been noticed from RSA No. 355 of 2009.

The plaintiff is before this court against concurrent findings of fact recorded by both the courts below, whereby the suit for declaration filed by him challenging the sale deed dated 13.2.1991 executed by respondent No. 1 in favour of respondent No. 2 as power of attorney holder of the appellant-plaintiff as illegal, void and ineffective, was dismissed.

Learned counsel for the appellant submitted that the property in dispute was purchased by the appellant on 1.12.1976 in the name of M/s Unknown Poultry Farm. He had issued general power of attorney in favour of his younger brother-Pritpal Singh (respondent No. 1), which was registered on 29.12.1989. The object of the power of attorney was to take care of the property, however, it is not disputed that it contained the clause permitting the power of attorney holder to even dispose of the property. Without consent of the appellant, respondent No. 1 sold the property to respondent No. 2, wife of another brother of the appellant on 13.2.1991. The appellant came to know of the sale deed in January, 1992. Immediately thereafter, steps were taken to file the suit challenging the same, which was filed on 26.3.1994.

While impugning the judgments and decrees of both the courts below, learned counsel for the appellant submitted that once the property was registered in the name of M/s Unknown Poultry Farm, the power of attorney given by the appellant to respondent No. 1 to deal with the property could not entitle him to dispose of the same. The property had been sold for a meager sale consideration. The learned courts below have gone wrong in opining that the suit filed by the appellant was time barred because the pleaded case of the appellant is that he came to know about the sale deed in January, 1992, the suit filed on 26.3.1994 was within limitation. Even if in terms of the material having come on record that the appellant had enquired about the sale deed in March, 1991, still the suit filed on 26.3.1994 was within three years therefrom. He further submitted that against the property, loan had been taken by the appellant, hence, the same could not be sold. It was not free from encumbrances. He further submitted that when the learned lower appellate court reversed the finding of the trial court on the issue of respondent No. 2 being a bonafide purchaser for consideration, the suit filed by the appellant deserved to be decreed and the sale deed was required to be set aside.

On the other hand, learned counsel for respondent No. 2 submitted that the appellant had executed a registered general power of attorney in favour of respondent No. 1 specifically giving him power to sell the property. Earlier he had given the power of attorney to Jhujhar Singh, his another brother for managing the property, which was cancelled. The plea of fraud sought to be raised is totally misconceived as the sale deed was got registered by respondent No. 1 in favour of respondent No. 2 more than a year after the execution of the power of attorney, the sale deed being dated 13.2.1991. Had it been a case of fraud or collusion, the power of attorney holder would not have taken so much time in getting the sale deed registered. Both the courts below have rightly opined that the suit filed by the appellant was time barred. The appellant had not established on record as to what was his date of knowledge of the sale deed. In fact, he had taken a stand that he came to know about the sale deed in January, 1992, hence, the suit was within limitation, however, it came on record during the course of evidence that the appellant enquired about the sale deed in March, 1991. With this material on record, the appellant's plea about the sale deed being a result of fraud or the suit being within limitation had rightly been rejected by both the courts below. The executant of a power of attorney is bound by the acts of power of attorney holder. Inadequacy of consideration is not a plea of fraud. In case, respondent No. 1 has not paid the sale consideration to the appellant, it is a matter between the executant of the power of attorney and the power of attorney holder. The sale deed cannot be held to be bad on that account. In fact, the appellant had got the sale deed executed through his power of attorney to defraud the bank as the loan had been raised. The suit was filed immediately after respondent No. 2 cleared the loan. In view of the aforesaid material on record, there is no error in concurrent findings of fact recorded by both the courts below. The appeals deserve to be dismissed.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, execution of the registered general power of attorney by the appellant in favour of his brother-respondent No. 1 on 29.12.1989 is not in dispute. The same incorporates the right to dispose of the same. The sale deed was got executed by respondent No. 1 in favour of respondent No. 2 on 13.2.1991, i.e., more than one year thereafter. Had there been collusion between the respondents, the respondent No. 1, power of attorney holder, could have registered the sale deed immediately after he got the power of attorney. The suit was filed on 26.3.1994. Both the courts below found that the same was barred by limitation. Though in the pleadings, the appellant sought to take a plea that he came to know about execution of the sale deed in January, 1992, however, it came on record in evidence that in March, 1991, the appellant enquired about the sale deed, hence, he had knowledge thereof in March, 1991. On that basis, the argument was sought to be modified claiming that if knowledge was in March, 1991, the same should be taken to the end of March, 1994, hence, the suit filed on 26.3.1994 should be considered within limitation. The contention is misconceived. Once with a view to bring the suit within limitation, the appellant took a plea that he got knowledge of the sale deed in January, 1992 and it was established on record that he enquired about the same in March, 1991, there being no specific date pleaded by the appellant, rather, he having concealed correct facts from the court, in my opinion, there is no error in the findings recorded by both the courts below to the extent that the suit filed by the appellant was beyond limitation.

Even the plea raised by the appellant that power of attorney had been executed by the appellant, whereas the property had been registered in the name of M/s Unknown Poultry Farm is also to be noticed and rejected for the reason that M/s Unknown Poultry Farm was admittedly a sole proprietorship firm of the appellant. It was not a separate legal entity.

The inadequacy of consideration cannot be an issue to challenge the sale deed executed by power of attorney holder and further alleged non-payment of the sale consideration by the power of attorney holder to the executant thereof. It is claimed by the respondents that the vendee in addition to the sale consideration paid to the power of attorney holder had even cleared the pending loan from the bank against the property in dispute.

For the reasons mentioned above, I do not find any reason to disturb the concurrent findings of fact recorded by both the courts below while dismissing the suit filed by the appellant. No substantial question of law arises in both the appeals. The same are, accordingly, dismissed.

(Rajesh Bindal)
Judge

18.5.2015
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