

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.3124 of 2011 (O&M)
Date of decision: 24.02.2015**

Nirmal Singh

... Appellant

Vs.

Jaspal Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. M.S.Sethi, Senior Advocate with
Mr. H.S.Sirohi, Advocate
for the appellant.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Sandeep Bansal, Advocate and
Mr. Rajesh Punj, Advocate
for the respondents.

AMIT RAWAL J.

At the instance of appellant-defendants, the present regular second appeal is directed against the concurrent finding of fact, whereby, the suit for specific performance of the agreement to sell dated 20.10.1991 in respect of land measuring 9 bighas has been decreed and the appellant-defendants have been directed to execute and register the sale deed in accordance with terms and conditions of the agreement to sell on the receipt of balance sale consideration of ₹ 2,40,000/- as well as to deliver the vacant

possession of land to the respondents-plaintiffs. As per decree, the appellant-defendants have been restrained from transferring the land in dispute, in any manner, whatsoever to any other person other than the respondents-plaintiffs.

The preface of the matter would be necessary before adverting to the arguments of the learned counsel for the parties.

The respondents-plaintiffs filed a suit for specific performance of agreement to sell dated 20.10.1991 executed by defendant No.2, i.e. attorney of appellant/defendant No.1, as defendant No.2 -Avjinder Singh was appointed as his 'General Power of Attorney' dated 6.9.1989, registered on 8.9.1989. Both brother and mother of defendant No.1, namely, Mukhtiar Singh and Smt. Basant Kaur, had also appointed, Avjinder Singh, as their General Power of Attorney jointly with him. The total sale consideration of the aforementioned land was fixed as ₹ 5,40,000/- and a sum of ₹ 2,00,000/- was sated to have been paid by the respondents-plaintiffs. As per the terms and conditions of the agreement to sell, it was mentioned that a sum of ₹1,00,000/- was to be paid out of the remaining sale consideration to the appellant-defendants on or before 30.11.1991. The target date for execution and registration of the sale deed was fixed two years from the date of execution of the agreement to sell i.e. 20.10.1991.

As per the case set up by the respondents-plaintiffs, on

25.11.1991, appellant-defendant No.1 was paid a sum of ₹1,00,000/- and in view of token of receipt of said money, executed an affidavit dated 25.11.1991 (Ex.P1). The pleaded case of the respondents-plaintiffs was that appellant-defendants did not appear before the office of Sub Registrar on 18.10.1993, whereas, respondents-plaintiffs were present. It has been sated that plaintiffs-respondents approached the defendants on 18.10.1993 and requested them to perform their part of the agreement but the defendants asked the plaintiffs to wait for another three months. Since the appellant-defendants did not perform their part of contract and notice dated 17.1.1994 (Ex.PW4/A) was sent to the appellant/defendants to discharge their part of the contract. On receipt of the notice, appellant-defendants orally assured them that sale deed would be executed after harvesting the wheat crop but failed to keep their promise. Accordingly, second notice dated 11.7.1994 (Ex.PW4/B) was sent to them and thereafter, another registered notice dated 8.9.1995 was also sent, but the appellant/defendants refused to accept the said notice. Thereafter, the suit was filed on 07.10.1995.

That upon receipt of notice of the plaint, appellant-defendants filed written statement. In paragraph No.5 of the written statement, it was denied that agreement to sell was at ₹ 30,000/- per bigha and receipt of rupees two lakhs was also denied. It was further stated that no money had been paid to defendant No.1, either by the respondents-plaintiffs or by defendant No.2. It was further stated that

alleged agreement had been prepared by defendant No.2, long after 14.02.1995, when defendant No.1/appellant-Nirmal Singh, revoked the power of attorney executed by defendant No.2-Avjinder Singh. Appellant-defendant No.1 was audacious to deny the affidavit dated 25.11.1991 (Ex.P1), vide which he is alleged to have received a sum of ₹1,00,000/-, whereas, the averments made in corresponding paragraph Nos.9 and 10 with regard to plea that the respondents-plaintiffs have approached the appellant-defendants on 18.10.1993 and requested them to perform their part of contract were vaguely denied. For the sake of brevity, para Nos.8 to 13 of the plaint, are reproduced herein below:-

“8. That the plaintiffs have always been ready and willing and still remain ready and willing to perform their part of the contract. The balance sale price, registration expenses, stamp fee, etc. is and has always been ready with them.

9. That the plaintiffs approached the defendants on 18.10.1993 and requested them to perform their part of the agreement to sell dated 20.10.1991 and even requested them to receive the balance sale price, stamp fee, registration fee etc. but the defendants asked the plaintiffs to wait for three months by which time the defendants would perform their part of the contract. A notice was also

sent to the defendants dated 17.1.1994 by ordinary post by the plaintiffs requesting the defendants to perform their part of the contract.

10. That even after the notice dated 17.1.1994 the plaintiffs approached the defendants and stated that they were ready with the balance sale price and registration expenses etc. and offered the same to the defendants but the defendants stated that they would execute the sale deed and get the same registered after the harvesting of the wheat crop but the defendants failed to keep their promise and also failed to perform their part of the contract which compelled the plaintiff to send the second legal notice to the defendants by ordinary post dated 11.7.1994.

11. That even after the receipt of the notice dated 11.7.1994 the defendants failed to perform their part of the contract and did not execute and get registered the sale deed in favour of the plaintiffs.

12. That thereafter third notice was sent to the defendants by ordinary post and requested them to execute the sale deed within 15 days from 5.12.1994 the date of notice but the defendants failed to perform their part of the contract although

the plaintiffs always remained ready and willing to perform their part of the contract and they had the balance sale price, stamp fee, registration expenses etc., ready with them.

13. That thereafter a registered notice dated 8.9.1995 was sent to the defendants requesting the defendants to execute and get registered the sale deed as per terms of the agreement to sell dated 20.10.1991 within 15 days of the receipt of the notice but the defendants refused to receive the said notices. Photocopy of notice, returned registered copers and postal receipt No.2888, 2889 dated 8.9.1995 are attached but the defendants failed to honour these notices also.”

and the corresponding reply of the aforementioned paragraphs of the written statement are extracted herein below:-

“8. That para 8 of the plaint is wrong and denied. The question of willing and ready does not arise. The plaintiffs were also never ready and willing as alleged.

9. That para 9 of the plaint is wrong and denied. The plaintiffs never approached the defendants as alleged nor there was any occasion to do so. No notice was sent to the answering defendant as

alleged nor it was received.

10. That para 10 of the plaint is wrong and denied. The plaintiffs never approached the answering defendant as alleged. No notice was sent to him as alleged nor it was received.

11. That para 11 of the plaint is wrong and denied. No notice was received by the answering defendant.

12. That para 12 of the plaint is wrong and denied. No notice as alleged was sent to or received by the answering defendant. All allegations are false.

13. That para 13 of the plaint is wrong and denied. No notice was received by the answering defendant nor he refused to take delivery thereof.”

Power of Attorney was executed in favour of defendant No.2, who admitted that he on the basis of power given in the GPA has executed an agreement to sell with the respondents-plaintiffs and in essence, admitted the averments culled out in the plaint.

Both the parties were at variance and the trial Court framed as many as nine issues including the issue of Relief. Respondents-plaintiffs in order to prove readiness and willingness much less execution of the agreement to sell examined following witnesses:-

1. PW1 - Narinderjit Singh son of Daya Singh, who stated that Nirmal Singh executed affidavit (Ex.P1) and the same was attested and identified by Executive Magistrate, Ludhiana.
2. PW2 – Jagjit Singh, Advocate, who stated that he served notice through registered post Ex.P2 on behalf of the plaintiffs on Nirmal Singh. Ex.P3 and Ex.P4 postal receipts. The registered envelopes were received back unserved vide Ex.P5 and Ex.P6 where their acknowledgment are Ex.P7 and Ex.P8.
3. PW3 - Surinder Singh, Sarpanch of village Thareeke.
4. PW4 – Gurdarshan Singh, Clerk from the office of Sub Registrar who stated that he has brought summoned record pertaining to power of attorney dated 8.9.1989 registered in the office of Sub Registrar.
5. PW5 – Chamkaur Singh i.e. plaintiff, who, exhibited on record notices dated 17.1.1994, 11.7.1994 and 5.12.1994 as Ex.PW4/A to Ex.PW4/C.

Whereas, appellant-defendant No.1, in order to rebut the evidence of the respondents-plaintiffs and to prove the averments made in the written statement, examined the following witnesses:-

1. DW1-Krishan Gopal, Clerk from the office of Sub Registrar, Ludhiana, proved on record the certified copy

of power of attorney dated 6.9.1989 as Ex.D1 and revocation deed concerning the same as Ex.D2.

2. DW2- Nirmal Singh i.e. defendant No.1, stated that he is owner of six acres of land approximately, out of joint holding with his brother Mukhtiar Singh and Ram Singh.

Learned trial Court on the basis of the aforementioned oral and documentary evidence, decreed the suit of the respondents-plaintiffs, whereby, the appellant-defendants were directed to execute and register the sale deed on receipt of balance sale consideration.

Appellant-defendant No.1 assailed the judgment and decree of the trial Court, by filing an appeal before the lower Appellate Court under Section 96 of the CPC. However, the said appeal was also dismissed by the lower Appellate Court, vide judgment and decree dated 05.05.2011. In these circumstances, the aforementioned regular second appeal has been arisen.

Mr. Mohinder Singh Sethi, learned Senior Advocate assisted by Mr. H.S.Sirohi, Advocate, in support of his grounds of appeal, raised the following contentions:-

i) That readiness and willingness was conspicuously absent as the respondents-plaintiffs have filed the suit on 07.10.1995, whereas the legal notices were sent in the month of December, 1994 and after two years from the target date.

ii) Defendant No.2 was attorney of defendant No.1,

who was not proper much less necessary party.

lii) Appellant-defendant No.1 had denied the execution of the agreement to sell much less receipt of earnest money.

iv) Respondents-plaintiffs have failed to prove the balance sale consideration and further by referring to cross-examination of the respondent-plaintiff, where he admitted that he was income tax assessee but did not produce the same and thus not discharged the onus.

v) Appellant-defendants had given power to defendant No.2 only to manage the property not to sell the property. On the date of filing of the suit, power of attorney had been revoked/cancelled on 14.02.1995.

vi) In support of his submissions, he further submitted that respondents-plaintiffs did not have the liquid cash.

Mr. Sethi, learned Senior counsel also relied upon the judgment of Hon'ble the Supreme Court in **Man Kaur (dead) by LRs vs. Hartar Singh Sangha (2010) 10 Supreme Court Cases 512**, by referring to paragraph No.17, 22, 39 and 40. He further cited the following judgments:-

1. **Harjinder Singh and others vs. Harbhajan Singh 2007(2) PLJ 227**, that interpretation of power of attorney by applying rule of construction has to be seen and to infer whether power of attorney was given for

management of the property or for the purpose of sale.

2. **Jagdev Singh and others vs. Sucha Singh and others 2007(2) PLJ 235;**

3. **Swaran Singh vs. Satnam Singh and others 2001 (2) PLJ 313**, that interpretation of document i.e. power of attorney constitutes the substantial question of law to be adjudicated by the Court.

4. **Mt. Jan vs. Mt. Fajjan and another AIR 1938 Lahore 351** that power of sale must be exercised only if was necessary for the purpose of management; and

5. **Smt. Nand Kaur vs. Mastan Singh and others 1990 Civil Court Cases 501 (P&H)**, to contend that rules of interpretation where authority is given for special purpose followed by general authority to sell, mortgage or gift. It must be construed to be given for the special purpose.

Mr. Anil Kshetarpal, learned Senior counsel assisted by Mr. Sandeep Bansal, Advocate and Mr. Rajesh Punj, Advocate, raised the following submission:-

i) There is no illegality and perversity in the concurrent finding rendered by the Courts below based on the fact and law.

ii) There is no substantial question of law involved in the present appeal to be adjudicated by this Court.

iii) Respondents-plaintiffs have not only averred but proved the readiness and willingness as envisaged under Section 16(c) of the Specific Relief Act, 1963, thus, Courts below rightly exercised jurisdiction under Section 20 of the Act.

iv) He further pointed out to the examination-in-chief and cross-examination of respondent-plaintiff, who, appeared as PW4-Chamkaur Singh, to contend that defendant No.1 did not ask specific question with regard to legal notices Ex.PW4/A to Ex.PW4/C. While referring to the stand of appellant-defendant No.1, that he did not receive notice, referred to examination-in-chief and cross-examination of DW2-Nirmal Singh, defendant No.1, wherein no plea with regard to receipt of legal notice had been taken and in cross-examination, when confronted with a specific question, appellant-defendant No.1 stated that he did not remember, if he had received notices dated 17.01.1994 (Ex.PW4/A), 11.7.1994 (Ex.PW4/B) and 5.12.1994 (Ex.PW4/C) and returned the registered notice (Ex.P5/A) sent to him. He further referred to the cross-examination, wherein, he unequivocally, admitted he did not cancel the power of attorney on 14.02.1995, and

also admitted his signatures on the affidavit, which also proved receipt of ₹1,00,000/- paid by plaintiff on 25.11.1995.

Mr. Sethi, learned Senior counsel, in rebuttal, submitted that suggestion was put to the plaintiff with regard to non-sending of the legal notices and further urged that both the Courts below have misread and misinterpreted the oral and documentary evidence. Therefore, the present appeal involves following substantial questions of law:-

- “a) Whether the interpretation and the construction of the document 'power of attorney' in favour of Shri Avjinder Singh who executed agreement to sell in this case was correct the most vital document on the basis of which the impugned agreement to sell has been entered into?*
- b) Whether the original document on the basis of which plaint was sustained have not been filed at all and the effect of non filing of such original document as requires U/O 7 Rule 14 CPC?*
- c) Could Avjinder Singh be arrayed as defendant No.2 when his power of attorney was revoked much before filing of the present suit?*
- d) Could the Court entertain and reply on the conflicting written statement filed by the attorney and ignore the written statement filed by defendant No.1?*

e) *Admittedly a joint power of attorney was given on behalf of three persons namely Mukhtiar Singh, Nirmal Singh, defendant No.1 and their 100 years old mother Jaswant Kaur who jointly owned and possessed the land inclusive of the land in dispute. Could the attorney execute the agreement to sell only for Nirmal Singh?*

f) *Whether the laches on the part of the plaintiffs disentitle them to any equitable relief under the Specific Relief Act?*

g) *Whether the findings of fact are perverse?*

h) *Whether the alleged agreement to sell could be specifically enforced after 20 years of its execution?"*

I have heard learned counsel for the parties, appraised the impugned judgments and decrees of the Courts below as well as record of the trial Court with able assistance of learned counsel for the parties and am of the view that aforementioned submissions of learned counsel for the appellant-defendant is devoid of merit and appeal liable to be dismissed for the following reasons:-

It is well settled that a person may lie but the document may not. Appellant-defendant No.1 in order to disprove the execution of the agreement to sell as well as affidavit Ex.P1, whereby, he has received a sum of ₹1,00,000/- in his own individual capacity, did not examine any expert that power of attorney dated 8.9.1989 and the affidavit dated 25.11.1991, did not bear his signatures, rather in

cross-examination, he admitted that affidavit (Ex.P1) was attested by Executive Magistrate, Ludhiana, bore his signatures. For the sake of brevity, the relevant piece of cross-examination of defendant No.1-Nirmal Singh is extracted herein below:-

“....It is correct that I have thumb marked Ex.P1 but I cannot say I also signed in Urdu on the said document which I have seen today in the Court in Court file on which Nirmal Singh is also written in Urdu...”

Similarly as regards the plea of readiness and willingness of respondents/plaintiffs is concerned, Mr. Kshetarpal, learned Senior counsel submitted that the said plea is not available to the appellant/defendant No.1, execution of the agreement to sell has been denied. It is settled proposition of law that once the vendor denies the execution of the agreement to sell, he cannot take the plea of readiness and willingness. In this regard, I draw support from the judgments of this Court in **Jora Singh vs. Lakhwinder Kumar and others 2011(1) R.C.R.(Civil) 130** and **Lal Chand vs. Tek Chand 2013(5) R.C.R(Civil) 104**.

On the contrary, it is categoric case of the respondents/plaintiffs, as pleaded in the plaint, the relevant paragraphs have already been extracted above, that respondents-plaintiffs had been contacting the appellant-defendants to perform their part of the agreement and for that four legal notices were sent to them and appellant-defendant No.1 was audacious enough to

feign ignorance about the aforementioned notices. Further in cross-examination to a specific question, defendant No.1/appellant stated as under:-

“....I do not remember if I have received notice Ex.PW4/A dtd.17.1.94, Ex.PW4/B dtd. 11.7.94 and Ex.PW4/C dtd.5.12.94 given by Chamkaur Singh and Teja Singh plaintiff. I have returned a regd.notice sent to me issued by Jagjit Singh, Advocate which is Ex.P5/A. I have not cancelled the power of attorney executed by me in favour of Avjinder Singh on 14.2.1995, which is Ex.D2, due to change of the circumstances. It is correct that the power of attorney Ex.PW4/1 was executed by my brother Mukhtiar Singh and my mother Basant Kaur and myself jointly. It is correct that Avjinder Singh had entered into an agreement to sell on my behalf with the plaintiff....”

He further admitted to the specific question, which is extracted herein below:-

“....It is correct that the power of attorney dated 4.2.1990 bears my signatures in Urdu which I have given to my counsel Avtar Singh Gill and H.S.Mangat. It is also correct that I have also put my signatures in Urdu on the power of attorney

dated 4.11.99 in favour of my counsel Shri Raj Kumar Kaushal and G.S.Sandhar, Advocates which I have seen today in the court file...”

In view of the aforementioned admission of the appellant-defendants, it leaves no manner of doubt that appellant-defendants after executing the agreement to sell took somersault by denying the agreement to sell. The admission of the appellant-defendants leads to irresistible conclusion that he had authorized defendant No.2 to enter into agreement to sell much less also received a sum of ₹1 lac over and above earnest money and in lieu thereof, while acknowledging receipt, executed an affidavit, which was duly attested by Executive Magistrate. No witness from the office of Executive Magistrate, Ludhiana has been summoned to disprove the affidavit Ex.P1.

On the contrary, respondents-plaintiffs have been able to prove readiness and willingness by sending perpetual legal notices in January 1994, July 1994 and December, 1994 and then in September, 1995 and then ultimately filed a suit in the month of October, 1995. Thus, there has been a continuous readiness and willingness on the part of the respondents-plaintiffs. It is settled proposition of law that readiness and willingness on the part of the respondents-plaintiffs has to be throughout from the date of agreement, till filing and during the pendency and till passing of the decree. The aforementioned proposition of law has been laid down

by Hon'ble the Supreme Court in **2007(4) RCR(Civil) 533 Sita Ram and others vs. Radhey Shyam**. There is no dispute with regard to proposition and ratio descendi laid down in the judgments cited by Mr. M.S.Sethi, learned Senior counsel. In the aforementioned judgments, each and every case had to be examined on the basis of testimonies of the witnesses brought on record by the parties to the lis.

In view of the candid admission of the appellant-defendants, there is no scope to apply/rule construction in interpreting the power of attorney dated 6/8th September, 1989. As regards the judgment in case of Man Kaur's case (supra), it is observed that it was a case, where vendee had entered into agreement to sell through his Power of Attorney and the suit for specific performance was filed, by some other attorney also had put in appearance as witness and the vendee did not step into witness box. With regard to this principle, Hon'ble the Supreme Court laid down the law that agent who did not have the knowledge, cannot depose on behalf of the principal. Herein in the instant case, appellant-defendant No.1 has himself stepped into witness box and in the cross-examination, spilled the beans.

In view of what has been observed above, respondents-plaintiffs have proved the due execution of agreement to sell, much less, readiness and willingness, whereas on the contrary, appellant-defendants have failed to prove the same as they failed to lead any

evidence rather miserably failed to rebut the burden/onus discharged by the respondents/plaintiffs.

In view of what has been observed, there is no substance in the appeal, much less, there is no illegality and perversity in the findings rendered by the Courts below, based on appreciation of oral and documentary evidence.

No substantial question of law arises for adjudication of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 24, 2015
savita