

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 2461 of 2012 (O&M)
Date of decision: 19.11.2015

Ram Kishan and others

.. Appellants

v.

Smt. Phoolwati and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rakesh Nehra, Advocate for the appellants.
Mr. Sanjay Majithia, Senior Advocate with
Mr. Ajay Shekhawat, Advocate for respondent No. 1-
caveator.

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Rajesh Bindal J.

The defendants are before this court against the judgment and decree of learned lower appellate court, whereby that of the trial court was reversed and the suit filed by respondent No.1-plaintiff was decreed.

In the case in hand, the suit was filed by respondent No. 1-plaintiff for declaration and permanent injunction. She alleged that the property in question was purchased by her from Bina vide registered sale deed dated 12.5.1997. The order passed by the Registrar dated 21.5.2002 cancelling the sale deed was also challenged.

The property in the case in hand was owned by Smt. Bina. She had initially executed a registered power of attorney regarding the same in

favour of Gajraj Singh (respondent No. 3) on 6.4.1992. Thereafter, a fresh registered power of attorney was executed in favour of Ram Kishan (appellant No. 1) on 17.12.1992, which was cancelled by way of a registered document on 25.4.1997. On 12.5.1997, two sale deeds were presented before the Sub Registrar for registration, one by Bina in favour of respondent No. 1-plaintiff dated 12.5.1997 and another dated 1.5.1997 in favour of appellants-defendants No. 1 to 5, executed by Gajraj Singh as power of attorney holder of Bina. The Sub Registrar, while rejecting the sale deed dated 1.5.1997 presented by appellants-defendants No. 1 to 5, registered the sale deed dated 12.5.1997 presented by respondent No. 1. The order was challenged by the appellants before the Registrar, who set aside the same on 21.5.2002 and directed registration of the sale deed in favour of the appellants. The order was impugned by respondent No. 1 in the suit filed, besides seeking declaration that she is owner in possession of the suit property on the basis of the sale deed dated 12.5.1997 already registered in her favour.

The contention sought to be raised by learned counsel for the appellants was that once there was a registered power of attorney already executed by Bina in favour of Gajraj Singh on 6.4.1992, which was never cancelled, he had all the rights to execute the sale deed on her behalf. The power of attorney holder having got the sale deed executed on 1.5.1997 in favour of the appellants, the same should have been registered, as against sale deed dated 12.5.1997 presented by Bina. The learned lower appellate court had reversed the findings recorded by the trial court merely on the presumption that on execution of fresh power of attorney by Bina in favour of Ram Kishan on 17.12.1992, the earlier power of attorney dated 6.4.1992 in favour of Gajraj Singh stood revoked, but there was nothing like that.

On the other hand, learned counsel for respondent No. 1-caveator submitted that even if the contention sought to be raised by learned counsel for the appellants that Gajraj Singh had the power of attorney to sell the property, still the original owner does not lose that right, rather, her right was supreme. The power of attorney holder was only acting on her behalf. He further submitted that it is wrong to contend that

the power of attorney holder executed the sale deed in favour of the appellants on 1.5.1997 as it is only that the document is dated 1.5.1997. While appearing as DW9-Gajraj Singh , in his cross-examination, clearly stated that he had received the consideration on 12.5.1997 at the time of presentation of the sale deed for registration and when it was not registered, the money was returned back. He further submitted that there is no agreement to sell pleaded by the appellants, which may have been executed by Gajraj Singh being a power of attorney holder, hence, to plead that the sale deed has been wrongly executed in favour of respondent No. 1 is misconceived. The judgment and decree of the lower appellate court does not call for any interference.

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

The property in dispute was owned by Bina. Even if the facts, as claimed by the appellants, are taken as such, Bina had executed a power of attorney in favour of Gajraj Singh . One sale deed executed by Gajraj Singh in favour of the appellants and another sale deed executed by Bina in favour of respondent No. 1-plaintiff were presented before the Sub Registrar on the same day, namely, 12.5.1997. The sale deed in favour of respondent No. 1 -plaintiff was registered, whereas the other was declined. Though the sale deed was set aside by Registrar in the appeal filed by the appellants and the trial court dismissed the suit filed by respondent No. 1, however, the learned lower appellate court has held the sale of land in favour of respondent No. 1 to be valid. The owner of the property, even if executes a power of attorney, does not loose the right to deal with the property. Here is a case in which the original owner executed the sale deed and on the same date, when the sale deed claimed to have been executed by the power of attorney holder was presented for registration, the same was declined. The power of attorney holder, namely, Gajraj Singh fairly stated in his cross-examination that he had received the sale consideration only on 12.5.1997 and when registration of the sale deed was refused, the money was returned to the vendee. Meaning thereby no sale consideration was passed.

Considering the aforesaid factual matrix, I do not find any reason to interfere with the impugned judgment of lower appellate court. No substantial question of law arises in the present appeal. Accordingly, the same is dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

19.11.2015
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