

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104

RSA No. 3282 of 2012 (O&M)

Date of decision: 18.08.2015

Smt. Kamlesh

...APPELLANT

VS.

Abhey Singh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Present is an appeal whereby challenge has been posed to the judgments and decree passed by the Courts below, vide which the suit for declaration and permanent injunction filed on the ground that the appellant-plaintiff has purchased the suit property vide sale deed No. 3239 dated 20.10.1997 from Sh. Tika Ram son of Puran through power of attorney Sh. Jagmal Singh and on the basis of which, she had come in possession of the property since the said date and thus, has become owner in possession, has been dismissed. Declaration has also been sought that the cancellation of the general power of attorney No. 169 on 20.10.1997, which was in favour of Jagmal Singh, is not valid and has no bearing on the sale deed executed in favour of the appellant-plaintiff apart from the other claims made therein. The suit of the appellant-plaintiff was dismissed on the grounds of limitation, non-failure to prove the execution of the sale deed in her favour and that the cancellation of general power of attorney executed in favour of

Jagmal Singh by Tika Singh was a valid cancellation and, therefore, the declaration, as sought, could not be granted.

It is the assertion of the counsel for the appellant that the suit of the appellant-plaintiff was within limitation as she had approached the Court at the time when her possession was threatened by the respondents. The suit was, therefore, within limitation. He has asserted that the sale deed, which was executed in favour of the appellant-plaintiff, is dated 20.10.1997 and the general power of attorney, which was in favour of Jagmal Singh, was also cancelled on 20.10.1997 without notice to the appellant-plaintiff and since she did not have any knowledge of the same, the same could not be said to be a ground for holding it to be a valid cancellation and as a consequence thereof, rendering the sale deed executed in favour of the appellant-plaintiff by the general power of attorney Jagmal Singh as invalid. Assertion has also been made that the appellant-plaintiff having been in possession of the property could not have been dispossessed except in accordance with law.

Having considered the submissions made by the counsel for the appellant and having gone through the records of the case, this Court is of the opinion that the assertions, as recorded above by the counsel for the appellant, cannot sustain. The findings recorded by the Courts below are based upon the evidence, which has been led by the parties which do not call for any interference by this Court. Suffice it to say that the appellant-plaintiff has failed to prove the execution of the sale deed No. 3239 dated 20.10.1997 by Sh. Jagmal Singh, general power of attorney holder of Sh. Tika Singh. The respondents, on the other hand, have been able to prove the due cancellation of the general power of attorney in favour of Jagmal Singh

executed by Tika Singh vide cancellation deed dated 17.10.1997, which was registered on 20.10.1997 Ex. DW3/B. Apart from that, the mutation has also been sanctioned in favour of the respondents-defendants from the date after the sale deeds were executed in their favour. Litigation has taken place with regard to this sanction of the mutation initially in favour of the appellant-plaintiff, against which an appeal was preferred by the respondents-defendants where they succeeded and the mutation was ultimately sanctioned in their favour. The appellant-plaintiff has, through the present suit, also challenged the said sanction of mutation in favour of the respondents-defendants. The same has been found to have been duly sanctioned in their favour.

It would not be out of way to mention here that the Assistant Collector First Grade, Rewari had passed the order dated 24.05.2000 whereas the suit has been filed in the year 2006. It can not, therefore, be said that the present suit is within limitation.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

It may be added that no substantial question of law is involved in this case which would merit admission of this case.

August 18, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE