

In the High Court of Punjab and Haryana at Chandigarh

101

RSA No. 2046 of 2013

Date of decision: 15.12.2015

HARMINDER KAUR AND ANR

.....Appellants

Versus

AMARJIT SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.J.S.Mehndiratta, Advocate,
for the appellants.

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Raj Mohan Singh, J.

1. Defendants are in regular second appeal against the concurrent findings of the Courts below.

2. Plaintiffs filed a suit for declaration to the effect that sale deed dated 21.1.2003 executed by defendant No.2 in favour of defendant No.1 on the basis of General Power of Attorney and consequent mutation dated 14.2.2003 in favour of defendant No.1 on the basis of said sale deed are illegal, null and void. With a further direction that defendant No.1 is not entitled to receive amount of compensation in respect of acquired land on the basis of said title.

3. Plaintiffs further alleged that the land was acquired by the Chandigarh Administration for the purpose of setting of industrial area and other allied uses vide notification dated 29.11.2002 and award was also passed by the Land Acquisition Collector on 26.3.2003. Defendant No.2 being General Power of Attorney of the plaintiffs, sold 12 kanal 9 marlas of land out of 19 kanal 2 marlas in favour of his wife vide sale deed dated 21.1.2003. Plaintiffs alleged that the sale deed was executed by General Power of Attorney by misusing the authority as Arjun Singh had already died on 1.4.1999 before execution of alleged sale deed. No title could have been passed in favour of defendant No.1 on the basis of said sale deed as General Power of Attorney already stood terminated with the death of Arjun Singh on 1.4.1999. The consequent mutation on the basis of said sale deed also has to go on such premise.

4. Defendants contested the suit, claiming that the sale deed was properly executed on receiving full sale consideration. Defendant No.2 never misused the General Power of Attorney. There was no such requirement in law that agreement to sell has to be mentioned in the sale deed. Factum of death of Arjun Singh was never communicated to defendant No.2. Defendants further alleged that the General Power of Attorney was in operation in the absence of any intimation regarding factum of death having been given to defendant No.2.

5. On the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiffs are entitled for declaration as prayed for ? OPP

2. Relief.”

6. Parties led their respective evidence in support of their case on the aforesaid issues.

7. Trial Court decreed the suit vide judgment and decree dated 30.5.2009 and the same was upheld by the lower Appellate Court vide judgment and decree dated 31.1.2013.

8. Learned counsel has made two fold submissions. Firstly, that simpliciter suit for declaration is not maintainable. Secondly, the factum of passing of consideration even, if, denied by the defendants, while appearing as DW, cannot be taken in consideration particularly when recital of the sale deed gives positive mention about the payment of consideration at the time of execution of sale deed.

9. I have considered both the submissions of learned counsel for the appellants with reference to material on record. The first argument does not arise at all. The plaintiffs have sought declaration to the effect that the sale deed dated 21.1.2003 executed by General Power of Attorney-defendant No.2 in favour of his wife- defendant No.1 is null and void. A declaration has been given by the Courts below on the basis of

material on record and after giving such declaration, consequent direction was issued in the form of mandatory injunction that the amount of compensation be not paid to defendant No.1, therefore, it cannot be observed that the suit is simpliciter for declaration and is barred in terms of Section 34 of the Specific Relief Act. The second submission in the light of admission made by defendant No.2, while appearing as DW, has to be answered in negative. The recital of the sale deed even, if, gives positive mention that the amount of consideration has already been paid to defendant No.2 by defendant No.1, but the admission of defendant, while appearing as DW, is specific that no amount of consideration was passed to defendant No.2. Keeping in view the relationship between defendant No.1 and defendant No.2, the statement of defendant No.2 in his cross-examination, assumes significance as the seal appearing at the back of the first page of the sale deed itself does not specify anything to be paid in front of Sub Registrar, therefore, whatever was earlier paid cannot be construed to be an evidence of actual payment in view of inter se relationship which has further been highlighted by defendant No.2 by way of categorical admission that nothing was paid to him by defendant No.1. On both the counts, the stand of the defendants-appellants cannot be appreciated.

10. No law point worth consideration is involved in this

appeal. Factum of death of Arjun Singh was very much in the knowledge of the appellants being residents of the same village. Considering appreciation of facts done by both the Courts below, no re-appreciation is possible in the present appeal, nor the findings of the Courts below are found to be the result of misreading of evidence or having suffered with any perversity.

Accordingly, the present appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 15, 2015
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