

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 5011 of 2013 (O&M)

Date of decision : July 23, 2015

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G.K Electrical through its Proprietor and another
.....Appellants

Versus

Sudesh Kumari and others
.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Surinder Mohan Sharma, Advocate
for the appellants.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The appellants-defendants no. 3 & 4 have come up in this regular second appeal against the judgment dated 4.9.2010 passed by the Civil Judge (Junior Division) Ambala City whereby the suit of the respondents no 1 & 2-plaintiffs was decreed and the judgment dated 11.9.2013 passed by the Additional District Judge, Ambala whereby the appeal against the judgment of the trial Court was dismissed.

Pursuant to Power of Attorney given by the plaintiffs to defendants no. 1 & 2, a sale deed dated 5.12.2000 (Ex P-5) was executed in favour of defendants no. 3 & 4. As per the Power of

Attorney the defendants no. 1 & 2 were authorized to sell 0-7 marla of land bearing khasra no. 1066//1/2 measuring 25.6 ft x 67 ft and one marla of khasra no. 1063 but they wrongly and illegally sold land measuring 31 ft x 67 ft of khasra no. 1066//1/2 and 1062/1, whereas they were never authorized to sell any part of khasra no. 1062/1 nor to sell more than 25.6 ft x 67 ft of khasra no. 1066//1/2.

The plaintiffs examined five witnesses to prove the above said fact before the trial Court. PW-1 Rajesh Kumar, Draftsman stated on oath that he had prepared the site plan Ex. P1 of the disputed property on instructions of Gaman Lal (plaintiff no.2) Disputed land was shown in the red colour and he identified his signatures on the said site plan. PW-2 Sanjay Saini, Registry Clerk, Tehsil Office, Ambala stated on oath that he had brought the summoned record which is deed no. 4167/1 dated 5.3.1997. PW-3 Deepak Kumar, Registry Clerk, Tehsil Office, Dera Bassi, Distt. Patiala deposed that he had brought the summoned record of deed no. 1139/4 dated 4.12.2000. Photostat copy of the same is Ex. P-2. The said deed is a General Power of Attorney and in his record deed no. 1390/4 dated 8.1.2001 is cancellation deed of the said General Power of Attorney vide which the above mentioned General Power of Attorney was cancelled. PW-3A Davinder Kumar Patwari deposed that he had brought the Aksh Sajra of Patti Mehar. PW-4 Gaman Lal-plaintiff no.2 tendered his evidence by way of affidavit Ex. PW-4/A wherein he reiterated the averments made in the plaint.

The defendants did not lead any evidence in support of

their case.

After going through the evidence led by the plaintiffs, the trial Court held that Ex. P2 was the General Power of Attorney dated 4.12.2000 which had been executed in favour of defendants no. 1 & 2 authorizing them to sell property bearing no. 1066/1/2 measuring 0-7 marlas situated at Patti Mehar, Khasra no. 1063(1-1) measuring 1 Kanal and khasra nos. 1060 (0-2), 1060/3 (0-1), 1060/2 (0-8), 1062/2 (0-4) measuring 15 marlas situated at Patti Mehar, Tehsil and Distt. Ambala. Vide registered sale deed dated 5.12.2000 the defendants no. 1 & 2 being the general power of attorney of the plaintiffs sold the share of plaintiff no. 1 in khasra no. 1066//1/2 and the share of plaintiff no.2 in khasra no. 1063 1 marla to defendants no. 3 & 4. Ex. PO of Aksh Sajra shows that the khasra no. 1063/1 does not abut the khasra no. 1066//1/2 but khasra no. 1062/1 abuts the khasra no. 1066//1/2. However, in the General Power of Attorney, there was no mention with regard to khasra no. 1062/1.

The oral and documentary evidence of the plaintiffs went un rebutted and unchallenged as the defendants neither stepped into the witness box nor produced a single witness to prove their case. Hence the suit of the plaintiffs was decreed to the extent that the sale made with respect to land being part of khasra no. 1062/1 was set aside and the defendants no. 3 & 4 were restrained from alienating or raising any construction on the said suit land.

The lower appellate Court on appeal affirmed the findings recorded by the trial Court.

After going through the judgments passed by the Courts below and hearing counsel for the appellants-defendants no. 3 & 4, the registration of the General Power of Attorney and the sale deed have been duly proved by the plaintiffs. The dispute arose on account of part of khasra no. 1062/1 which had not been mentioned in the General Power of Attorney and hence the land measuring 4-½ ' x 76' of khasra no. 1066/1/2 had been sold wrongly by the defendants no. 1 & 2 in favour of present appellants-defendant no. 3 & 4. In the absence of any evidence led by the defendants, the findings of fact recorded by both the Courts do not require any interference.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 23, 2015
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(**RITU BAHRI**)
JUDGE