

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1587 of 2015 (O&M)
Date of Decision.19.09.2015

Sardul Singh and others

.....Appellants

Versus

Sukhcharan Singh and another

.....Respondents

Present: Mr. Premjit Kalia, Advocate and
Mr. Aseem Kalia, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 165 days in re-filing the appeal is condoned.
2. The second appeal is at the instance of the defendants aggrieved by the decree for specific performance granted in favour of the plaintiff. The plaintiff was filing a suit on the basis that the agreement said to have been executed by the 1st defendant through his power of attorney son by a document dated 25.06.2003 under the terms of which ₹ 1 lac was paid as advance and on the same day an agreement of sale had been written for payment of the balance on 08.07.2003. The plaintiff's contention was that on 08.07.2003, he turned up at the Registrar's office when the defendant did not come and therefore, he went to the second defendant's house and when he was still unable to execute the sale deed, he further advanced ₹ 6 lacs and made an endorsement therefor on the document on 10.07.2003. The 1st defendant purported to cancel the

power of attorney subsequent to the agreement and a further advance received by son on 11.07.2003. Finding that the defendant was trying not to abide by the terms, the plaintiff filed the suit on 19.08.2003.

3. The trial Court had granted the decree for the recovery of advance of ₹ 7 lacs and denied to him the plea for specific performance. The contention in defence was that the 1st defendant was 75 years of age at the time when the agreement was written and he was living along with his grand sons born through the pre-deceased son. The 2nd defendant was living away at the place in Rajasthan about 300 kms away from his native village. The plaintiff and the 1st defendant were residents of the same village and the defendant was taken to the Rajasthan by his son by exercise of fraud and the 2nd defendant had actually connived with plaintiff to take the agreement in respect of the properties to dupe him and relieve him of all the properties to the exclusion of grand sons. The defendants' plea, therefore, was that he was not a willing party to the power of attorney or the agreement and it had been brought about by fraud and coercion.

4. At the trial, therefore, it became relevant to consider whether there was anything particular to show that there had been a practice of fraud or coercion. Again if he was willing to go to Rajasthan to make an agreement, there was no need for merely to executing the power of attorney in favour of his son and allow the son to enter into an agreement of sale on his behalf in favour of the plaintiff. The 1st defendant himself could have executed the agreement in favour of the plaintiff.

5. The Court considered the issue of the genuineness of the

power of attorney from the point of view of the fact that the defendant purported to cancel the power of attorney on 11.07.2003 and that was the first occasion for the 1st defendant to set out any vitiating circumstance if there existed any at the time of execution of the power of attorney. There was, on the other hand, no reference to any fraud or coercion as having been practiced by his son and the document had actually been witnessed by the son-in-law of the 2nd defendant. When the near relations of the 1st defendant had themselves been parties to the power of attorney and the agreement, the Court found that the plea of fraud or coercion as spoken to by the defendant cannot be true. The same argument is also made before me by the counsel appearing on behalf of the appellant to say that the father could have never gone far away to execute the power of attorney. I will hold that if he was going to issue power of attorney in the favour of his son, there was nothing artificial about it, unless it was made clear that the father and the son had been at logger heads for a long time. The Court found no such evidence as available but the 1st defendant was attempting to resile from the agreement and by deceit a sale deed was executed in favour of his grand children. When there was no fraud found then the consequence of specific performance was a natural corollary by virtue of Section 10 of the Specific Relief Act. In an action for enforcement of contract for sale of immovable property, specific performance is only appropriate remedy and not damages. There must be something particular pointed out from the evidence that the plaintiff's conduct was such that it was grossly inequitable for the plaintiff to obtain the specific relief. As it turns out that even the 1st defendant is not alive and the contest is taken only by

the grand children who are interested in supporting their own purchase brought from the grand father. The Court found that their purchase could not be bona fide, for, they had such close relations to the grand father with whom they had been living and they ought to have, therefore, known about the agreement of sale executed in favour of the defendant. Under such circumstances, the Court had no difficulty in granting the decree for specific performance as prayed for. I find that the decision of the Appellate Court was perfectly justified in the manner in which it was canvassed before it.

6. I find nothing substantial in the second appeal for making a reversal of the judgment passed by the appellate Court. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 19, 2015
Pankaj*