

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.68 of 2013 (O&M)

.....

Date of decision:4.5.2015

Sudershan Kumar

.....Appellant

v.

Prem Lata and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Kulwant Singh, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Sudershan Kumar-appellant/plaintiff against Prem Lata, Rajender Kumar and The Estate Officer, HUDA-respondents/defendants aggrieved against the impugned judgment and decree dated 1.4.2010 passed by the learned Civil Judge (Junior Division), Karnal, and against the impugned judgment and decree dated 26.7.2012 passed by learned Additional District Judge, Karnal, vide which the appeal filed by the plaintiff has been dismissed.

The brief facts of the case are that Sudershan Kumar-plaintiff filed suit against Prem Lata, Rajender Kumar and The Estate Officer, Haryana Urban Development Authority, Karnal-defendants for declaration to the effect that the plaintiff is owner in possession of plot No.1559, Sector

9, Urban Estate, Karnal, being its original allottee with consequential relief of permanent injunction restraining defendants No.1 and 2 from acting further on the basis of cancelled General Power of Attorney (for short - 'GPA') and the sale deed No.11458 dated 10.2.2005 executed and registered on the basis of said revoked GPA and further restraining defendant No.3 from transferring the said plot in the name of defendant No.2 or any body else.

It is stated mainly in the plaint that the plaintiff was allotted the plot in dispute by defendant No.3. Defendant No.1 is the relative of the plaintiff. As the plaintiff was not able to look after and maintain the plot in question and as he was residing away from the plot in question, so he executed a General Power of Attorney (GPA) in favour of defendant No.1 bearing No.10/4 dated 8.10.1997 registered in the office of Sub Registrar, Indri, District Karnal. The plaintiff sent a notice to defendant No.1 in the month of December 2004 vide which he had cancelled his above said GPA and had directed defendant No.1 not to act on the basis of said GPA. However, as the plaintiff and defendant No.1 are in relation with each other and hence in good faith the plaintiff had not got the said GPA cancelled in the office of Sub Registrar, Indri, District Karnal. defendant No.1 on receipt of said notice became dishonest and she joined hands with defendant No.2 and sold the plot in question in favour of defendant No.2 for a fictitious consideration of ₹6,50,000/- only. Defendant No.1 also moved an application on 1.2.2005 to defendant No.3 for transferring the plot in question in the name of defendant No.2 for which permission was granted to

her on 10.2.2005. Defendant No.3 sent a letter dated 28.2.2005 to the plaintiff in order to know about his willingness for transferring the plot in question in favour of defendant No.2. The plaintiff wrote a letter to defendant No.3 vide which he had specifically mentioned that he was the owner in possession of the plot in question and the same should not be transferred in the name of defendant No.2 or any body else. It is also the case of the plaintiff that he sent representations on 2.3.2005 and 7.3.2005. He also got cancelled the GPA vide cancellation deed dated 1.3.2005.

On the other hand, the case of defendant No.1 is that the plaintiff had executed a registered GPA in her favour on 8.10.1997. The plaintiff never served any notice upon defendant No.1 regarding the cancellation of the GPA. Defendant No.1 executed sale deed on 10.2.2005 in favour of defendant No.2 after receiving the total sale consideration and the entire amount of the sale consideration was handed over to the plaintiff. The GPA was never cancelled or revoked by the plaintiff before the execution and registration of the said sale deed dated 10.2.2005. Defendant No.2 filed written statement-cum-counter claim stating that he is bona fide purchaser and at the time of execution of the sale deed, the GPA was not cancelled. It is also stated that defendant No.2 paid a sum of ₹6,50,000/- in the shape of cheques drawn on Syndicate Bank, Karnal and HDFC Bank Limited, Karnal respectively.

The learned Civil Judge (Junior Division), Karnal, vide judgment and decree dated 1.4.2010 dismissed the suit of the plaintiff. The plaintiff filed the appeal before the District Judge, Karnal, which was also

dismissed vide judgment and decree dated 26.7.2012 by learned Additional District Judge, Karnal. Aggrieved against these judgments and decrees of the Courts below, the present regular second appeal has been filed.

I have heard learned counsel for the appellant and have gone through the record.

At the time of arguments, learned counsel for the appellant argued that in view of the letter sent under postal certificate (UPC), it is to be presumed that notice has been duly sent by the plaintiff on 7.12.2004 to defendant No.1 terminating the GPA.

After going through the record and after hearing learned counsel for the appellant, I find that first of all there is concurrent findings of the Courts below that the plaintiff has failed to prove the notice dated 7.12.2004 sent to defendant No.1 revoking the GPA. Both the Courts below have discussed the evidence in right perspective and in minute detail with reasoning and as per law and have reached to the conclusion that no presumption can be attached to the letter sent Under Postal Certificate. The notice dated 7.12.2004 has not been sent by the plaintiff by registered post nor the plaintiff tried to get cancelled the GPA by executing cancellation deed at that time. The cancellation deed had been executed to cancel the GPA in favour of defendant No.1 executed by the plaintiff only on 1.3.2005 i.e. after the execution of the sale deed. The sale deed was executed on 10.2.2005. The learned Courts below reached to the correct conclusion that neither in the cancellation deed nor in the representations sent by the plaintiff to defendant No.3 there is any mention of the notice sent to

defendant No.1 by him in December 2004. Further, in the plaint it is stated that notice dated 7.12.2004 had been sent whereas in the evidence the plaintiff has alleged that the notice was dated 5.12.2004 which was sent on 7.12.2004 through UPC. The Court also reached to the conclusion that the recital in the cancellation deed also shows that the GPA has been cancelled on 1.3.2005 w.e.f. 1.3.2005. Further more, the Courts below have also discussed that the plaintiff has not written regarding this notice of December 2004 cancelling the GPA in his letter dated 16.2.2005. The learned Courts below appreciated all evidence correctly and reached to the conclusion that the notice stated to be sent, as alleged by the plaintiff, cancelling the GPA is not proved.

The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in Samittri Devi and another v. Sampuran Singh and another, 2011 (1) R.C.R.(Civil) 860 (SC). I have gone through this judgment. In this judgment, the Court held that the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such a presumption is expected to be drawn even in the case of a letter sent under postal certificate. As discussed above, the facts do not justify in this case to apply the presumption to letter sent under postal certificate as this notice has not been mentioned even in the cancellation deed nor in the letters written by the plaintiff to defendant No.3 by way of representations etc.

Therefore, from the above discussion, I find that at the time of execution of the sale deed there was validly executed GPA in favour of

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defendant No.1. The findings given by the Courts below are correct and as per law. The evidence has been correctly appreciated by the Courts below and and these judgments do not require any interference from this Court and the same are upheld. Otherwise also, no question of law, much less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same is dismissed.

May 4, 2015.

(Inderjit Singh)
Judge

hsp