

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

RSA No.783 of 2013 (O&M)
Date of Decision.14.08.2015

Smt. Indro and another

.....Appellants

Versus

Somnath and others

.....Respondents

Present: Mr. Ram Avtar Yadav, 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. The appeal by the plaintiff was as regards the dismissal of the suit and the appeal seeking for a prayer that the sale deed executed by his power of attorney to his wife and relative through document dated 21.10.1999 was illegal and null and void. The attempt of the plaintiff was to show that the power of attorney did not authorize the agent to sell the property and it was merely a special power that did not authorize him to sell the property. The trial Court did not accept the same and the suit was dismissed. In appeal one of the purchasers gave a statement in Court and filed an application under Order 23 Rule 3 CPC that he had no objection to the plaintiff securing a decree in the manner prayed for by him and the sale deed could be declared to be null and void. The Court still proceeded to dispose of the appeal on merits and found that the so-called compromise cannot affect rights of yet another purchaser.

2. The counsel for the appellant would contend that if one of the purchasers of the property Som Nath had actually conceded the plaintiff's right in the property and was also prepared to abide by a decision that the sale deed was not true and valid, the Court could not have dismissed the suit in whole and could have granted decree at least to the extent to which the 1st defendant Som Nath had an interest in the property. I asked the counsel to explain as to how a joint purchaser could concede for a sale deed to be declared as null and void and whether it would bind yet another purchaser. I could not elicit a proper response but I must observe that if one of the joint purchasers has conceded the plaintiff's right to be in possession of the property, I will take that to be a relevant fact for consideration for me among other factors. It cannot operate as an estoppel against the contesting defendant. If the issue were to be therefore examined about the grounds made out for assailing the transaction by his power of attorney did not survive favourable consideration because the power of attorney authorised the attorney to transact on his behalf. It was not merely a special power of attorney for a singular act. On the other hand even an action for sale would only allow for the plaintiff to seek for accounting from an agent and cannot assail the transaction of sale itself. A mere conduct of one of the defendants to say that he has no objection to the sale being rendered invalid cannot be acted upon by a Court to find that the sale could be partially treated as invalid. Either the sale must go in whole or the sale deed must be upheld. If there is no justifiable reason given for assailing the sale, the concession given by one of the defendants that the sale deed could be treated as null and void cannot

be acted upon by the Court. I do not find any error in the judgments of the Courts below to take a decision against the plaintiff and there is no warrant for interference in second appeal.

3. The second appeal is dismissed as finding no substantial question of law for consideration.

(K. KANNAN)
JUDGE

August 14, 2015
Pankaj*