

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.3037 of 2014 (O&M)
Date of Decision: January 20, 2015.**

Rajesh Kumar

.....APPELLANT(s).

VERSUS

Sunil Chawla and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jagdish Manchanda, Advocate
for the appellant (s).

SURINDER GUPTA, J.

The suit filed by Sunil Chawla and Praryna Lamba seeking the relief of specific performance of agreement to sell dated 09.02.1999 was decreed by Civil Judge (Junior Division), Karnal and the appeal against the judgment and decree filed by appellant Rajesh Kumar was dismissed by Additional District Judge, Karnal. The cross-objections filed by plaintiffs-respondents No.1 and 2 were allowed and defendants No.2 and 3 i.e. Haryana Urban Development Authority, Karnal through its Estate Officer and Chief Administration, Haryana Urban Development Authority, Panchkula were directed to transfer the plot in question in favour of plaintiff No.2 after completing the necessary formalities under rules.

The case of the plaintiffs, in brief, is that appellant-defendant vide agreement dated 09.02.1999 agreed to sell one EWS plot bearing old No.109, new No.113 measuring 4 marlas situated in Sector-6, Urban Estate, Karnal for a sale consideration of ₹1 lac. The agreement was duly attested by

the Notary Public and the possession of the plot was delivered to the plaintiffs on receiving full sale consideration. The appellant-defendant also handed over all the documents pertaining to the plot to plaintiff-respondent No.1 Sunil Chawla. He also executed a general power of attorney dated 09.02.1999 regarding this plot in favour of respondent No.5-defendant No.4 Vikas Thukral gave all the rights of registration, execution and transfer of the plot. A Will dated 09.02.1999 and affidavit were also executed by the appellant-defendant No.1 in favour of plaintiffs-respondents No.1 and 2.

As per clause No.27 of the allotment letter dated 03.10.1991, the plot could not be transferred within a span of ten years, therefore, the sale deed could not be got executed on 09.02.1999 despite payment of full sale consideration. Plaintiff-respondent No.1 Sunil Chawla entered into full payment agreement to sell dated 21.11.2003 with plaintiff-respondent no.2 for consideration of ₹1,08,000 and permission to transfer the plot in question in favour of plaintiff-respondent No.2 was sought through attorney of appellant-defendant No.1.

The general power of attorney executed by the appellant in favour of respondent No.5 Vikas Thukral was cancelled on 21.04.2004. Thereafter the appellant was requested to fulfil his part of contract under the agreement dated 09.02.1999 but he failed, leading to the filing of the suit by respondents No.1 and 2.

Appellant-defendant contested the suit taking various preliminary objections viz maintainability of the suit; locus standi of respondents No.1 and 2 to file the suit; the suit was barred by limitation; and that plaintiffs-respondents No.1 and 2 were barred from filing the suit by their act and conduct. He denied the execution of the agreement to sell dated

09.02.1999 or any other document in favour of plaintiffs-respondents No.1 and 2. It was alleged that the appellant was in need of ₹25,000 which was given to him by respondent-defendant No.4 Vikas Thukral who got some blank papers signed and thumb marked by him. The loan amount was returned but those documents were not returned and later utilized for fabricating the agreement.

In the separate written statement, defendants No.2 and 3 admitted the allotment of plot in question to the appellant but alleged that the plot was not transferred on the request of plaintiff-respondent No.1 due to dispute between the parties.

In his separate written statement, respondent-defendant No.4 Vikas Thukral admitted the claim of plaintiffs-respondents No.1 and 2.

The Court of Civil Judge (Junior Division), Karnal declined the plea of the appellant that agreement dated 09.02.1999 was a forged and fabricated document. The execution of the agreement, general power of attorney and Will all dated 09.02.1999 by the appellant were held as proved. The plea of the appellant regarding loan transaction of ₹25,000 with respondent-defendant No.4 was also discarded. On the point of limitation, it was observed that in the absence of any date fixed for execution of the sale deed, the suit was within limitation. The plea of respondents No.1 and 2 that the possession of the plot was delivered at the time of execution of the agreement dated 09.02.1999 was also upheld.

The findings of the Civil Judge (Junior Division), Karnal were affirmed in appeal by Additional District Judge, Karnal.

I have heard learned counsel for the appellant and have perused the paper-book with his assistance.

The first argument of learned counsel for the appellant challenging the legality and validity of the agreement dated 09.02.1999 is that the plot was allotted to the appellant on 03.10.1991 and under the terms of allotment letter, he could not alienate this plot for a period of 10 years i.e. upto 02.10.2001, as such, any agreement to sell before 02.10.2001 was invalid, illegal and not enforceable under law.

The above argument of learned counsel for the appellant carries no weight. The appellant had received the whole sale consideration and transferred the possession of the plot. He had executed the general power of attorney in favour of respondent-defendant No.4 to perform all the acts of getting the plot transferred from authority concerned in favour of the vendee. His attorney performed all the formalities to seek the transfer of the plot in favour of respondent No.2 by moving the application and depositing the stamp papers for conveyance deed along with transfer fee of ₹5,000. At that time, the power of attorney in favour of respondent-defendant No.4 was a valid one and action performed by the attorney on the basis of his authority had never been challenged by the appellant. Power of attorney was got cancelled on 21.04.2004 and even at the time of cancellation of power of attorney, nothing was alleged that attorney had exceeded his authority or had committed any fraud with appellant. In the instant case, the agreement dated 09.02.1999 has not resulted in violation of the terms of the allotment of plot to the appellant as the title of property was not transferred by this agreement. The deal was completed when in the year 2004, attorney of appellant exercising his authority on behalf of appellant moved the concerned department for transfer of the plot in favour of plaintiff-respondent No.2.

The agreement was challenged on the ground of fraud. Both the

Courts below have recorded concurrent finding that the fraud as alleged by the appellant is not proved. The first Appellate Court while discarding the plea of the appellant that agreement dated 09.02.1999 is result of fraud, has observed in para 11 of the judgment as follows:-

“11. As per defendant No.1, a fraud has been practiced upon him. However, the contention of the defendant No.1 is devoid of any merit. It is settled proposition of law that a party alleging fraud has to prove the same. Mere alleging that a fraud has taken place would not be sufficient. Once defendant no.1 has admitted his signature in English on the agreement to sell Ex.P1 and his photograph is also affixed on it and also admitted his signature and thumb impression on other documents, it was for him to prove that infact documents i.e. agreement to sell Ex.P1 etc on which his signatures/thumb impression are appearing were given as a security documents against the loan of Rs.25,000/- . However, he has failed to discharge that onus. Infact except the self serving statement of defendant no.1 and his witnesses there is no iota of evidence on record which could prove his contention. He has also not led any evidence as to for which purpose he had taken the said loan. As per defendant No.1 he had returned the said loan but interestingly he has not told as to on which date he had returned the said loan. No receipt etc. in this regard has been placed on record. Not only this, defendant no.1 has also not initiated any criminal proceedings against plaintiff no1 and others for practising fraud upon him. In normal course, it is not believable that if such a fraud is practised upon a person he would not knock the door of the concerned authorities and shall remain a mute spectator. Certainly, he would run pillar to post and agitate the matter to his best. However, nothing of the sort was done by defendant No.1 for the reasons best known to him. Moreover, had there been

any fraud on the part of plaintiff no.1 then after the expiry of period of ten years i.e. upto 2001 he would have at once disposed of the property or got transferred it in his name whereas defendant no.4 GPA applied after period of three years for transfer of the property on 5.4.2004 vide Ex.P13 stamp papers for conveyance deed and Ex.P14 Rs.5000/- as transfer fee of the suit property in HUDA in favour of plaintiff no2 subsequent purchaser of suit property vide Ex.P12 which after notice to defendant no.1 by HUDA, defendant no.1 cancelled the GPA on 21.4.2004 vide Ex.P31 and he filed suit for permanent injunction on 28.4.2004 vide Ex.P15 i.e. plaint in order to wriggle out of Ex.P1 agreement to sell as well as Ex.P3 registered G.PA. Later on the suit was dismissed as withdrawn by the plaintiff vide Ex.P32 and Ex.P33. The plaintiffs have filed the present suit within limitation 23.12.2005 whereas registered GPA Ex.P3 was cancelled for the first time on 21.4.2004 vide Ex.P31. The target date of Ex.P1 being was open. This conduct of the parties also prove the contention of the plaintiffs and dispel that of defendant no.1.”

It appears that the appellant was conscious of the fact that he is not in a position to convey the title of the suit property to the plaintiff-respondent No.1 because of the bar under the terms of allotment and due to this reason, no specific date for execution of the sale deed was fixed in the agreement. Had it been a routine agreement to sell, in that event, on payment of full consideration, defendant no.1 would have immediately got the sale deed executed or the parties must have settled a date for this purpose. This shows that the time was not the essence of the agreement. The appellant after execution of the agreement in the year 1999 remained silent till the year 2004 when he cancelled the general power of attorney in favour of respondent-defendant No.4. Even at that stage, he never challenged the execution of

general power of attorney or the agreement alleging the fraud played with him.

Learned counsel for the appellant has placed reliance on the observations of Hon'ble Supreme Court in *Waheed Baig Vs. Bangi Lakshamma & Ors 2008(14) SCC 435*, wherein Hon'ble Supreme Court has observed that where the Government has allotted quarters to the industrial workers giving them no right to sell or alienate the same, agreement entered into by the industrial worker to sell the quarter cannot be specifically enforced as the industrial worker had no alienable right in the property. The above proposition is not applicable to the facts and circumstances of the case. In the instant case, the appellant had right to sell the property but the same could be exercised only after a period of ten years of the allotment. It was after the expiry of period of ten years that the general power of attorney appointed by the appellant had taken the steps to get transferred the plot under the agreement and the act of the attorney binds the appellant.

On perusal of the paper-book and judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

January 20, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE