

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

RSA No.3191 of 2014 (O&M)

Date of Decision.06.11.2015

Kehar Singh s/o Shri Ram Kishan

.....Appellant

Versus

Anti Devi and others

.....Respondents

Present: Mr. V.B. Aggarwal, Advocate
for the appellant.

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 is brought at the instance of the plaintiffs whose suit for declaration that they were the owners of 7/9th share in the property along with defendant Nos.3 to 6 failed. The contention of the plaintiffs was that the property belonged to Ram Kishan and the 1st defendant was his wife. Ram Kishan was said to have executed the Will in favour of his wife during his life time on 31.12.1992 and he had died in the year 1995 and the Will came into effect. The 1st defendant purports to have executed a power of attorney in favour of the 2nd defendant on 24.03.1998 and the sale was executed by the 2nd defendant in favour of the defendants No.7 to 10. The plaintiffs were contending that the sale by the 2nd defendant was not valid since the power of attorney had been cancelled on 10.04.1998 and the said fact had been known to the 2nd defendant as well. The 1st defendant admitted to the execution of the Will and claimed that she was the owner of the

property. The 2nd defendant filed a written statement admitting to the plaintiff's claim and admitting also that the power of attorney made in his favour by the mother had been cancelled and he had been informed about cancellation. The suit was an act of collusion between the plaintiffs and defendant Nos.1 and 2 and the contention by defendants No.7 to 10 was that they were bona fide purchasers of the property for value without notice of any cancellation and that they had purchased the property from the 2nd defendant as power of attorney for the 1st defendant.

2. The Court put at issue in suit whether the Will said to have been executed by Ram Kishan was true and whether the plaintiffs were entitled to the share in the property. There was also a plea with regard to the question of whether the purchase by defendant Nos.7 to 10 could be protected by virtue of Section 41 of the Transfer of Property Act as bona fide purchasers.

3. At the trial it was brought out that subsequent to the death of Ram Kishan, the property stood mutated in the name of the 1st defendant and the plaintiffs had themselves appeared before the revenue officials and given an affidavit admitting to the Will. The affidavit was also confronted to one of the witnesses who admitted to the signatures of the defendant in the affidavit and his statement before the revenue official that the Will was true. The mother had also stated that the Will was true. The Court, therefore, found that if the Will was true and the property had been transferred to the 2nd defendant as a power of attorney, the plaintiffs cannot make a claim for share in the property by a declaratory action, unless it was proved that the power of

attorney itself had been cancelled before the sale and the cancellation was not made known to the purchasers. It was a curious situation which the trial Court and the Appellate Court confronted when the cancellation of power of attorney said to have been executed on 10.04.1992 was not on the file. On the other hand, the document which was referred to by the plaintiffs in the plaint and said to have been exhibited as A2 was not available on the file but there was a cancellation of power of attorney dated 5.8.1998. The Court found that there was no proof of cancellation of power of attorney and it was not possible to rely on such cancellation by the mere admission of the cancellation of power of attorney by the 2nd defendant, when as far as the purchasers were concerned, there was nothing brought on record to show that they had been put to knowledge of any cancellation. The Court also found that there was no document on which it could rely on to say that the cancellation took effect. All that the plaintiffs were contending was that the power of attorney had been cancelled as admitted by the 2nd defendant himself and therefore, the sale in favour of defendant Nos.7 to 10 will not be valid.

4. The Court while considering the issue of whether the power of attorney stood cancelled found that the document itself was not on file and it noticed that there was nothing brought out at the time of trial as to the manner of proof of such cancellation as having been brought to the knowledge of the 2nd defendant. As regards the admission by the 2nd defendant itself in the statement that he had been informed, the Court observed that it was merely an act of collusion, for after having sold the property to defendant Nos.7 to 10, they had joined along with the

plaintiffs who are the brothers to deny the sale deed and setting up of case of cancellation of power of attorney.

5. I will find no defect in the reasonings adopted by the Courts below for intervention. Learned counsel for the appellant argues that the plaintiffs and defendant Nos.1 and 2 are close relatives and the 2nd defendant knew that the power of attorney had been cancelled. It is also the further contention that it was a very serious matter of the original document from the Court's file was missing and the Court was not powerless to take appropriate action. While I would accede to a plea that a document which was lost from the Court file was a serious matter, the plaintiffs themselves ought to make good the loss by production of secondary evidence to show what the document contained, for the Court had no resources to know what the document prepared on 10.04.1998 contained. It was also essential for the plaintiffs to bring out by evidence as to how the cancellation of power of attorney was brought to the knowledge of agent and how a person who had been held out as an agent could not have sold property to defendant Nos.7 to 10 and bind them by cancellation which had not been brought to their knowledge. Mere knowledge of the 2nd defendant himself was not sufficient in order to annul the sale for what was most essential was that a case of bona fide purchase made by the purchaser was to display the bona fides which the defendant Nos.7 to 10 were affirming by giving evidence in rebuttal that the document of cancellation was not brought to the knowledge of the purchasers. When the 2nd defendant was literally admitting the case of the plaintiffs, he must have been examined by the plaintiffs' side to bring home the evidence that

defendant Nos.7 to 10 had been also informed about cancellation of power of attorney and still they went ahead with the purchase. If the cancellation was not brought home, the purchasers would be protected by dealing with the person who was an agent by holding out and it would not have been possible for the plaintiffs to deny the efficacy of the sale deed after the transaction had been brought about by a person who was admittedly the agent of the 1st defendant.

6. The dismissal of the suit by the Courts below was, under the circumstances, justified and I will find no reason for interference in the second appeal. The second appeal is dismissed as involving no substantial question of law for consideration.

(K. KANNAN)
JUDGE

November 06, 2015
Pankaj*