

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.4154 of 2014 (O & M)

Date of Decision: *October 07, 2015*

Jyoti

..... APPELLANT

VERSUS

Joga Singh

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL Singh

. . .

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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PRESENT: - Mr. Raman Goklaney, Advocate, for the appellant.

Mr. S.K. Arora, Advocate, for caveator – respondent.

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Jaspal Singh, J

1. Appellant – defendant Jyoti has preferred the instant appeal challenging the judgment and decree dated March 31, 2014 passed by the Additional District Judge, Ferozepur whereby judgment and decree dated September 4, 2013 rendered by the trial court, decreeing the suit of plaintiff – Joga Singh, has been upheld.

2. Briefly stated, the case set up by the plaintiff is that he is owner in possession of house in question which was purchased by him from

Kaushalya and Santokh Singh son of Jaswant Singh through registered sale deed and constructed the house on it. On September 1, 2005, he executed an agreement to sell in respect of the house in favour of defendant – Jyoti for total sale consideration of Rs. 1,92,000/- and received ₹ 95,000/- as earnest money and delivered possession thereof to defendant. The date for execution of sale deed was fixed as September 1, 2006 but defendant failed to get the sale deed executed as she failed to arrange the balance sale consideration, and other expenses to be incurred for execution & registration. At the time of execution of agreement of sale, it was agreed between the parties that in case, defendant failed to get the sale deed executed, the earnest money paid by her to Joga Singh would be forfeited. Plaintiff requested the defendant to deliver back the possession of the house in question to him but she showed her inability instead she assured the plaintiff that she would arrange some other vendee for purchase of the house. As per assurance of defendant, he executed General Power of Attorney on September 25, 2006 in favour of defendant but she again failed to arrange the other vendee and to get the sale deed executed. Thereafter, plaintiff cancelled the General Power of Attorney vide registered Cancellation Deed. Plaintiff requested the defendant to deliver the possession of house but she refused to do so. Accordingly, Joga Singh instituted the suit claiming that defendant has no right to retain the possession of suit property; agreement of sale stood cancelled; earnest money pay by the defendant to him stood forfeited and plaintiff is entitled to possession of the house in question.

3. Defendant contested the suit by filing written statement on the ground that plaintiff agreed to sell the house in question for a total sale consideration of ₹ 1,82,000/- and not ₹ 1,92,000/- as alleged. Lateron,

effect was reduced on March 8, 2006 which was duly signed by the plaintiff. The defendant failed to arrange the balance sale consideration. Thereafter, plaintiff did not execute the sale deed in her favour on the pretext that original sale deed was not available with him and assured the defendant that he will get the sale deed executed after tracing out the original sale deed. Thereafter, he demanded more money from her. She paid the entire sale consideration to him on September 25, 2006, in lieu of which, plaintiff executed a receipt in her favour. It was only on receipt of entire sale consideration, he (defendant) executed a General Power of Attorney qua the house in question, but, later on with malafide intention, he got cancelled the said Power of Attorney and filed the instant suit.

4. Replication was filed by the plaintiff wherein the version of written statement was denied. From the pleadings of parties, the following issues were framed by the trial court:-

- 1) Whether the plaintiff is entitled for declaration as prayed for? OPP
- 2) Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for? OPP
- 3) Whether the suit of plaintiff is false, frivolous and vexatious to the knowledge of the plaintiff? OPD
- 4) Whether the suit is not maintainable in the present form? OPD
- 5) Whether the plaintiff has not come to the court with clean hands? OPD
- 6) Relief.

5. In order to substantiate their case, both the parties led evidence, oral as well as documentary.

6. After hearing learned counsel for the parties and perusing the record available on record, the trial court, vide judgment & decree dated

March 31, 2014, decreed the suit of plaintiff – Joga Singh for declaration and possession as prayed for by him.

7. Dis-satisfied by the aforesaid judgment & decree, defendant – Jyoti approached the lower appellate court by filing an appeal, however, that was also dismissed, upholding the findings recorded by the trial court.

8. Dis-heartened defendant – Jyoti has preferred the instant appeal challenging the judgments & decrees rendered by the courts below.

9. While assailing the impugned judgments & decrees passed by the courts below, learned counsel for the appellant has argued with vehemence that it is undisputed fact that agreement to sell dated September 1, 2005 was entered into between the parties and a sum of ₹ 95,000/- as earnest money was received, though, it has been alleged that total sale consideration was ₹ 1,92,000/- but infact, the suit property was agreed to be sold for a sum of ₹ 1,82,000/- and the sale deed was to be executed in favour of appellant – defendant on September 1, 2006. Subsequent to the agreement to sell, appellant – defendant also paid a sum of ₹ 3,500/- and thereafter a sum of ₹ 30,000/- vide receipt Ex.D5 was paid on March 8, 2006, and as such, the plaintiff – respondent received a sum of ₹ 1,28,500/-. Not only this, the plaintiff – respondent also executed General Power of Attorney dated September 25, 2006 (Ex.D6) in favour of the appellant, besides the execution of receipt of even date Ex.D5. Learned trial court as well as lower appellate court have grossly erred in misappreciating the aforesaid documents. Infact, General Power of Attorney is an irrevocable one and on the strength of the agreement (Ex.PX) to sell as well as General Power of Attorney dated September 25, 2006 (Ex.D6), defendant - appellant became absolute owner of the property in dispute. Even the possession of property,

defendant and since the date of execution of agreement to sell, she is enjoying the possession. The aforesaid bundle of documents has been discarded by the courts below without assigning any cogent reason. No doubt, agreement to sell by itself may not create any interest in the property but the agreement to sell alongwith payment of the entire sale consideration, delivery of possession, execution of the receipt and irrevocable General Power of Attorney certainly create an interest in the property within the meaning of Section 202 of the Contract Act, 1872 (for short, 'Act of 1872'). The General Power of Attorney dated September 25, 2006 (Ex.D6) is irrevocable as is clear from its contents. There is specific recital in it that the defendant could sell, mortgage, lease and rent out the house in question. Not only this, even she is authorized to transfer the house in any way and to get the mutation effected. There is also a specific recital in the General Power of Attorney that it would not be cancelled by its executant. Thus, mere fact that the appellant – defendant did not appear before the Sub Registrar on the stipulated date does not *ipso facto* mean that she was not willing to perform her part of agreement. Thus, the impugned judgment and decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant appeal.

10. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned judgments& decrees passed by the courts below, this Court is not in an agreement with the submissions.

11. During the course of arguments, much reliance has been placed by the learned counsel upon Section 202 of the Act of 1872. At this juncture, it would be apt to reproduce the same which reads as under:-

“Termination of agency, where agent has an interest in subject-matter. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.”

12. Before proceeding further to decide the matter in controversy on merits, it would be appropriate to mention here that Section 202 of the Act of 1872, referred to above, is not at all helpful to the appellant, especially, in view of the fact that no such plea has been taken by the appellant – defendant, either before the trial court or before lower appellate court. Thus, the said plea for the first time is not available to the appellant in this regular second appeal.

13. Now, the question which survives for determination is whether General Power of Attorney can be deemed to be a Conveyance Deed vide which the respondent – plaintiff has agreed to sell the house in question to the appellant – defendant in the absence of execution and registration of the sale deed.

14. By now, it is well settled that agreement to sell, General Power of Attorney or Will neither convey any title nor any interest in the immovable property which can be lawfully and legally transferred/conveyed only by way of registered deed of conveyance. Agreement to sell by itself does not create any interest in the property or charge over any such property.

If any authority is needed to buttress this observation, we can have reference to the pronouncement of Hon'ble Apex Court in case Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & another, 2011(4) CCC 558 (SC) as well as Kumar Gonsusab & others vs. Sri Mohammad Miyan Urf Baban & others, 2009(2) CCC 638 (SC). In another case Venkatesh & others vs. D.A.C. Venkoosa, 2008(3) CCC 99 (Karnataka), the Karnataka High Court has observed that in order to protect the possession under Section 53-A of the Transfer of Property Act, 1882 (for brevity, 'Act of 1882'), agreement holder, right from the date of agreement is obliged to show his readiness and willingness to perform his part of contract. A person who is not ready and willing to perform his part of contract is not entitled to claim protection provided under the Section 53-A of the Act of 1882.

15. Adverting to the facts of the case in hand, agreement to sell dated September 1, 2005 was admittedly executed in between the parties, in pursuance of which, sale deed was to be executed and registered on September 1, 2006 but to the utter surprise, no effort was made by the appellant – defendant to get the sale deed executed as per the terms & conditions of the aforesaid agreement to sell. Appellant – defendant Jyoti, while appearing in the witness box as DW-1, has admitted in clear terms that neither she visited the office of Sub Registered on the stipulated date i.e. September 1, 2006 for getting sale deed executed in her favour in pursuance of agreement to sell Ex.PX nor she instituted a suit for specific performance of the agreement to sell in question. The limitation prescribed for filing a suit for specific performance is three years which has already expired. As has been discussed above, appellant – defendant is not entitled to the benefit of Section 53-A of the Act of 1882 and as such, the proposed transferee who

agreement can resist the suit for possession for the simple reason that his/her right to obtain specific performance stood barred by law of limitation. So, taking the case of the appellant from any of the angles, this Court does not find any merit in the instant appeal, rather, this Court is of the considered view that there is no infirmity, illegality or impropriety in the findings recorded in the judgment deliver by learned trial court which have been upheld by lower appellate court. There is no question of law, much less, substantial question of law involved in this case.

16. Accordingly, the instant appeal being devoid of merits is dismissed, leaving the parties to bear their own costs.

October 7, 2015
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(Jaspal Singh)
Judge