

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**Regular Second Appeal No.6343 of 2014 (O&M)**

**Date of decision: 7.4.2015**

Smt.Bhagwani

**... Appellant**

**Versus**

Chhaju Ram

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

**Present:** Mr.Pawan Kumar Gupta, Advocate,  
for the appellant.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

This second appeal is against the judgment and decree of the learned trial Judge dated 21<sup>st</sup> July, 2012 and the appellate court decree dated 23<sup>rd</sup> September, 2014 affirming the decree of the learned trial Judge in a suit for specific performance of an agreement to sell dated 28<sup>th</sup> May, 2005 with respect to the suit corpus.

2. The plaintiff and defendant Ramesh Chand are alleged to have executed an agreement to sell the property for sale consideration of ₹ 2.13 lacs. The plaintiff alleged that an amount of ₹ 1.25 lacs was received in cash as earnest money by the power of attorney holder of the defendant Ramesh Chand and possession of the property was delivered to the plaintiff at the spot and the date for registration of the sale deed was settled to be convened

on 27<sup>th</sup> May, 2006, on which date, the balance amount of ₹ 88,000/- was contracted to be paid to the defendant. The deal did not materialize when seller backed out of the deal.

3. The plaintiff instituted a suit for specific performance of the agreement of sale. The plaintiff asserted that one day before the date fixed for execution of the sale deed, he reminded the defendant of his contractual liability to cooperate in the transfer of property in favour of the plaintiff. Since 27<sup>th</sup> May, 2006 and 28<sup>th</sup> May, 2006 were holidays, the plaintiff appeared before the Sub-Registrar on 29<sup>th</sup> May, 2006 on the next working day but the vendor failed to appear in the office of Sub-Registrar for execution of the sale deed, due to which, a legal notice was issued by the plaintiff to the defendant on 18<sup>th</sup> December, 2006 calling upon him to come forward and convey the property on 29<sup>th</sup> December, 2006 but the defendant failed to appear again. The plaintiff asserted that he was always ready and willing to perform his part of the contract but neither the power of attorney holder nor the defendant took steps in execution of the sale deed.

4. On summons issued by the trial Court, the defendant appeared and filed a written statement contesting the case and taking the objection that she had never executed a general power of attorney in favour of her nephew Ramesh Chand to alienate her property but was only authorized Ramesh Chand to manage the suit property. Ramesh Chand had fraudulently got a general power of attorney executed in his favour on the basis of which document he executed an agreement to sell with the plaintiff which is not binding on her. When she came to know of the fraudulent act she cancelled the power of attorney on 19<sup>th</sup> March, 2007 by executing a cancellation deed before the office of the Sub-Registrar exercising jurisdiction. It is not

disputed that the alleged sale agreement was unregistered and if possession passed, such passing was unlawful and created no right to possession without payment of stamp duty. All she conceded was that she intended to give special power of attorney to Ramesh Chand to look after her property affairs but he took advantage of her illiteracy and manufactured a general power of attorney with right to alienation of the defendant's property. Rather interestingly, Ramesh Chand had in fact transferred the property in the name of the defendant's sons without her consent, knowledge and without passing of any valuable consideration to the owner to cause her wrongful loss.

5. Learned trial Judge found that the defendant executed a power of attorney in favour of Ramesh Chand Ex.P5 on 21<sup>st</sup> September, 2003. It was on the strength of this attorney that the agreement to sell in favour of the plaintiff with respect to the property was executed and possession delivered. The plaintiff produced Ramji Lal PW1 as a witness to the agreement, Singh Raj PW2 who scribed the document and was shown the power of attorney authorising holder to enter into contractual obligations on behalf of Smt.Bhagwani. PW3 was also an attesting witness and was produced as witness by the plaintiff who deposed that the earnest money changed hands. Learned trial Judge accepted the evidence as good and sufficient to maintain a suit for specific performance and the defendant was bound by the acts of Ramesh Chand done on her behalf. The court found the sale agreement as unregistered document which has no face value but since the defendant was ready and willing to execute the sale deed, it was the defendant who had failed to appear before the Sub-Registrar to assist in executing the conveyance deed. On these premises, the learned trial Judge decreed the suit on 21<sup>st</sup> July, 2003 and ordered the sale deed to be executed

by the defendant in terms of the agreement by receiving the balance amount of consideration, failing which, the plaintiff could execute the agreement in due course of law. It may be noted that the corpus consists of 31K-3M comprising 1/3<sup>rd</sup> share of the defendant falling in the revenue estate of village Tehla, Tehsil Narnaul as per jamabandi for the year 2002-03 which comes to 10K-7M of land belonging to the defendant.

6. The first appeal preferred under Section 96 of the Code before the learned Additional District Judge, Narnaul failed affirming the findings of the learned trial Judge. Learned appellate Court supported the findings recorded by the court *a quo* and held that defendant Smt.Bhagwani never challenged the power of attorney given in favour of Ramesh Chand in 2003 and sought to cancel it in March, 2007 after the agreement of sale. If it was not challenged and the general power of attorney executed by the defendant authorized Ramesh Chand not only to manage the property but to alienate it as well, then Ramesh Chand acted under due authority to enter into an agreement to sell with the plaintiff. It is worthy of notice that the plaintiff brought the suit on 20<sup>th</sup> January, 2007 while the general power of attorney was cancelled on 19<sup>th</sup> March, 2007, i.e., after the filing of the suit. Learned appellate Court held that the general power of attorney was a legal and valid document; earnest money had passed into the hands of Ramesh Chand, a nephew of the defendant; he remained ready and willing to perform his part of the contract but the opposite party reneged from the deal compelling the plaintiff to bring the suit by way of specific performance of the agreement of sale; the defendant was owner and bound by the general power of attorney duly executed by her in favour of her nephew Ramesh Chand; Mere cancellation of general power of attorney after the filing of the suit is a

counter measure; fraud was not proved by the defendant or that it was practiced on her deceitfully due to her illiteracy or that she intended only to give special power of attorney to manage her property. When due execution of the agreement to sell has been established on record and the vendee got his presence marked before the Sub-Registrar on the first working day after the appointed day, it is not enough to urge that the sale agreement was an unregistered document and, therefore, reliance could not be placed on it in a court of law. An agreement to sell property does not cease to have effect merely because it is unregistered. It remains an executable contract provided the ingredients in a suit for specific performance are established on evidence and then the conclusion is irresistible that the parties are bound by contractual obligations. A reading of the power of attorney does not indicate anything to the contrary or against the plaintiff who dealt with persons duly authorized by law to sell the property. Hardship is no excuse to avoid contract on the facts established in this case though as a proposition of law, hardship can be accepted as a ground to deny specific performance in terms of s. 20 (b) of the Specific Relief Act, 1963 which is a discretionary relief. If hardship resulted, then the defendant could have taken steps to cause impleadment of Ramesh Chand as a party to the suit or Smt.Bhagwani could have instituted a separate suit against Ramesh Chand for practicing fraud on her in making of the general power of attorney but this was not done and, therefore, mere cancellation after the filing of the suit did not enure to the benefit of the appellant and in this both the Courts did not commit any legal or factual error in reaching the conclusions they did after appreciating the evidence and taking a plausible view on the material brought on record.

7. Reliance of the appellant on the decision of the Supreme Court in **Avinash Kumar Chauhan v. Vijay Krishna Mishra**; 2009 (1) CCC 735 and two other decisions, one of the Patna High Court in **Sri Ashok Goenka & anr. v. Chandra Bhushan Singh & Ors**; 2010 (3) CCC 057 and of this Court in **Gurbachan Singh v. Raghubir Singh**; AIR 2010 Punjab & Haryana 77 are not applicable to the facts and circumstances of this case and are distinguishable.

8. There can be no dispute with the proposition of law laid down in *Avinash Kumar Chauhan's* case that an agreement to sell requires registration if possession is delivered to the purchaser and that such an instrument deserves to be impounded if produced in Court since it is not duly stamped in terms of the provisions of the Stamp Act, 1899, and Ss. 33 and 35 thereof. When the agreement of sale is executed either by the defendant or by Court in execution of decree, the stamp duty will be paid thereon, otherwise the agreement will be incapable of being converted into a conveyance deed but that milestone has not reached thus far. Similarly, the decision of the Patna High Court also does not come in aid of the appellant when it deals with Section 53-A of the Transfer of Property Act, 1882 and the doctrine of part performance do not need to be invoked in cases where agreements of sale are unregistered documents. This was a case where temporary injunction was claimed on the basis of a claim for possession based on such agreement which was held not a permissible ground for grant of temporary injunction in favour of the propounder. In the present case, injunction has not been prayed for and it is a suit simpliciter for specific performance of the contract of sale. Lastly, learned Single Judge of this Court in *Gurbachan Singh's* case is also inapplicable on the facts of this

case. In this case, the plaintiff had filed two suits one of specific performance the other for permanent injunction on the ground that he was in possession of the suit property which is not the case here. The prayer in the suit is for specific performance of contract and is not a suit based on part performance of the contract or for declaration as to right of possession against the defendant. Besides, the 8 issues framed by the trial Judge do not reflect the defence now taken as to unregistered document and its evidentiary value. Therefore, it becomes necessary to reproduce the issues which are as under : -

1. Whether the defendant is agreed to sell his and mentioned in the plaint to the plaintiff as per agreement to sell dated 28.5.2005? OPP
2. Whether the plaintiff was and still ready and willing to perform his part of contract as alleged in the plaint? OPP
3. Whether the present suit is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether present suit is hopelessly time barred? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
7. Whether the defendant is entitled to special cost of Rs.20,000/- from the plaintiff under Section 35A of CPC? OPD
8. Relief.

9. An objection was taken that the agreement of sale being an unregistered and that possession had passed in part performance of contract; therefore, the suit could not be based on such an instrument. Besides, a reading of the 17 paragraphs of the grounds of appeal dated 21<sup>st</sup> January, 2008 filed by the defendant-appellant does not reveal the defence of unregistered document or an agreement to sell taken in first appeal that it deserves to be impounded or discarded in absence of registration where possession was claimed to have passed to vendee in part performance of the contract of sale. If such a plea was not raised either before the trial Judge or in first appeal, then it is not open to be examined in regular second appeal for the first time. The appellant defended herself on the specious plea that the general power of attorney did not bind her rights and its making was a fraudulent document even though it was a registered instrument.

10. The only star argument raised by the learned counsel for the appellant with the help of case law above, therefore, fails and the appeal deserves to be dismissed as not giving rise to any error of fact or a question of law, much less a substantial one for securing an admission of the matter for regular hearing after notice of summons to the opposite party. There being no merit in the appeal it is ordered to stand dismissed.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**April 7, 2015**  
Paritosh Kumar