

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3013 of 1987 (O&M)
Date of Decision : 25.02.2016

Mohinder Kaur

....Appellant

Versus

Nishan Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sunil Agnihotri, Advocate
for the appellant.

Mr. H.S. Bajwa, Advocate
for the respondents.

Surinder Gupta, J.

This is appeal by Mohinder Kaur defendant no. 2 in the civil suit filed by Nishan Singh, against the judgment of Ist Appellate Court, whereby appeal filed by plaintiff-Nishan Singh was accepted and his suit was decreed, declaring him owner in possession of suit property, and defendant no. 2-Mohinder Kaur (appellant) and Pritam Singh-defendant no. 1, were restrained from interfering in possession of plaintiff over suit property.

2. In later part of the judgment, parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Case of plaintiff-Nishan Singh, in brief, is that he is owner in possession of land measuring 5 *kanals* 3 *marlas* being 1/3rd share of land measuring 15 *kanals* 9 *marlas* (as fully described in the headnote of plaint) situated in the revenue estate of village Mannpur, *tehsil* Dasuya. Besides above land, he is also owner in possession of suit property described in the sub heads (B) to (D) of the headnote. Defendants no. 1 and 2 came

to plaintiff about 40 days before filing of the suit and asked him to hand over possession of suit property to defendant no. 2 on the plea that she has got some sale deed in her favour. On enquiry, plaintiff came to know that defendant no. 1 had executed a sale deed in favour of defendant no. 2 on 28.05.1981 in respect of suit property in his capacity as '*mukhtiare-am*' of plaintiff.

4. Plaintiff never intended to sell his property or had any necessity, reason or occasion to appoint defendant no. 1 as his attorney. On 31.03.1981, defendant no. 1, who is real brother of plaintiff took plaintiff to Tanda to get him loan for the purchase of fertilizers for his crop and other necessities. He obtained his thumb impressions on certain papers on the plea that same were required for loan purpose. Plaintiff, who is a simpleton and illiterate man, on the assurance of his brother (defendant no. 1) and in good faith put his thumb impressions on papers. It transpired that by fraud, misrepresentation and undue influence, defendant no. 1 has cleverly obtained General Power of Attorney (later referred to as 'GPA') dated 31.03.1981 from plaintiff and thereafter executed the sale deed of the property of plaintiff in favour of his wife Mohinder Kaur-defendant no. 2. Plaintiff has challenged, GPA as well as sale deed as illegal, null and void documents.

5. In the joint written statement filed by defendants no. 1 and 2, claim of plaintiff was contested *inter alia* pleading that plaintiff is real brother of defendants no. 1 and 3 and is much younger in age. After death of their father, plaintiff started living

with defendant no. 1 who got him married and incurred whole expenses of his marriage. However, later on there started litigation between plaintiff and his wife and defendant no. 1 financed the whole litigation expenses. Later on plaintiff divorced his wife and started living with defendant no. 1 and executed a valid General Power of Attorney (GPA) dated 31.03.1981, in his favour. To remarry plaintiff required more money and with his consent, defendant no. 1 executed a valid registered sale deed of his property in favour of his wife (defendant no. 2). The sale deed was executed after full and final settlement with plaintiff. On 31.03.1981, plaintiff himself had gone to the office of *tehsildar* for execution and registration of GPA, which was his voluntary act. All the other averments of plaintiff were contested, controverted and denied.

6. Plaintiff reiterated his case in replication. Pleadings of the parties led to framing of issues as follows:-

- (i) Whether the plaintiff is owner in possession of the land in dispute? OPP
- (ii) Whether the defendants have purchased land?
If so, when, from whom and its effect? OPP
- (iii) If issue no. 2, is proved in the affirmative whether the said sale deed (sic was) got executed by fraud as alleged in the replication?
OPP
- (iv) Whether the plaintiff is entitled to the injunction prayed for? OPP
- (v) Whether the plaintiff is entitled to the decree of

the possession in the alternative? OPP

(vi) Relief.

7. The suit was dismissed by then learned Additional Senior Sub Judge, Dasuya with the observation that GPA (Ex. D-1) and sale deed (Ex. D-2) were legal and valid documents.

8. Not satisfied, plaintiff filed appeal before the Additional District Judge, Hoshiarpur. Learned Appellate Court framed two additional issues as follows:-

“1-A. Whether the Mukhtiare-nama dated March 31, 1981 was got executed from Nishan Singh (plaintiff) by Pritam Singh (defendant) through fraud, misrepresentation and undue influence. If so, its effect? OPP

1-N. Whether the sale deed dated May 28, 1981 executed by Pritam Singh (defendant) in favour of his wife Mohinder Kaur (defendant) in regard to the suit land was for consideration. If so, its effect? OPD”

9. Report was called from trial Court on additional issues. Learned Additional Senior Sub Judge sent the report, recording the findings on additional issues, in favour of defendants and against plaintiff.

10. Learned Ist Appellate Court framed following points for determination in the appeal:-

(i) Did Nishan Singh (plaintiff) appointed his brother Pritam Singh (defendant as his *Mukhtar-i-am* vide the impugned deed of General

Power of Attorney dated March 31, 1981 (Ex. D-1). Closely connected with it was the question as to whether he was in need of him to act as his *Mukhtar-i-Am*?

- (ii) Was the impugned sale deed dated May 28, 1981 (Ex. D-2) executed by Pritam Singh (defendant) in furtherance of the purpose of the object for which he was appointed as the *Mukhtar-i-Am*?
- (iii) Was the impugned sale deed dated May 28, 1981 (Ex. D-2) executed for consideration, and if not so, its effect?

11. The findings on all the above points were recorded in favour of plaintiff and against the defendants. Learned Ist Appellate Court recorded following reasons in support of its conclusion that GPA dated 31.03.1981 and sale deed dated 28.05.1981, were not legal and valid documents, binding on plaintiff:-

- (i) Plaintiff was in possession of suit property which shows that possession was not delivered to defendant no. 2-Mohinder Kaur (appellant) under the sale deed alleged by her.
- (ii) There was no occasion or reason for Nishan Singh (plaintiff) to appoint his brother Pritam Singh (defendant no. 1) as his attorney for the purpose of management of suit property which plaintiff was himself managing even after the

alleged GPA and sale deed.

- (iii) Pritam Singh has stated the reason for Nishan Singh to appoint him as GPA in following words:-

“Nishan Singh made me Mukhtar-Am because he used to say that he wanted to contract marriage. His divorce case was not pending when he made me attorney. Mukhtar (attorney) had been appointed prior to the divorce case.”

- (iv) Mohinder Kaur, who appeared as DW-2 gave reasons for Nishan Singh to appoint her husband as attorney as he wished to go for second marriage.
- (v) Virsa Singh, *sarpanch* (PW-3) has stated that plaintiff was a simpleton person and was unable to understand his welfare. In a gathering of village inhabitants, the fraud committed by Pritam Singh (defendant no. 1) and his wife (defendant no. 2) on Nishan Singh-plaintiff came in for severe condemnation. He has stated that in the matter of execution of GPA and sale deed, plaintiff was victimized by the defendants.
- (vi) As per recital in the GPA, Pritam Singh was appointed attorney for the better management of property of plaintiff. While examining this fact, learned Ist Appellate Court observed in para 14 of the judgment as follows:-

“It was recited in the impugned Mukhtarnama (Ex. D-1):-

“I myself am helpless to manage my property. Therefore, for my own assistance (I) appoint Pritam Singh son of Lachhman Singh son of Pala Singh, resident of village Mannpur, Tehsil Dasuya, brother of the self, as my Mukhtar.”

No doubt, under the various terms/conditions embodied in the attorney deed (Ex. D-1), the Mukhtar (Pritam Singh) was authorized to mortgage, sell, or exchange his (Nishan Singh's) property as well. But the real import of this document (Ex. D-1) was that the authority to sell the suit property could not be exercised except for the purpose or object for which it was executed, namely, to assist him (plaintiff) in the management of his property. In other words, the authority vested in the Mukhtar (Pritam Singh) to sell the suit property was ancillary or sub-servient to the prime object which was the management thereof (suit property). Undoubtedly, Mukhtar (Pritam Singh) could not sell the suit property unless its sale was necessary from the view point of its management.”

12. Material contradictions regarding payment of sale consideration under the sale deed dated 28.05.1981 also weighed before Ist Appellate Court to conclude that GPA and sale deed in question were not valid documents. While Pritam Singh has stated that payment of sale consideration was made one year prior to execution of the sale deed, his wife Mohinder Kaur has stated that sale consideration was paid before the sub-registrar

at the time of registration of sale deed. There is no explanation as to why the sale deed was not got executed from plaintiff when he was present before the sub-registrar to receive the payment and even otherwise, if he had to sell the property to his sister-in-law, he could execute the sale deed himself instead of appointing her husband as attorney.

13. It was also observed by Ist Appellate Court that no valid title in the suit property was conveyed to the vendee on the basis of impugned sale deed (Ex. D-1).

14. Not satisfied, defendant no. 2 has come up with this appeal.

15. Learned counsel for the appellant has argued that GPA executed by plaintiff was a registered document. Plaintiff has not denied his thumb impression on GPA or had not been able to prove that it was got executed under misrepresentation or undue influence. GPA authorized defendant no. 1 to sell/alienate the suit property. Exercising his power, defendant no. 1 sold the same, though in favour of appellant/his wife. Appellant has been able to prove that sale consideration was paid to plaintiff. This fact is not disputed that plaintiff had matrimonial dispute with his wife and ultimately got divorce from her. He was in need of money to contract second marriage and sold the suit property to fulfill his need. The reasons given by Ist Appellate Court while setting aside the sale deed are superfluous and not tenable or borne out from perusal of the record. Both the documents i.e. GPA as well as sale deed were legally and validly executed by plaintiff through his attorney. This suit has been filed by

plaintiff after a period of about two years of execution of sale deed in collusion with and at the behest of defendant no. 3, brother of plaintiff and defendant no. 1, as he also wanted share in the property of plaintiff.

16. Learned counsel for the respondents has argued that circumstances discussed by learned Ist Appellate Court clearly depict that GPA dated 31.03.1981 and sale deed dated 28.05.1981 are the out come of fraud on plaintiff, who was a simpleton man. It is quite surprising that plaintiff is giving GPA to defendant no. 1 for the better management of his land and within a period of two months defendant no. 1 is selling that land to his wife. In case, plaintiff had to sell the land to defendant no. 2-Mohinder Kaur, he could execute the sale deed directly in her favour. Defendant no. 2-Mohinder Kaur had not taken possession of the suit property despite her contention that entire sale consideration was paid which further shows that GPA as well as sale deed were sham transactions. It has been stated by defendant no. 2-Mohinder Kaur that plaintiff-Nishan Singh was present before the sub-registrar at the time of execution of sale deed. The buyer never takes risk and when Nishan Singh was present before the sub-registrar she must have obtained his signatures/thumb impression on the sale deed or would have got the same executed from him instead of getting the same executed through her husband as attorney of Nishan Singh. She contradicted her husband in the matter of payment of sale consideration and even learned Additional Senior Sub Judge has admitted that there was discrepancy with regard to payment of

sale consideration. Defendant no. 1-Pritam Singh has stated that sale consideration was paid a year before execution of sale deed while defendant no. 2-Mohinder Kaur has stated that it was paid before sub-registrar. Moreover, the very purpose of selling the suit property, as stated by Pritam Singh and Mohinder Kaur, is not made out as divorce proceedings between plaintiff and his wife had not been initiated at the time of execution of sale deed, as such, plaintiff could not go for second marriage or required finance for the same.

17. On giving a careful thought to the submissions of learned counsel for the parties and on perusal of judgments of the Courts below, I find that the instant case is having peculiar facts and circumstances. It is a case where parties are living in the same village and in the same house. Defendants no. 1 and 2 are alleging that for better management of property of plaintiff, he executed GPA in favour of his brother defendant no. 1-Pritam Singh and within two months of execution of GPA, defendant no. 1 sold the land and other property of plaintiff to his wife Mohinder Kaur-defendant no. 2. While appearing as DW-1, Pritam Singh has stated that plaintiff had taken a loan of ₹7500/- from him as he wanted to remarry. In lieu of those ₹7500/- paid to Nishan Singh, he had executed the sale deed of his property in favour of his wife. He has further stated that the sale deed was executed with the consent of plaintiff. From the statement of this witness it is evident that three brothers, namely; Nishan Singh-plaintiff, Pritam Singh-defendant no. 1 and Naranjan Singh-defendant no.3, were residing in the adjoining houses in the village. They have inherited the houses/site of houses from their father and then separated after

partition. He has admitted that he or his brothers have no source of income except from suit property. Plaintiff-Nishan Singh is illiterate. It looks strange that an agriculturist, as per appellant, is planning to go for second marriage after divesting himself of his only source of income i.e. land owned by him. In the rural social set up, amongst agriculturist, owning land is considered to be a positive factor for such a wish of agriculturist. Even if it be believed that plaintiff required money for his marriage, he could take loan on his land and other property instead of selling the same. In these circumstances, selling of land and other property of plaintiff by his attorney in favour of defendant no. 2 (wife of attorney) cannot be termed as act of good management.

18. As per recital in GPA (Ex. D-1), it was executed for better management of property owned by plaintiff. However, while appearing as DW-1 Pritam Singh has stated that plaintiff was more intelligent than him. He was looking after his work himself. If it be so, there was no need for plaintiff to appoint defendant no. 1-Pritam Singh as his attorney for the better management of his property.

19. The plea raised by defendant no. 2-Mohinder Kaur that plaintiff appointed defendant no. 1 as attorney and sold the suit property/land, as he required money for his second marriage, gets contradicted from statement of defendant no. 1-Pritam Singh himself, who has stated that GPA was given to him before filing divorce petition. At that time divorce proceedings were not pending. This statement of defendant no. 1 falsifies his

claim that plaintiff had to go for second marriage and to bear expenses for second marriage he sold his property. As already discussed above, it is otherwise not believable that a person is thinking of going for second marriage but at the same time selling his entire property leaving him with no source of income. Defendant no. 1-Pritam Singh had admitted that plaintiff had no other source of income except from the suit land.

20. While referring to statements of defendant no. 1-Pritam Singh and defendant no. 2-Mohinder Kaur, learned Additional Senior Sub Judge as well as Ist Appellate Court have rightly concluded that there are material discrepancy regarding payment of sale consideration. Defendant no.1 has stated that plaintiff was given the sale consideration of ₹7500/- about a year before execution of sale deed. This payment was made to plaintiff at his house. This money was brought by his wife from her brother Pal Singh about 2 or 4 days before payment. However, at the time of making that payment of ₹7500/- sale deed was not got executed from plaintiff. At the time of sale of land he never enquired from plaintiff as to how he will maintain himself thereafter. Defendant no. 2 has stated while appearing as DW-2 that plaintiff had matrimonial litigation with his wife on which he spent from his pocket. Thereafter, plaintiff had taken ₹7500/- to contract second marriage. For that consideration of ₹7500/- paid to plaintiff, her husband executed the sale deed (Ex. D-2) in her favour. Regarding payment of sale consideration, she has stated that ₹7500/- was paid by her to her husband in front of sub-registrar in the presence of witness Channa Ram and

plaintiff-Nishan Singh. After getting the sale deed registered, they came out and ₹7500/- were paid to plaintiff by her husband. She had brought the sale consideration of ₹7500/- about two days before execution of the sale deed. The above glaring and material contradictions speak about the falsity of entire transaction. If defendant no. 2-Mohinder Kaur be believed, in that case, her husband defendant no. 1-Pritam Singh gets falsified and in the event of defendant no. 1, be believed, statement of defendant no. 2-Mohinder Kaur (vendee) gets shattered. As per recital on the sale deed, amount of ₹7500/- had already been paid to plaintiff. This shows that statement of vendee Mohinder Kaur (appellant) and her husband are just a bundle of lies and no payment of ₹7500/- was made to plaintiff. Though, learned Additional Senior Sub Judge brushed aside this material contradiction holding that authenticity and genuineness of sale deed cannot be questioned on this score, Ist Appellate Court has rightly held that it is a material and glaring discrepancy reflecting on the conduct of parties. Mohinder Kaur has stated that house, which was sold by plaintiff, is still in his possession and has given no reason as to why possession of house was not taken by her.

21. The parties were living in the same village and in the same house (though in separate portions), as such, there was no reason or occasion for plaintiff to execute GPA in favour of defendant no. 1. In case he had to sell his entire property to defendant no. 2-appellant, he could himself execute the sale deed without appointing an attorney. As per recital in GPA, attorney was given for better management of property of plaintiff.

Defendant no. 1 could not make out as to what act he had done for better management of property of plaintiff. He has admitted that except executing the sale deed in favour of his wife he has not performed any other act as attorney of plaintiff. Even if, it be believed that GPA was given for better management of property of plaintiff, act of defendant no. 1 executing the sale deed of property of plaintiff cannot be termed as an act of better management in exercise of the powers conferred on him by plaintiff. Reference to this effect can be made to observations in case of **Mt. Jan vs. Mt. Fajjan and another, AIR 1938 Lahore 351**, wherein it was observed as under:-

“.....On the second point he was of opinion that in view of the provisions of S. 237, Contract Act the plaintiff was bound by the acts of Mt. Fajjan, which fell within the scope of her authority. It seems to me that the second point is really the most important one in the case. The learned counsel for the appellant has contended that the power of attorney was really given to Mt. Fajjan for management of the property of the plaintiff as she was married and was not in a position to look after the land. The power to sell and mortgage was no doubt mentioned in the document but it was purely incidental to the power of management and was not meant to be exercised except when it was necessary for that purpose. Counsel relied in this respect on the law as laid down in Article 34 in Bowstead on Agency, Edition 8, which runs as follows:-

“Powers-of-attorney must be strictly pursued, and are construed as giving only such authority as they confer expressly or by necessary implication. The following are the most important rules of construction : (1) The operative

part of the deed is controlled by the recitals. (2) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.”

22. The facts and circumstances discussed above clearly show that the plea of defendant no. 1 that GPA was given, as plaintiff intended to go for second marriage, is on the face of it is false. As per defendant no. 1-Pritam Singh himself, plaintiff was more intelligent than him, as such, he had no reason to appoint Pritam Singh as attorney for management of his property. In case, intention of plaintiff while executing GPA was to sell his property, in that event he himself could execute the sale deed in favour of his sister-in-law, as parties are living in the same village and same house, particularly when, as per appellant, he was present before the sub-registrar at the time of execution and registration of sale deed.

23. In view of the facts and circumstances on record and material contradiction regarding payment of sale consideration in the statement of defendant no. 1-Pritam Singh and the appellant, Ist Appellate Court has committed no error of law or fact while drawing conclusion that sale deed was without consideration. All the facts and circumstances discussed above, support the conclusion drawn by Ist Appellate Court that these indicate that GPA (Ex. D-1) and the sale deed (Ex. D-2) came into existence under the well hatched conspiracy of defendants no. 1 and 2 to usurp the suit property.

24. On perusal of judgment of Ist Appellate Court, 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.

February 25, 2016

jk

**(SURINDER GUPTA)
JUDGE**