

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. RSA No. 1440 of 1988 (O&M)
Date of Decision : 13.07.2016**

Baljinder Singh and anotherAppellants

Versus

Jagir Kaur (through LRs) and othersRespondents

2. RSA No. 1441 of 1988 (O&M)

Mewa Singh and othersAppellants

Versus

Jagir Kaur (through LRs) and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. O.P. Goyal, Senior Advocate
with Mr. Mukesh Verma, Advocate
for the appellants.

Mr. Amit Jhanji, Advocate
for the respondents.

Surinder Gupta, J.

Above captioned appeals are being decided by this common judgment as the subject matter of both the appeals is similar.

2. A short question, which calls for answer in both the appeals, is as to whether the agreement executed by defendant no. 2-Swaran Singh (in Civil Suits No. 104 and 105 of 10.04.1985) in favour of plaintiffs in his individual capacity binds defendant no. 1-Jagir Kaur, owner of the suit property, who had appointed defendant no. 2-Swaran Singh as her attorney, and on the basis of said agreement a decree for specific performance of agreement can be passed against defendant no. 1-Jagir Kaur?

RSA No. 1441 of 1988 (Civil Suit No. 104 of 10.04.1985)

3. Case of plaintiffs, in brief, is that defendant no. 2-Swaran Singh, who is attorney of defendant no. 1-Jagir Kaur agreed to sell the land of *khasra* no. 144/2 and 141 in *khewat* no. 171, *khatauni* no. 230 for a consideration of ₹19,000/- and received ₹1500/- as earnest money. The balance sale consideration was to be paid at the time of execution and registration of the sale deed for which date was fixed as 10.06.1980. Plaintiffs have always been ready and willing to perform their part of contract. Before 10.06.1980, defendants informed plaintiffs that one Bhagwant Singh son of Kahan Singh had filed Civil Suit No. 78 of 1980 on 29.04.1980 against defendants claiming ownership of the suit land and for restraining defendants from alienating the same. With mutual consent, it was agreed that defendants will execute the sale deed in favour of plaintiffs within one month of dismissal of suit filed by Bhagwant Singh. The suit filed by Bhagwant Singh was decreed on 10.10.1981 and the appeal against that judgment and decree was accepted on 24.01.1985, resulting in dismissal of suit filed by Bhagwant Singh.

4. The land in suit was under lease with Mahan Singh father of plaintiff no. 3. Instead of executing the sale deed in favour of plaintiffs, a notice was served on Mahan Singh for payment of *chakota*. Thereafter, plaintiffs served notice through their counsel on defendants calling upon them to execute the sale deed. It was at this stage that defendants claimed that they are not bound to execute the sale deed. They were again approached on 22.02.1985 to execute the sale deed but of no avail, hence this suit. The defence of defendants was struck off as they failed to file

written statement despite opportunities given to them.

5. Learned Sub Judge, Ist Class, Samrala decreed the suit with the observation that defendant no. 2 had admitted execution of the agreement. Plaintiffs were also held as ready and willing to perform their part of contract.

RSA No. 1440 of 1988 (Civil Suit No. 105 of 10.04.1985)

6. In this case agreement was executed by defendant no. 2 to sell the land of plaintiff on 01.02.1980 for a sum of ₹23,500/- and a sum of ₹3000/- was received as earnest money. The other facts of case are similar as in Civil Suit No. 104 of 10.04.1985. In this suit also, plaintiffs were allowed the relief of specific performance of agreement dated 01.02.1980 on payment of balance sale consideration.

7. Learned Sub Judge, Ist Class, Samrala while deciding the suit did not venture into the zone of conflict i.e. as to whether the agreement was executed by defendant no. 2-Swaran Singh in his capacity as attorney of defendant no. 1-Jagir Kaur or in his individual capacity.

8. During course of arguments, this fact has been fairly admitted by learned counsel for the appellants that agreement was executed by Swaran Singh in his individual capacity and not as attorney of defendant no. 1-Jagir Kaur. He has, however, argued that defendant no. 2-Swaran Singh was attorney of defendant no. 1-Jagir Kaur and even if this fact is not mentioned in the agreement that he had executed the same in his capacity as attorney of defendant no. 1, the same can be inferred from the evidence on record. He has further argued that both the defendants did not file any written statement and then filed appeal against

judgment of Sub Judge, Ist Class together. This strengthens the case of plaintiffs that defendant no. 2 had executed the agreement in his capacity as attorney of defendant no. 1, who is bound to honour the agreement by executing the sale deed either herself or through her attorney. Learned Ist Appellate Court dismissed the suit of plaintiffs on the ground that agreement was executed by defendant no. 2 in his individual capacity and not as attorney of defendant no. 1, as such, the same does not bind defendant no. 1. Learned Ist Appellate Court accepted both the appeals on similar ground, as such, for the purpose of reference I will refer to judgment of Civil Appeal No. 168/64/100 of 1986/87 decided on 12.05.1988 (both the appeals were decided on same date).

9. In para 9 of the judgment, learned Ist Appellate Court has observed as follows:-

“9. On careful perusal of agreement, Ex. P-2, I have also found that this agreement was executed by defendant no. 2 in his own individual capacity by alleging himself as owner of land agreed to be sold under it in favour of the plaintiffs and not as attorney of defendant no. 1. It was also nowhere mentioned in the agreement, Ex. P-2, as is the case now set up before the court by the plaintiffs, that the land agreed to be sold was owned by defendant no. 1 and that she had appointed defendant no. 2 as her attorney on her behalf, he (sic who) had executed this agreement. The endorsement, Ex. P-3, on the back of the agreement, Ex. P-2, for extending the period for the execution of the sale deed was also executed by defendant no. 2 in his individual capacity and not as attorney of defendant no. 1. In the notice, Ex. P-8

dated 13.02.1985 given by the plaintiffs to defendant no. 2 also it was nowhere alleged that defendant no. 2 had entered into an agreement of sale of land as attorney of defendant no. 1. Plaintiffs have also not issued any notice to defendant no. 1 calling upon her to execute the sale deed in pursuance of any agreement of sale such as, Ex. P-2, which was executed by defendant no. 1 (sic defendant no. 2) on her behalf as attorney. This shows that even till the despatch of this notice plaintiffs have been believing the representation made by defendant no. 2 in the agreement, Ex. P-2, that he was the owner of the land agreed to be sold and so they had served notice, Ex. P-8, upon him only asking him to execute the sale deed in pursuance of the agreement in their favour.”

10. Substantial questions of law which arise for consideration in these appeals are as follows:-

- (i) Whether the agreement executed by defendant no. 2-Swaran Singh in his individual capacity as owner of suit property binds defendant no. 1-Jagir Kaur, who had appointed him as her attorney?
- (ii) Whether defendant no. 2, who had received earnest money from plaintiffs at the time of execution of agreement to sell is bound to return the same to plaintiffs, if so on what terms?

11. From the above discussion of facts, it is evident that agreement was executed by defendant no. 2 in his individual capacity, claiming himself to be the owner of land agreed to be sold and not as attorney of defendant no. 1. Learned counsel for appellants could not

dispute that the findings of learned Ist Appellate Court referred above are based on facts and evidence on record. It appears that plaintiffs had been dealing only with defendant no. 2 in his individual capacity. It is evident from the fact that they obtained the agreement from defendant no. 2 in his individual capacity and served notice on him and it was only before the Ist Appellate Court the issue was raised that agreement should be considered to have been executed by defendant no. 2 as attorney of defendant no. 1.

12. The contention of learned counsel for the appellants is that the act of defendant no. 2 performed in his individual capacity should be considered as act performed by him as general attorney of defendant no. 1.

13. The above contention of learned counsel for appellants carries no merit as an agent/attorney is deemed to be acting on behalf of principal only when he is performing that act under the authority given to him. In the agreement he has never represented to plaintiffs that he, on behalf of defendant no. 1 either have authority to sell or execute the agreement and was exercising that authority so as to bind the principal i.e. defendant no. 1. Legal proposition that the act performed by attorney in his individual capacity cannot bind the principal is not disputed. Admittedly, defendant no. 2 was having power of attorney of defendant no. 1 but he dealt with plaintiffs in the matter of sale of suit property as owner and not in his capacity as attorney. The act performed by defendant no. 2 binds him and in no manner defendant no. 1.

14. I find no legal or factual infirmity in the judgment passed by

Ist Appellate Court calling for any interference so far as it relates to declining the grant of relief of specific performance of agreement executed by defendant no. 2-Swaran Singh. However, defendant no. 2 is bound by the agreement and is under all liabilities to return the earnest money received by him from plaintiffs. Ist Appellate Court while accepting the appeal and dismissing the suit has not looked into this aspect. Defendant no. 2 has no authority to retain the earnest money received by him from plaintiffs. The earnest money was received 36 years back. Keeping in view these facts, plaintiffs are allowed the relief of return of earnest money with equal amount as damage with interest @ 12% per annum from the date of receipt of earnest money till the date of actual payment.

15. In view of my above discussion, the first substantial question of law is decided against appellants and the second substantial question of law is decided in favour of appellants.

16. As a sequel of my discussion above, these appeals are partly allowed. The judgment and decree passed by Ist Appellate Court is affirmed with the modification that plaintiffs-appellants is entitled to return of earnest money from Swaran Singh-defendant no. 2 with equal amount as damage, with interest @ 12% per annum from the date of receipt of earnest money till the date of actual payment.

17. In view of peculiar facts and circumstances of case parties are left to bear their own costs.

July 13, 2016
jk

(SURINDER GUPTA)
JUDGE