

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5573 of 2008 (O&M)
Date of decision: February 04, 2016

Smt. Amina and another

.. Petitioners

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Arnav Sood, Advocate for the petitioners.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. M. L. Sarin, Senior Advocate with
Mr. Kabir Sarin, Advocate for respondent No. 4.

...

Rajesh Bindal J.

1. The petitioners have approached this court impugning the order dated 28.11.2007 passed by the Registrar, Mewat cancelling the sale deed dated 20.8.2007 registered in favour of the petitioners.

2. Learned counsel for the petitioners submitted that Ganesh Dass son of Khem Chand was owner of certain land. He entered into an oral agreement to sell the aforesaid land in favour of husband of petitioner No. 1 and petitioner No. 2 on 1.8.2007, for a total sale consideration of ₹ 37,25,000/-. ₹ 9,50,000/- were paid by way of pay order drawn on Haryana Gramin Bank, Branch Bahadurgarh, District Jhajjar as earnest money. As Ganesh Dass was resident of Uttar Pradesh, on receipt of balance sale consideration of ₹ 27,75,000/-, he executed general power of attorney in favour of Shaukat Ali son of Walli Mohammad and Hamidulla son of Abdul Rehman, which was duly registered on 10.8.2007 with Sub Registrar,

Karnailganj, District Gonda (UP). In pursuance to the aforesaid power of attorney, the power of attorney holders got the sale deed registered on 20.8.2007. After due verification, the sale deed was handed over to the petitioners in original by the Registrar. The petitioners submitted copy thereof to the Revenue Patwari for sanction of mutation. The same was not done. However, to the surprise of the petitioners, they received an order dated 28.11.2007, passed by the Registrar, Mewat/Nuh, in exercise of powers under Section 68 of the Registration Act, 1908 (for short, 'the Act') cancelling the sale deed allegedly on the ground that the power of attorney in pursuance to which the sale deed was got registered was found to be fictitious.

3. Learned counsel for the petitioners, while referring to Hussain Ali Shah v. Sardar Ali Shah and others, AIR 1933 Lahore 786; Nyadarsingh v. Chensingh, AIR 1955 MP 205; Jodh Singh and others v. The Registrar (Deputy Commissioner), Ambala and others, (1999-1) PLR 29 and CWP No. 4638 of 2010—Vaid Famil Charitable Trust and another v. State of Haryana and others, decided on 11.7.2011, submitted that after registration of the sale deed, the Registrar does not have any power to cancel the same in exercise of powers under Section 68 of the Act, as the only remedy with a person who disputes the validity of the sale deed is to file a civil suit and challenge the same. The plea of fraud, if any, raised has to be established by way of evidence. The power of attorney, on the basis of which power of attorney holder got the sale deed registered was a registered document, which raises a presumption of genuineness, hence, the impugned order passed by the Registrar deserves to be set aside.

4. On the other hand, learned counsel for respondent No. 4 submitted that the case set up by the petitioners is that there was an oral agreement to sell. In fact, it is a case of complete fraud. Total sale consideration is said to be ₹ 37,25,000/-. The property is situated at Nuh. Pay order of ₹ 9,50,000/- was got prepared at Bahadurgarh and the balance is claimed to have been paid in cash. There is nothing to show that the petitioners had the capacity to pay such a huge amount in cash. Respondent No. 4 is resident of Faridabad. The power of attorney was got registered in

District Gonda (UP). The sale deed was presented for registration on 20.8.2007. Immediately after registration of the sale deed, the matter was referred by the Sub Registrar to the Registrar as power of attorney was found to be forged. It was even confirmed by Sub Registrar, Gonda. Even the Registrar has recorded a finding to that effect in the impugned order. Fraud vitiates everything. Respondent No. 4 did not file any appeal or application to the Registrar or the Sub Registrar, as he was not in knowledge of registration of the sale deed. It was *suo motu* exercise by the Sub Registrar. Notice was given to the petitioners, but they did not avail of the opportunity afforded. In support of the arguments, reliance was placed upon S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. & Ors., JT 1993 (6) SC 331 and Jodh Singh's case (supra).

5. He further submitted that in terms of Section 33 of the Act, power of attorney should have been registered in the area, where the principal resides, whereas respondent No. 4 is resident of Faridabad, whereas the power of attorney was registered in District Gonda (UP). Fraud is further established from the fact that the power of attorney pertains to 6 kanals and 14 marlas, whereas the sale deed pertains to 14 kanals and 18 marlas of land. Though it has been confirmed by the Sub Registrar, Gonda that the power of attorney was not registered there, there is nothing produced on record by the petitioners in support of the plea that it was a genuine document. The execution of power of attorney has been denied by respondent No. 4 and as a consequence the sale deed. Once it is so, the sale deed was rightly cancelled by the Registrar after examining the issue in detail. Reference was made to Yanala Malleshwari v. Smt. Ananthula Sayamma, AIR 2007 AP 56 and Shri Ajay Loothra and others v. The Deputy Commissioner-cum-Registrar, Gurgaon and others, (2011-4) PLR 541. Learned counsel for respondent No. 4 further distinguished the judgment of Lahore High Court in Hussain Ali Shah's case (supra), while submitting that in the case in hand, execution of the sale deed has been denied by the vendor, whereas in that case, the facts were different.

6. In response, learned counsel for the petitioners submitted that Section 34 of the Act confers powers on the Sub Registrar for any enquiry

before registration of the sale deed and not after registration thereof. After the sale deed is registered, he is *functus officio*. He further submitted that power of attorney holder is, in fact, executant of the document. He acts on behalf of the owner, namely, the principal who had executed the power of attorney. In the case in hand, power of attorney holders are not denying execution of the sale deed. It is respondent No. 4, the principal, who is denying execution of the power of attorney and is trying to raise an argument that as a consequence the sale deed is bad, for which the only remedy is to file a civil suit, as the plea of fraud is required to be established after leading evidence, the onus of which is always on the person alleging fraud.

7. Heard learned counsel for the parties and perused the paper book.

8. The facts, which emerge from the contentions raised by learned counsel for the parties, are that the sale deed was executed by Shaukat Ali son of Walli Mohammad and Hamidulla son of Abdul Rehman, as power of attorney holders of Ganesh Dass on 20.8.2007. The sale deed after execution was duly handed over in original to the vendees. The claim of the petitioners is that it was on the basis of registered power of attorney executed by respondent No. 4 in favour of Shaukat Ali son of Walli Mohammad and Hamidulla son of Abdul Rehman, It was registered in District Gonda. There is a certificate produced on record by the petitioners from Sub Registrar, Gonda that the power of attorney is genuine. A subsequent certificate is on record from the same authority opining that the power of attorney was not registered there. The sale deed was cancelled by the Registrar on a reference sent by the Sub Registrar.

9. The legal issue, which arises for consideration by this court in the present petition, is as to whether the Registrar could cancel the sale deed already registered. The issue was gone into by a Division Bench of Lahore High Court in Hussain Ali Shah's case (supra), wherein it was held that Section 68 of the Act does not confer any power on the Registrar to cancel a registered document, the execution of which is not denied and it has already been registered. The same view was expressed by this Court in

subsequent judgments in Vaid Famil Charitable Trust's case (supra); Ram Rattan and another v. The Deputy Commissioner and others, 2014(1) RCR (Civil) 668; and Maya Kaur and another v. State of Haryana through Financial Commissioner-cum-Principal Secretary, Revenue Department, Haryana Civil Secretariat, Sector 17, Chandigarh and others, 2014(5) RCR (Civil) 872.

10. In the case in hand, execution of the document as such is not denied by the power of attorney holders, who represented the owner. What is sought to be disputed by respondent No. 4, who is claiming himself to be the owner of the property, is that the power of attorney, on the basis of which Shaukat Ali and Hamidulla got the sale deed registered was in fact a forged document. This is an aspect altogether different. Once the consistent opinion of this court is that if a sale deed is already registered, the Registrar has no power to cancel the same, the order of cancellation cannot be sustained. The fact as to whether the power of attorney produced by Shaukat Ali and Hamidulla on behalf of respondent No. 4 for registration of the sale deed is a forged document or not is to be established in appropriate proceedings. This court in writ jurisdiction will not be able to record a finding thereon, there being two different communications from the authority before whom the power of attorney was registered, taking a different view.

11. As far as plea of fraud raised by learned counsel for respondent No. 4 is concerned, there is no dispute regarding proposition of law, but the question is the appropriate proceedings. Before this court is a person in whose favour the sale deed was registered and the only legal issue sought to be raised by him is that the Registrar does not have any power to cancel the same after registration in exercise of powers conferred under Section 68 of the Act. The plea of fraud is sought to be raised pertaining to power of attorney produced by Shaukat Ali and Hamidulla for getting the sale deed registered on behalf of respondent No. 4, which may have to be established in appropriate proceedings. On that plea, the order passed by the authority having no jurisdiction cannot be sustained.

12. For the reasons mentioned above, the writ petition is allowed. The impugned order dated 28.11.2007 passed by the Registrar, Mewat cancelling the sale deed is set aside.

(Rajesh Bindal)
Judge

February 04, 2016
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(Refer to Reporter)