

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2968 of 2010
Date of decision : March 2, 2016

Harun

..... Appellant

Versus

Daud and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kamal Chaudhary, Advocate for
Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate for
Mr. M. S. Tewatia, Advocate
for the respondents.

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?

Amit Rawal, J (oral).
CM No. 8861-C of 2010

This is an application under Section 149 read with
Section 151 CPC for making good the deficiency in court fees.

The application is allowed.

Permission granted to make good the deficiency in
court fee.

CM No. 8860-C of 2010

This is an application under Section 151 CPC
seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 542 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 2968 of 2010

The appellant-plaintiff is aggrieved of the judgment and decree of the lower appellate court whereby suit seeking specific performance of the agreement to sell has been dismissed in toto whereas cross objection of the defendant has been accepted.

Mr. Kamal Chaudhary, learned counsel appearing on behalf of the appellant submits that defendant No.1 had executed a registered General Power of Attorney dated 1.11.1990 in favour of defendant No.2 empowering him to alienate the land belonging to him, in pursuance to the aforementioned power given by the principal, being agent entered into an agreement to sell dated 22.11.1990 in favour of plaintiff and defendant No.3 and the total sale consideration of ₹80,000/- in respect of land measuring 12 Kanals was paid. The condition contained in the agreement to sell was that on culmination of the civil proceedings stated to be pending, cause of action shall arise to the parties to seek specific performance of the agreement to sell. The civil litigation ended on 16.2.1996 whereas the suit was filed on 5.6.1997. Though, defendant No.1 vendor cancelled the power of attorney on 28.11.1990 and by that time the General Power of attorney had already been acted upon. The trial court found that the appellant-plaintiff was not ready and willing and held entitled to refund of the amount of ₹80,000/- with interest @ of

6%.

Aggrieved against the aforementioned finding, the parties filed appeal and cross appeals. The cross appeals on behalf of the vendor was allowed and the appeal was dismissed.

He submits that the judgment of Hon'ble Supreme Court which has been relied upon by the lower appellate court in **Bhatori Vs. Ram Piari 1996 (3) RCR (civil) 538** does not apply to the facts and circumstances of the case as the power of attorney in that case did not empower the attorney for entering into an agreement to sell whereas in the present case, specific clause empowered the agent to alienate the land. The cancellation of the power of attorney, aforementioned, was an act of dis-honesty, much less aggrandization and urges this Court to formulate substantial question of law as carved out in the Memorandum of Appeal.

- i) Whether the plaintiff had been ready and willing to perform his part of the agreement?
- ii) Whether the judgment and decree of the lower appellate court and that of the trial court suffers from illegality and perversity?
- iii) Whether the agreement to sell, aforementioned, has been proved in accordance with law?

Mr. Ashish Gupta, learned counsel appearing on behalf Mr. M. S. Tewatia, for respondent No.2 submits that there is no illegality and perversity in the judgment and decree rendered by the lower appellate court as it has un-clinchingly been proved that the

agreement to sell was surrounded by suspicious circumstances and states that the beneficiaries/vendees, who are none else but the sons of General Power of Attorney. Infact the General Power of Attorney exceeded the power described in the General Power of Attorney dated 1.11.1990. The same was cancelled on 28.11.1990. The plaintiff has no power to seek specific performance of the agreement to sell. The attorney did not pass on the sale consideration, much less price of the land measuring 12 Kanals was much higher than the one which has been agreed to be sold.

He further submits that the power of attorney was given to contest the civil litigation instituted at the instance of Kulwant Singh viz-a-viz property of Baksha and when the attorney did not act the same was cancelled. This fact has been noticed by the trial court in paragraph 9 of the judgment, thus, prays that no substantial question of law arise for determination by this Court and the appeal is liable to be dismissed. Paragraph 9 reads thus:-

“In rebuttal, defendant NO.1 stepped into witness box as DW1 and has deposed that one Baksha predecessor in interest of the plaintiff was owner in possession of land measuring 12/13 acres but was having no son and was blessed with only one daughter; that said Baksha had taken in adoption son of his daughter namely Nasrudd in and transferred land measuring 5 acres in his name; that said Baksha had also transferred the land measuring 4 acres in favour of sons of his sister and two acres of land in favour of father of the plaintiff that said Nasruddin out of land measuring 5 acres, sold away the land measuring 12 Kanals to

the answering defendant regarding which defendant No. 2 Mohar Khan got filed a civil suit through his uncle's son namely Phulel in the Civil Court in the year 1984 and on dated 21.11.90 panchayat was conveyed in which the answering defendant executed one power of attorney in favour of defendant No.2 with respect to the land measuring 12 kanals and it was also decided in the said Panchayat that defendant No.2 would get dismissed the said civil suit so filed by the said Phulel; that said defendant was asked by the Panchayat for getting dismissed the said civil suit within a period of two days, but when defendant No. 2 did not comply with the said direction for a period of 7 days, then the answering defendant No. 1 on dated 28.11.90 got cancelled the General Attorney dated 1.11.90, that the plaintiff never paid any amount to the answering defendant, but defendant No. 2 by purchasing the stamp paper in the back date, executed one agreement to sell of the disputed land in favour of his children, which agreement is forged and fabricated; that the plaintiff is not entitled for any relief. Defendant No. 1 further remained one Isa as DW-2, who has deposed that on dated 21.11.90 a settlement took place between defendant No.1 defendant No.2 and one Phulel vide which defendant No.2 was to get dismissed one civil suit and it was further settled that defendant No.1 shall execute one power of attorney relating to the disputed land in favour of defendant No.2 regarding which security shall be given by three person namely Gaddar, Hakmuddin and Shamsu; that as per settlement, defendant No.1 executed and got registered one General Power of Attorney

on dated 21.11.90 in favour of defendant No.2 and said Gaddar etc. got executed and registered one lease deed on the same day as of security in favour of defendant No.1 that lateron, defendant No.2 changed his stand and refused to get dismissed the said civil suit on which defendant No.1 got cancelled the power of attorney dated 21.11.90 vide cancellation deed Ex.DW2/A that the plaintiff has filed a false suit against the defendant. In his cross examination, he has shown his lack of knowledge regarding the factum of agreement of defendant No.1 for selling the disputed land to the plaintiff, for a sale consideration of Rs. 80,000/- and execution of General Power of attorney by defendant No.1 in favour of defendant No.2 in lieu thereof etc. Defendant No.1 has further examined one Mohammad Safias DW3, who has deposed in a more or less similar manner to that of DW-2 Isa. The said witness has also in his cross examination, shown his lack of knowledge regarding factum of agreement of defendant No.1 for selling the disputed land, to the plaintiff for sale consideration of Rs.80,000/- and receipt of sale consideration of Rs. 80,000/-by defendant No.1 and delivery of possession of the disputed land by defendant No.1 in favour of the plaintiff.

The plaintiff, by filing the present suit, has prayed for a decree for specific performance of agreement of sale of the disputed land on the basis of an oral agreement of sale dated 21.11.90, which was converted into writing on dated 22.11.90 and, thus, for directing the defendant No.1 to execute and get registered the sale deed of the disputed land in favour of the plaintiff and defendant No.3

with respect to the disputed land, further seeking relief of injunction for restraining defendant No.1 from alienating the disputed land and from interfering in the possession of the plaintiff and defendant No.3 over the same on the assertions that defendant No.1 had on dated 21.11.90 orally agreed to sell the disputed land to the plaintiff and defendant No.3 for an amount of Rs.80,000/- and received the said amount from the plaintiff and defendant No.3 on that very day and also handed over the possession of the disputed land to them and on dated 22.11.90 executed an agreement of sale on the basis of said oral agreement and it was also agreed by said defendant No.1 that the sale deed of the disputed land will be executed after the decision of civil litigation relating to the disputed land.”

I have heard learned counsel for the appellant and appraised the paper book and of the view that the power of attorney, aforementioned, was executed in favour of defendant No.1 but has been misused by the agent who entered into an agreement to sell aforementioned. Defendant No.1 has failed to belie the aforementioned facts, viz-a-viz litigation regarding the estate of Baksha.

It is strange that the agent on the next date entered into an agreement to sell with regard to the land measuring 12 Kanals of the defendant No.1 with plaintiff and defendant No. 3 who are none else but sons of General Power of Attorney. Such an act had been deprecated in the judgment in Bhatori's case (supra)

where the agent acted on the power given by the attorney and entered into an agreement to sell with his family members, much less with sons. It has also been surfaced that whether ₹80,000/- had been passed on or not.

In view of the aforementioned facts, the trial court rightly did not exercise jurisdiction under Section 20 of the Specific Relief Act, 1963 and ordered for refund of earnest money through attorney. The act of entering into an agreement to sell of father (defendant No.2) with plaintiff and defendant No. 3 who are his sons is not legal and fair.

In view of the aforementioned observations, the questions of law are answered in favour of the appellant-plaintiff and against the respondent-defendant. The judgment of the lower appellate court is set aside and that of the trial court refunding the earnest money of ₹80,000/- along with interest @ of 6% is restored.

The appeal stands partly allowed.

The cross objection filed by the respondents-defendants before the lower appellate court resulting into passing of the judgment and decree is dismissed.

(AMIT RAWAL)
JUDGE

March 2 , 2016
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