

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

R.S.A. No.3454 of 2011 (O&M)

Date of decision: 27.04.2016

Renu Mutreja

..Appellant

Versus

Ajay Soni and others

..Respondents

R.S.A. No.3682 of 2011 (O&M)

Ajay Soni and others

..Appellants

Versus

Shobha Kaul and others

..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ranjit Chawla, Advocate
for the appellants
in RSA No.3682 of 2011.

None for the appellant in RSA No.3454 of 2011 and
for respondent No.4 in RSA No.3682 of 2011

Mr. Sanjay Vij, Advocate
for respondent No.3 in RSA No.3682 of 2011
for respondent No.8 in RSA No.3454 of 2011

Mr. Deepinder Singh, Advocate
for respondent Nos.1 and 2 in RSA No.3682 of 2011
for respondent Nos.1 to 3 in RSA No.3454 of 2011

Jitendra Chauhan, J.

This judgment shall dispose of RSA Nos.3454 of 2011 and 3686 of 2011 arising out of common judgment dated 30.05.2011 of the Ist Appellate Court by which RCA No.71 of 2010 against the partial decreeing of civil suit No.258 of 2002, decided on 28.07.2010 and RCA No.118-RBT of 2010 against dismissal of civil suit No.347 of 2004, decided on 28.07.2010, vide common judgment of trial Court were dismissed.

The brief facts, are that Dr. Sunil Kumar was owner in possession of Flat No.03, GF, Block F4, village Charmswood, Suraj Kund Road, Faridabad, constructed by M/s Ajay Enterprises. He purchased this flat vide agreement dated 28.06.1994, for a sum of Rs.7,87,000/- against certificate of sale dated 13.01.1995 is Ex.P9, while original receipts are Ex.P2 to P6. He expired on 06.06.1996. After his death, his widow Shobha Kaul and minor daughter Shvetika Kaul became owner in possession of plot in equal shares. It is alleged that in February 1996, Dr. Sunil Kaul had taken a loan of Rs.3 lacs from Ajay Soni and S. R. Soni. It is further alleged that after the death of Dr. Sunil Kaul, his widow raised further two loans of Rs.3 lacs and Rs.4 lacs and in this manner the total loan came to be Rs.10 lacs. Repayment of the loan was to be made by the end of 1998. It was an interest free loans on the understanding that Ajay

Soni and S R Soni could exclusively use the flat till repayment of the entire loan amount. Ajay Soni took a general power of attorney from Shobha Kaul, widow, Ex.D1 and agreement to sell, Ex.D2 and receipt, Ex.D3 (disputed documents) from Shobha Kaul. She alleged that she returned the amount of Rs.3,42,000/- to Ajay Soni, but he did not hand over the vacant possession of the flat to her. On 04.04.2001, Shobha Kaul cancelled the general power of attorney vide revocation deed Ex.P18. Her assertion is that documents, Ex.D2-alleged agreement to sell and Ex.D3-receipt were signed by her in good faith in lieu of loan and at the time of signing the documents, these were unfilled and blank, later on these were filled in by Ajay Soni.

The flat in question was further sold by Ajay Soni on 20.03.1998 to Renu Mutreja by executing receipt Ex.D7 for sale consideration of Rs.8,50,000/-. General power of attorney Ex.D6 and vacant possession of the flat were handed over to the vendee Renu Mutreja by Ajay Soni.

Shobha Kaul, widow and her minor daughter, Shvetika filed civil suit No.258 of 2002, for recovery of possession of the flat and mesne profits for use and for occupation of the flat, which was partially decreed by the trial Court holding that the plaintiffs are entitled to get possession of the flat from defendant Renu Mutreja

subject to payment of Rs.58,000/-, the balance loan amount to Ajay Soni, within a period of one month. Their prayer for mesne profits was declined. Ajay Soni and LRs of S. R. Soni filed Ist appeal RCA No.71 of 2010, which was dismissed on 30.05.2011 by the Additional District Judge, Faridabad. Hence, Ajay Soni and LRs of S. R. Soni filed RSA No.3682 of 2011.

To protect her ownership and possession, Renu Mutreja filed suit No.347 of 2004 for declaration that she is owner in possession of the flat and for mandatory injunction, which was dismissed on 28.07.2010, by the Additional Civil Judge, Sr. Divs. Faridabad, vide common judgment, and the Ist appeal bearing No.RCA No.118-RBT of 2010 was also dismissed by the Additional District Judge, Faridabad vide common judgment dated 30.05.2011. Hence, she filed Regular Second Appeal No.3454 of 2011.

Both the RSA Nos.3454 of 2011 and 3682 of 2011 are being heard and disposed of together, as both involve common questions of law and facts.

It is worthwhile to mention here that during the pendency of these appeals, Shobha Kaul and Shvetika Kaul-decree holders, took possession of the flat in question on 01.10.2011 in execution proceedings. Dispossession of the appellant in RSA NO.3454 of 2011 was stayed on 06.12.2011, but by then the process of

possession in execution of decree had been already completed.

In RSA No.3454 of 2011, it is averred that the subsequent vendee, Renu Mutreja-appellant is a bonafide purchaser for value without notice; that the findings of the Courts below that Ex.P13 and Ex.P14 were got signed blank by Ajay Soni from Shobha Kaul, who is an MBBS doctor is erroneous, and that the Courts below have failed to appreciate that in the year 1999, the sale deed could not have been executed as there was ban on registration of sale deeds in District Faridabad. The ownership and possession of the present appellant may be protected by accepting this appeal and reversing the judgments and decrees of both the courts below. At the end, it is averred that the Courts below have failed to grant alternative relief of refunding the amount against Ajay Soni and deceased S. R. Soni, which is erroneous.

In RSA No.3682 of 2011, the learned counsel for appellants contended that the learned Ist Appellate Court has dismissed the application under Order 41 Rule 27 of the CPC for production of additional evidence, vide impugned order dated 30.05.2011. The two pages fax note sent by Shobha Kaul is relevant piece of evidence, which goes to prove that actual loan advanced by the appellants herein to the plaintiff Shobha Kaul was Rs.10 lacs and not Rs.4 lacs, as held by both the Courts below. The learned counsel

contended that application under Order 41 Rule 27 CPC may be allowed and the case may be remitted back to the Ist Appellate Court for a fresh decision on merits by affording an opportunity to the present appellants to lead additional evidence in Ist Appellate Court.

Learned counsel for the respondent-Shobha Kaul supported the judgments and decrees of Courts below.

I have heard the learned counsel for the parties and perused the paperbook with their able assistance.

In RSA No.3682 of 2011, it appears that the appellants have not challenged the judgments and decrees of both the Courts below on merits, but restricted his contention in grounds of appeal too, challenging the order of dismissal of application Order 41 Rule 27 CPC. This Court has carefully gone through the pleadings of the parties. In their written statement, the appellants have specifically pleaded that Dr. Sunil Kaul took a loan of Rs.3 lacs, and thereafter his widow had been extended loan of Rs.3 lacs and then of Rs.4 lacs and thus the total amount came to Rs.10 lacs. It was a loan amount. It is important to mention here that Ajay Soni has not come forward to support his own case. He was to appear himself in Court and to state on oath the whole facts and answer the question to the best of his personal knowledge, which he alone could do. He avoided to appear in Court, so this Court draws an adverse inference against Ajay Soni.

S R. Soni also did not support his own case while alive. The application under Order 41 Rule 27 CPC has been rightly dismissed by the Ist appellate Court.

It is admitted position of law that the agreement to sell or receipt or GPA do not confer any ownership right or title in the property in favour of a person. The general power of attorney is a document to act for and on behalf of the executant and to all acts which are necessary. There is no law that the GPA cannot be revoked. DW5, Umesh Tangnoo, GPA of Shobha Kaul admitted that it was a loan transaction, and that at the time of advancing loan, Ajay Soni got executed the agreement to sell and receipts, Ex.P13 and Ex.P14, respectively. It is further admitted by him that it was unfilled agreement, when the executant signed it. The cross-examination of DW5 made it clear that the documents were executed as security of the loan amount and there was no intention on the part of Shobha Kaul to alienate the flat to Ajay Soni. This is the best witness, upon whom both the Courts below have placed reliance. Both the parties were known to each other and at one time, the parties had a joint business. It might be in the knowledge of Ajay Soni and S. R. Soni that daughter of Sunil Kaul is minor and that her mother is incompetent to sell the share of her minor daughter. Permission of the Guardian Judge under Section 8 of the Hindu Minority and

Guardianship Act was neither applied for nor obtained. The loan, if any, taken by Shobha Kaul was a personal transaction, not binding on inheritance right of her minor daughter. Only advancement of Rs.4 lacs as loan had been made, out of which Rs.3,42,000/- has been returned to Ajay Soni by Shobha Kaul. Ajay Soni had no right to further sell the flat to Renu Mutreja-appellant. The learned counsel for the respondent pointed out that in the written-statements of Renu Mutreja, filed in the Civil Suit No.258 of 2002 and in plaint in civil suit No.347 of 2004, there is no specific averment regarding the bonafide purchase of flat for valuable consideration or that she had made bonafide enquiries that Ajay Soni was the actual owner of the flat. Whenever a person purchases any property, he takes all the original documents of ownership from the vendor, but in this case, the original receipts regarding payment of sale-price to the builders, are coming from the possession of Shobha Kaul. As Ajay Soni was not owner of the flat he could not have further sold it to Renu Mutreja.

So far as contention of the learned counsel that the suit would have been decreed regarding refund of money in favour of Renu Mutreja, the subsequent vendee, against Ajay Soni and others; the courts below have rightly granted liberty to her to recover the amount.

No other point has been argued.

No question of law, what to say substantial, has arisen in these appeals. There is no reason to interfere in the concurrent findings of facts recorded by both the Courts below. There is no illegality, infirmity or misappreciation of evidence by both the Courts below. The judgments and decrees of both the Courts below are hereby affirmed.

For the foregoing reasons, there is no merit in RSA No.3454 of 2011 and RSA No.3682 of 2011, which are dismissed.

No costs.

27.04.2016

ashok

(JITENDRA CHAUHAN)
JUDGE