

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3918 of 2013 (O&M)

Date of Decision: 15.03.2016

Attar Singh

... Appellant(s)

Versus

Surinder Pal Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Vikram Singh, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts recorded by both the Courts below in a civil suit for declaration with permanent injunction as it was dismissed by the Court of first instance and appeal was dismissed by the first Appellate Court. Thereafter, present regular second appeal before this Court.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts for the purpose of decision of the present appeal that appellant-Attar Singh and one Karan Singh filed suit for

declaration to the effect that general power of attorneys No.4555/4 dated 13.2.2004, 4556/4 dated 13.2.2004 and 4669/4 dated 16.2.2004 registered by Sub Registrar-III, Delhi and the sale deeds executed on the basis of said GPAs and the revenue entries entered thereupon are illegal, null and void along. Plaintiffs also sought relief of permanent injunction restraining the defendants from alienating the suit land and from changing the nature of the same or raising any construction thereon. As per plaintiffs, they are owners in possession of the agricultural land measuring 28 kanals 14 marlas and their ownership was recorded in the revenue record. Plaintiffs had earlier filed a civil suit against defendants No.1, 4 and others on 4.12.2003 for challenging the documents upon which defendant No.1, in collusion with other defendants, had obtained signatures of plaintiff No.1 fraudulently when he was admitted in Rajiv Gupta Hospital after suffering from heart attack. In the said suit, an agreement was effected between the parties on 19.12.2003 to the effect that land measuring 23 kanals, out of total land of 28 kanals 14 marlas, would remain with the defendants and the remaining land measuring 5 kanals 14 marlas would remain with the plaintiffs as owners in possession. As per plaintiffs, no general power of attorney was ever executed. Plaintiffs also served a legal notice on defendant No.5 on 3.12.2003 for cancellation of any GPA in possession of defendants No.1 to 4. Legal notice was also served on defendant No.1 on 15.1.2004. The defendants expressed their intention not to get the sale deed registered and to sell the land only on the basis of GPAs when asked by the plaintiffs in this regard. On enquiry, plaintiffs came

to know that GPAs No. 4555/4, 4556/4 & 4669/4 registered with the office of Sub Registrar-III, Delhi, were self created by defendants No.1 to 4. All the three GPAs were cancelled by the plaintiffs and intimated vide registered notice dated 20.2.2004.

Defendants contested the suit *inter alia* taking preliminary objection regarding maintainability of the suit under Order 2 Rule 2 CPC and Section 11 CPC. On merits, defendants contended that plaintiffs entered into agreement of sale with defendant No.1 and with one Harish Bajaj for the sale of suit land for a sale consideration of ₹ 8,50,000/- per acre. Agreement of sale dated 30.7.2003 was also executed by the plaintiffs. Payments were received on different dates by the plaintiffs and target date was also extended on different dates. For that purpose, plaintiffs executed general power of attorneys dated 2.8.2003 and 18.11.2003 in favour of the defendants, who sold part of land vide registered sale deeds dated 16.10.2003, 13.10.2003 and 12.8.2003. Later on, plaintiffs turned dishonest and filed suit for declaration to the effect that GPAs and the sale deeds were illegal, null and void. However, on 19.12.2003 a compromise was effected between the parties to the effect that defendant was owner in possession of land measuring 23 kanals. Defendants had already sold the land measuring 16 kanals 7½ marlas, which was given to the defendants vide compromise dated 19.12.2003. Defendants sought specific performance with regard to the remaining land measuring 6 kanals 12½ marlas on the basis of agreement of sale as well as compromise dated 19.12.2003 and sought dismissal of the suit.

Plaintiffs filed counter claim and the Court of first instance settled the issues and parties were put to trial. The Court of first instance, after considering the entire material and evidence available on the file, returned the findings that suit of the plaintiffs is without any merit and counter claim of defendant No.1 was partly allowed and a decree for specific performance of agreement of sale dated 30.7.2003 read with compromise dated 19.12.2003 was passed in favour of defendant No.1 and against the plaintiffs. The said findings were affirmed by the first Appellate Court.

Learned counsel for the appellant mainly submitted that the Courts below failed to appreciate that respondent Surinder Pal played fraud with the appellant and sold the land measuring 23 kanals to some other person vide sale deeds No. 4444 and 4330 dated 13.10.2003 and No. 2787 dated 12.8.2003. That way how the land was sold even before the execution of agreement of sale of land and how the GPAs were got executed by the respondent. The Courts below completely ignored the evidence available on file on this point.

Having considered the submissions made by learned counsel for the appellant and having gone through the record of the case, this Court is of the considered view that present regular second appeal is without any merit because both the Courts below have already appreciated the entire evidence and recorded findings of facts. There is absolutely no substantial question of law involved in this case. Both the Courts below returned the findings that in earlier litigation, which was withdrawn on 2.1.2004 on the basis of compromise, plaintiffs had

admitted that defendant No.1 along with others are owner in possession of 23 kanals of land out of total land measuring 28 kanals 14 marlas and subsequent suit was barred under Order 23 Rule 1(4) CPC. The Courts below also returned the findings that impugned sale deeds, on the basis of GPAs, were executed because sale deed No. 6824 was executed on 12.1.2003, whereas GPA was cancelled subsequently on 11.2.2004. The Courts below also returned concurrent findings of facts that plaintiffs themselves claimed to have served a legal notice upon defendant No.1 to the effect that they were ready and willing to get the sale deed executed and registered regarding land measuring 23 kanals. The sale consideration has admittedly been passed. More so, land measuring 16 kanals 7½ marlas has already been sold by exercising powers under GPA. But Harish Bajaj, one of the two proposed vendees, has not been impleaded as party. The said concurrent findings of facts, having been recorded by both the Courts below, do not call for any interference. There being no substantial question of law involved in the present appeal and the same stands dismissed.

(Shekher Dhawan)
Judge

March 15, 2016

"DK"