

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

**R.S.A No. 179 of 2015 (O&M)
Date of decision :09.02.2016**

Bhagu alias Bhagu Ram through LRs

..... Appellants

Versus

**Jagtar Singh son of Bhagu alias Bhagu Ram (since deceased) through
his legal heirs and others.**

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Abhinav Gupta, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 24.07.2014 passed by the learned Additional District Judge, Jalandhar, vide which the appeal preferred against the judgment and decree dated 03.01.2013, passed by the learned Addl.Civil Judge (Sr. Division), Phillaur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. As per the case of the plaintiff-appellant, he purchased a plot vide sale deed Ex.P-5 dated 25.10.1982 out of Khasra No. 124//5/3 (2-10). His wife Azeezan also purchased equal share out of the same Khasra number vide sale deed Ex.P-3 dated 25.10.1982. both of them have constructed the house on the suit plot measuring 20 Marlas. Smt. Azeezan

wife of the plaintiff-appellant died about 9 years prior to the date of filing the suit. The appellant-plaintiff has pleaded that in-fact the entire property was purchased by him, but he had got executed the sale deed in favour of his wife out of love and affection. The plaintiff was residing joint with his sons namely Amrik, Buta Mohammad @ Buta Malik, Rachhpal and Jagtar Singh. Plaintiff has challenged the sale deed dated 03.10.2005 allegedly executed by him in favour of his son-defendant Jagtar Singh for the alleged sale consideration of Rs. 3 lacs. The appellant-plaintiff has challenged the said sale deed on the ground that he never executed the said sale deed in favour of the defendant. He did not receive even a penny out of the alleged sale consideration of Rs. 3 lacs. The said sale deed is illegal, null and void and without consideration. It was further pleaded that defendant might have obtained the thumb impression of the plaintiff on the alleged sale deed by fraud or misrepresentation in collusion with the deed writer and marginal witnesses on pretext of obtaining the power of attorney with respect to the plot measuring 6 ½ Marlas, which had fallen to his share as a result of family settlement.

4. Defendant-respondent Jagtar Singh has contested the suit on the grounds *inter alia* that the plaintiff had executed a valid registered sale deed dated 03.10.2005 for valuable consideration of Rs. 3 lacs while in sound disposing mind without any pressure in the presence of Gurdev Singh, Lambardar and Paramjit Singh another attesting witness. The mutation was also rightly sanctioned on the basis of said sale deed in favour of the defendant. After the purchase, he has raised the construction of the residential house in the property in dispute.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the sale deed dated 03.10.2005 is illegal, null, void and without consideration and is result of fraud?OPP
2. If issue no. 1 is proved, whether plaintiff is entitled for declaration?OPP
3. Whether the plaintiff has got no locus standi to file the present suit?OPD
4. Whether present suit is within time?OPP
5. Whether present suit is maintainable?OPP
6. Whether plaintiff executed one sale deed in favour of defendant no.3.10.2005?OPD.
7. Relief.

6. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 03.01.2013.

7. Aggrieved with the aforesaid judgment and decree, the plaintiff preferred the appeal and the same was also dismissed by the learned District Judge, Jalandhar vide impugned judgment and decree dated 24.07.2014. Hence this Regular Second Appeal.

8. I have heard Mr. Abhinav Gupta, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that there was no question of deceased-plaintiff Bhagu @ Bhagu Ram executing the sale deed in favour of defendant-Jagtar Singh as they were not on speaking terms since long. He further contended that the impugned sale deed is the result of fraud or misrepresentation.

Plaintiff had four sons. He had equally divided the plot measuring 20 Marlas amongst his sons. Every son was given 6 ½ Marlas. So, there was no reason to sell 10 Marlas of land to defendant Jagtar Singh. He further contended that the alleged impugned sale deed is without any consideration as no sale consideration was paid to the plaintiff. Rachhpal, the brother of defendant has also received 6 ½ Marlas of land in the family partition. He has not been examined by the defendant. Learned counsel for the appellant contended that deceased-plaintiff was an old man and the sale deed in question has been procured by way of fraud or misrepresentation. The same is without any consideration and is null and void.

10. I have duly considered the aforesaid contentions.

11. The contentions raised by learned counsel for the appellant are self contradictory. On the one hand, he has alleged that the plaintiff was not on speaking terms with defendant-respondent Jagtar Singh. On the other hand, in the plaint it is pleaded that thumb impressions of the plaintiff has been obtained by defendant-Jagtar Singh on the pretext of getting the power of attorney. If, the relations between them were strained, then there was no question of the plaintiff executing the power of attorney in favour of defendant-Jagtar Singh.

12. The plea of fraud and misrepresentation and non receipt of the sale consideration were the facts which were especially in the knowledge of the plaintiff. The plaintiff was required to appear in the witness box and to depose to prove all these pleas. He was also required to subject himself to the cross-examination by the opposite party. As

observed by the learned First Appellate Court, the issues in this case were framed on 22.08.2008. Thereafter, one dozen opportunities were given to the plaintiff to produce his evidence. But, he did not turned up in the witness box and instead of that he executed the special power of attorney in favour of his son Amrik on 21.03.2009 and said Amrik has appeared as a witness on behalf of the plaintiff. No reason has been assigned as to why the plaintiff did not stepped into the witness box and what necessitated Amrik his attorney to depose in his place. The Hon'ble Supreme Court in case **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., (2005-2), The Punjab Law Reporter 1** has laid down as under:-

“8. In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

Order III, Rules 1 and 2 CPC. empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of

the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, appellant-plaintiff Bhagu @ Bhagu Ram was required to step into the witness box as all the pleas raised by him to assail the sale deed were in his special knowledge and his attorney has not rendered any act in connection with the said sale deed. So, he was not competent to depose for the acts committed by the plaintiff himself. Only, the plaintiff-appellant could have the personal knowledge with respect to the fraud, misrepresentation and non payment of the sale consideration. He was also liable to be cross-examined by the opposite party on all these facts. There is no evidence to show that Amrik, the attorney of the plaintiff was present at the time of execution and registration of the sale deed. So, he could have no personal knowledge under what circumstances the impugned sale deed was executed. So, virtually there is no evidence from the side of the appellant to establish the pleas raised by him to assail the sale deed.

13. On the other hand, defendant has led sufficient evidence to prove the execution of the sale deed. He has examined DW-3 Avtar Chand, the scribe of the sale deed, DW-4 Paramjit Singh, the attesting witness of the sale deed, his widow-Rani has stepped into the witness box as DW-5 as Jagtar Singh has died during the pendency of the case. Amrik, the attorney of the plaintiff has also admitted that the impugned sale deed bears the photograph of his father as well as vendee Jagtar Singh. He also admitted that Gurdev Singh, Lambardar as well as Paramjit Singh belongs

to his village and they have no enmity with them. Thus, appellant-plaintiff has failed to establish that the sale deed Ex.D-1 dated 03.10.2005 is the result of fraud or misrepresentation and without consideration.

14. Moreover, the impugned sale deed is a registered document. The Hon'ble Supreme Court in case **Prem Singh & Ors. Vs. Birbal & Ors. 2006(3) R.C.R (Civil) 381**, has laid down that there is a presumption that a registered document is validly executed. The onus to rebut that presumption shall be on the person who challenged the validity of the registered document. The same principle of law has been laid down by the Hon'ble Apex Court in case **Ranganayakamma and another Vs. K.S. Prakash (D) by L.Rs and others 2008(3) R.C.R (Civil) 601**. This Court also in case **Jasvir Singh Vs. Mohan Singh and others 2010(3) R.C.R (Civil) 654** has laid down that the endorsement of Registrar on the sale deed goes to prove that executor of sale deed presented the sale deed before the Registrar and admitted before the Registrar its execution and receiving the consideration in lieu thereof. When Registrar issued a certificate of registration, the strong presumption is attached about the correctness of the contents of the sale deed. The appellants have not been able to rebut the statutory presumption attached to the sale deed in question being the registered document. Hence, it cannot be stated to be null and void or illegal. Therefore, the concurrent findings arrived at by the learned Courts below requires no interference. in the second appeal while exercising the limited powers under Section 100 CPC.

15. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 09, 2016
s.khan

(DARSHAN SINGH)
JUDGE