

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

RSA-332of 2016 (O&M)

Date of decision: 05.02.2016

Neelam and another

...Appellants

Versus

Jaidev and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G.C. Shahpuri, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

The plaintiff/respondent filed a suit for mandatory injunction. The trial Court vide judgment and decree dated 09.04.2014, decreed the suit.

2. Aggrieved against the findings of trial Court, the defendants/appellants filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree, dated 20.10.2015.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the defendants/appellants.

4. It is contended by the learned counsel for the appellants that both the Courts below have not appreciated the fact that the plaintiff had failed to prove his title over the suit property. The respondent No.1 had executed the power of attorney in favour of respondent No.2 qua the suit property on 22.03.1995, which in turn would make out that the plaintiff has alienated the suit land for a valuable consideration and therefore, the plaintiff was left with no right, title or interest in the suit land. He further contends that both the Courts have wrongly emphasized qua the title of the suit property vesting in the plaintiff on the basis of a previous decree dated 11.01.1999, passed in civil suit No. 723 of 1997. The identity of the said property has not been established with the suit property in any manner, however, both the Courts below have failed to appreciate the admitted facts that defendant No.1 becomes the absolute owner of the suit property on the basis of power of attorney dated 22.03.1995 as well as Will, dated 23.03.1995 qua the suit property and since then he was enjoying the possession of the suit land till the time of execution of the sale deed in

favour of the present appellants.

5. I have heard the contentions of learned counsel for the appellant.

6. This Court has perused the entire record. Perusal of the same reveals that respondent No.2 while appearing as DW-1 had admitted that no sale deed was executed by the appellants in his favour. The General Power of Attorney, dated 22.03.1995 executed by plaintiff in favour of Jagdish Kumar, had already been cancelled vide deed of cancellation, dated 28.03.2007, which is a registered document. It is settled law that a power of attorney does not confer any right, title or interest in the property. A power of attorney holder acts on behalf of the original owner but he does not become owner himself. He has no right to confer title on himself on behalf of the original owner. After appreciating testimony of PW13 and PW14 and other documentary evidence on record, the trial Court observed that possession was given on 22.03.1995 on the date of execution of power of attorney. The constructive possession remain with the plaintiff as licensee and not as owner of the property. The alleged Will, if any, executed by the plaintiff in favour of the wife of the plaintiff will come into operation only after the death

of the testator i.e., the plaintiff. The defendants failed to produce any iota of evidence that they are owners of the property.

7. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and evidence produced by the parties. This Court finds that the aforesaid contentions have no merit as they only relate to appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence by the Courts below.

In **Kashmir Singh Vs. Harnam Singh and another**,

2008(2) RCR (Civil) 688, it has been held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

8. These are pure findings of fact. No question of law, much-less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

05.02.2016

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(JITENDRA CHAUHAN)
JUDGE