

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

RSA No.3597 of 2016 (O&M)

Date of decision : 02.08.2016

Kulwant Singh

.....Appellant

Versus

M/s Silvasa Polutries Pvt. Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Jaspal Singh, Advocate for appellant.

Mr. Yogesh Goel, Advocate for respondent No.3-Caveator.

DARSHAN SINGH, J.

CM-9400-C-2016

There is delay of 330 days in re-filing the present appeal. The appellant has filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 330 days in re-filing the present appeal is hereby condoned.

RSA-3597-2016

This regular second appeal has been preferred against the judgment and decree dated 23.02.2015 passed by the learned Additional District Judge, Ludhiana, vide which the appeal filed against the judgment and decree dated 21.05.2013 passed by the learned Additional Civil Judge

(Senior Judge), Ludhiana, has been dismissed.

2. The appellant-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 31.05.2003 entered into by respondent-defendant No.2 on behalf of respondent-defendant No.1 in favour of the appellant-plaintiff with respect to the land measuring 33 Kanals 14 Marlas detailed and described in the plaint, situated in the revenue estate of village Mohi. The consequential relief of injunction was also sought.

3. As per the averments in the plaint, defendant No.2 was the general power attorney of defendant No.1. In his capacity as a general power of attorney of defendant No.1, he executed the agreement to sell dated 31.05.2003 in favour of the plaintiff with respect to the suit land for a sale consideration of ₹ 4,00,000/- per acre. ₹ 1,00,000/- was paid as earnest money in the presence of the marginal witnesses. The stipulated date for execution and registration of the sale deed was 30.06.2003 on receiving the balance sale price. The defendant did not turn up for execution and registration of the sale deed. Though the plaintiff went to the office of the Sub Registrar, Mullanpur. He is still ready and willing to perform his part of contract. Hence, the suit.

4. Defendant No.1 contested the suit on the grounds *inter alia* that the alleged agreement dated 31.05.2003 is a forged and fictitious document. It is the product of fraud, misrepresentation and conspiracy between the plaintiff and defendant No.2. The answering defendant never authorised or executed any power of attorney in favour of defendant No.2

to enter into any agreement to sell for the sale of land mentioned in the plaint. Defendant No.2 submitted his resignation from the Company on 12.06.2003. The alleged agreement to sell has been falsely prepared after 12.06.2003 in order to cheat defendant No.1. All other averments in the plaint were controverted.

5. The trial Court framed the following issues :-

1. Whether plaintiff is entitled for possession by way of specific performance of the agreement dated 31.05.2003 with regard to the property in dispute as prayed for? OPP
2. Whether the plaintiff was ready and willing and still ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the instant suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.

6. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff vide impugned judgment and decree dated 21.05.2013. Aggrieved with the said judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Ludhiana vide impugned judgment and decree dated 23.02.2015. Hence, this regular second appeal by the appellant-plaintiff.

7. I have heard Mr. Jaspal Singh, Advocate, learned counsel

for the appellant, Mr. Yogesh Goel, Advocate, learned counsel for respondent No.3-Caveator and gone through the paper-book carefully.

8. Learned counsel for the appellant contended that defendant No.2 Amarjit Singh was the power of attorney of defendant No.1-Company. He was posted as Manager of the said Company and was doing transactions on behalf of the Company being its attorney. He contended that the original power of attorney was in the possession of defendant No.2 Amarjit Singh, who did not contest the suit and also did not appear in the witness-box. So, the said power of attorney could not be got produced. He further contended that in the agreement dated 31.05.2003, it has been categorically mentioned that defendant No.2 was the general power of attorney of defendant No.1-Company. The burden was upon defendant No.1 to establish that defendant No.2 had no such power of attorney. Thus, he contended that the agreement dated 31.05.2003 was validly executed by defendant No.2 in favour of the plaintiff on behalf of defendant No.1 for the sale of the suit land and the suit of the plaintiff has been wrongly dismissed by the learned courts below.

9. I have duly considered the aforesaid contentions.

10. As per the case of the appellant-plaintiff, the agreement dated 31.05.2003 was executed by defendant No.2 Dr. Amarjit Singh in favour of appellant-plaintiff on behalf of defendant No.1 posing himself to be the power of attorney of defendant No.1. I do not find any substance in the plea raised by learned counsel for the appellant-plaintiff

that burden to establish that defendant No.2 was not the power of attorney of defendant No.1 was upon defendant No.1. The appellant-plaintiff has based his entire claim on the basis of the agreement to sell dated 31.05.2003 allegedly executed by defendant No.2 in his favour as power of attorney of defendant No.1 for the sale of the suit land. The appellant-plaintiff is claiming relief of specific performance of the agreement to sell dated 31.05.2003. As per Section 101 of the Indian Evidence Act, 1872 (for short the "Evidence Act"), whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Section 102 of the Evidence Act also provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. In the instant case, as the appellant-plaintiff desired the Court to give judgment as to his right for specific performance of the agreement to sell dated 31.05.2003, which has been executed by defendant No.2 alleging himself to be the power of attorney of defendant No.1 and in the absence of the proof of the authority/competency of defendant No.1 to execute the agreement to sell dated 31.05.2003, the suit of the plaintiff is bound to fail. So, the burden to establish that defendant No.2 was duly appointed attorney of defendant No.1 and he executed the agreement to sell dated 31.05.2003 in that capacity, was upon the appellant-plaintiff.

11. Mere recital in the agreement to sell dated 31.05.2003 will not establish that defendant No.2 was the power of attorney of

defendant No.1. Admittedly plaintiff has not produced in evidence the power of attorney executed by defendant No.1 in favour of defendant No.2. Mere this fact that defendant No.2 was working as Manager with defendant No.1-Company till 12.06.2003 will not establish that he was also the attorney of the Company and was duly authorised for the sale of the land of the Company. The learned first Appellate Court has observed that the appellant-plaintiff Kulwant Singh has admitted in the cross-examination that he first time met Amarjit Singh in the year 1997 and seen the power of attorney executed in his favour and that he does not know on what amount of stamp paper the power of attorney was written. He also does not know who has signed the power of attorney on behalf of defendant No.1. He did not keep the copy of the said power of attorney. He does not know about the designation of Amarjit Singh in the Company. No year, month or date was mentioned in the power of attorney. Thus, the appellant-plaintiff has not been able to bring on record any evidence to show that defendant No.2 Amarjit Singh was duly appointed as power of attorney of defendant No.1-company and he was authorised to sell the suit land on behalf of defendant No.1-Company. The plea raised by defendant No.1 in the written statement with respect to conspiracy between the appellant-plaintiff and said Amarjit Singh stands vindicated from the fact that even a criminal case was registered against present appellant and Amarjit Singh for preparing forged agreement in connivance with each other in order to cheat defendant No.1.

12. As the appellant-plaintiff has not been able to establish

that defendant No.2 was duly authorised to execute the agreement to sell dated 31.05.2003 being power of attorney of defendant No.1, so defendant No.1 is not legally bound by the unauthorised act of defendant No.2 and appellant-plaintiff has no right to legally enforce the agreement to sell dated 31.05.2013 against defendant No.1.

13. Consequently, no fault can be found with the concurrent findings recorded by the learned courts below.

14. Resultantly, the present appeal is without any merit and the same is hereby dismissed.

02.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No