

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

RSA No.3959 of 2016 (O&M)

Date of decision: 05.12.2016

Hartej Singh

.... Appellant

versus

Gurdial Singh & ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mohd. Yousaf, Advocate
for the appellant.

Amol Rattan Singh, J.(Oral)

This is the second appeal of one of the defendants, after the suit filed by the plaintiff [now represented by his LRs, (i.e. respondents no. 1 and 2 herein)] seeking a decree of declaration was decreed in his favour and the first appeal filed by the present appellant was dismissed.

2. The facts, as taken from the judgments of the learned courts below, are that as per the plaintiff, he was the owner of land measuring 14 kanals and 13 marlas, situated in village Govindwal, Tehsil Raikot, District Ludhiana, fully described in the head note of the plaint. He was stated to be a non-resident Indian, resident in Malaysia. The second defendant in the suit (present respondent no. 3), Sukhjinder Singh, was stated to be a relative of the plaintiff, being the grand son of his brother and therefore, the plaintiff executed a special power of attorney on 25.04.2006 in favour of the said defendant, so as to enable him to look after and manage the said property. It was contended that no power to sell or alienate the property had been conferred in the instrument of power of attorney.

It was further contended that defendant no.1, Hartej Singh, had

notice of the purpose of the instrument executed, but he connived with defendant no. 2 and executed a sale deed dated 16.01.2007 in favour of himself (defendant no. 1), in respect of the suit property and therefore, a declaration was sought, that the sale deed was illegal, void and inoperative, the second defendant having had no power to alienate the land of the plaintiff.

A mutation having been entered in the revenue record pursuant to the sale deed, defendant no. 1 is also stated to have tress-passed in the suit land and established his illegal possession over the same.

Consequently, the suit was instituted on 03.11.2009, seeking the aforesaid declaration, with a further relief of permanent injunction against further alienation of the suit land. The plaintiff also sought possession of the suit land.

3. Upon notice issued, defendant no. 1 appeared and filed his written statement, whereas the second defendant failed to put in appearance and was proceeded against *ex parte*.

In his reply, the first defendant pleaded that the second defendant had sold the land on the basis of a power of attorney executed and had received the entire sale consideration, but with an ulterior motive, the plaintiff in connivance with the second defendant, had file a suit after a lapse of three years of the sale.

It was further contended that the contesting defendant was a *bona fide* purchaser of the suit land, for valuable consideration, and as such, the suit deserves to be dismissed.

4. A replication having been filed by the plaintiff, the following issues were framed by the learned Additional Civil Judge (Senior Division),
Jagraon:-

“1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP

2. Whether plaintiff is entitled to decree for permanent injunction as prayed for? OPP

3. Whether plaintiff is entitled to decree for possession as prayed for? OPP

4. Whether plaintiff has no locus standi to file the present suit? OPD

5. Whether suit is not maintainable? OPD

6. Whether defendant no. 1 is a bona fide purchaser for valuable consideration? OPD

7. Relief.”

5. It is noticed in the judgment of the learned Additional Civil Judge, that at the stage of evidence, the plaintiff Saudagar Singh died and his legal heirs, i.e. his sons Gurdial Singh and Narinder Singh (respondents no. 1 and 2) were impleaded as his LRs, with his three daughters having been arrayed as proforma defendants (presently respondents no. 4 to 6).

6. The plaintiff examined one Parminder Singh, who was the attorney of Narinder Singh, attorney of the original plaintiff Saudagar Singh.

He also tendered into evidence four documents, which were Exhibits P-1 to P-4 and one document which was placed on record as Mark-A.

The defendants examined the first defendant (the present appellant) and one Kuljit Singh, Assistant Manager in the Punjab National Bank, who proved the statement of account of defendant no. 2, Sukhjinder Singh. The defendants also tendered by way of evidence the sale deed dated

16.01.2007.

7. After considering the pleadings and arguments and on the appraisal of the evidence, the learned Civil Judge found that though the copy of the power of attorney had been tendered into evidence as Mark-A by PW-1, the veracity thereof was not challenged by the defendants, who also did not produce any other power of attorney by way of evidence, though, as the purchaser of the suit property on the basis of a power of attorney, the present appellant-defendant no. 1 would normally have it in his possession.

On a perusal of the said document, Mark-A, it was found that the power of attorney had been executed by the plaintiff in favour of defendant no. 2 only to conduct and manage all affairs pertaining to the land of the plaintiff at village Govindwal, in terms of the rights conferred him in two paragraphs of the instrument. It was further found that the said paragraphs empowered defendant no. 2 to fix the rent and conditions for lease, accept surrender of leases and to undertake recovery of rent, as also to take legal proceedings in case of non-payment of rent.

Thus, it was found that the purposes for which the instrument had been executed, did not reveal any power to alienate the suit land.

8. As regards the contention of the present appellant-defendant no. 1 that he was a *bona fide* purchaser for consideration, that too was rejected, as it was found that with exercise of due diligence he would have known that the attorney, i.e. defendant no. 2, was not authorized to sell the land. Hence, it was held that he was not a *bona fide* purchaser.

9. The statement of account of defendant no. 2, Ex. D-2, in support of which the official from the bank testified as DW-2, was found to show that a deposit of Rs. 3,00,000/- was made in the account of defendant no. 2 on

17.07.2007, but since the sale deed Ex. D-1 was dated 16.01.2007, i.e. six months prior to the aforesaid deposit, the said document was held not to be proof of payment of consideration by the present appellant to defendant no.2.

10. Holding as above on the main issues, as also on the issue of *locus standi* and maintainability, the suit of the plaintiff was decreed in his favour and the sale deed dated 16.01.2007 was held to be null and void and in operative against the plaintiff, with the present appellant further restrained from alienating the suit land, which he was directed to deliver possession of, to the plaintiff.

11. In the first appeal filed by the present appellant-defendant no. 1, the learned Additional District Judge, Ludhiana, noticed the pleadings before and the issues framed by the lower Court, as also the evidence led by the parties.

Thereafter, that Court went on to reproduce para 2 of the power of attorney tendered in evidence before the learned Civil Judge, which reads as follows:-

“For me and in my name to ask receive and recover from all receivers farmers and tenants and all other occupiers whatsoever of my said land messuages and hereditaments all rents arrears of rent issues profit emoluments and sum of money now due owing and payable or at any time hereafter to become due owing and payable in respect of the same premises in any manner whatsoever and also on non-payment thereof to enter and distrain and the distresses therein found to obtain and keep or to sell and dispose of according to law.”

12. From the aforesaid recital contained in the instrument of power of

attorney, the learned first appellate Court also came to the same conclusion as had the learned Civil Judge, that no power to sell the suit land had been conferred by the plaintiff on defendant no. 2 and as such, the sale deed dated 16.01.2007 was correctly declared to be illegal, null and void by the lower Court.

On the aforesaid findings, the first appeal of the present appellant was dismissed.

13. Before this Court in this 2nd appeal, learned counsel for the appellant has first of all submitted that actually the phrase “on non-payment thereof to enter and distrain and the distresses therein found to obtain and keep or to sell and dispose of according to law”, contained in the power of attorney executed by the late plaintiff, Saudagar Singh, in favour of respondent No.3 – Sukhjinder Singh (defendant No.2), showed that the said Sukhjinder Singh had been empowered to dispose of and sell the property, on the basis of which he entered into an agreement with the appellant and thereafter sold the suit property to him vide the sale deed dated 16.01.2007.

He further submits that the plaintiff never stepped into the witness box to refute the contention of the appellant-defendant in his favour. The plaintiff had, in fact, telephonically spoken with the Sub Registrar and had admitted the fact that he had empowered his attorney, Sukhjinder Singh, to sell the suit property.

14. Having considered the aforesaid arguments, I find myself unable to agree with learned counsel on both counts.

As regards the phrase referred to above, the second part of the said phrase, i.e. the words “to obtain and keep or to sell and dispose of according to law”, are very obviously only the context of the first part of the

long sentence, which is as follows:-

“For me and in my name to ask receive and recover from all receivers farmers and tenants and all other occupiers whatsoever of my said land messuages and hereditaments all rents arrears of rent issues profit emoluments and sum of money now due owing and payable or at any time hereafter to become due owing and payable in respect of the same premises in any manner whatsoever and also on non-payment thereof to enter and distrain and the distresses therein found.....”

Hence, paragraph 2 of the document has been correctly interpreted by the Courts below to hold that the right granted to the attorney is only with regard to the disposal of the “goods” found in the suit property, which could be entered into by the attorney, in case he failed to recover rents, arrears of rent, issues, profit, emoluments and sums of money due and owed and payable by the tenant or other occupiers. The phrase can by no yardstick be interpreted to mean that the attorney could sell or dispose of the suit property.

For clarification, it may be stated that the phrase “distresses therein found” refers to the objects found in the suit property, which would be retained by the attorney, for the purpose of realizing arrears of rent etc. The word “distrain” also refers to holding the seized objects/goods being kept, for the purpose of distraining or selling them.

Hence, the interpretation attempted to be given by learned counsel for the appellant, does not hold good in any manner, to give the phrase any meaning other than that which has been given by the learned courts below, especially the learned first appellate Court.

15. As regards the contention with regard to the admission of the plaintiff, by not stepping into the witness box, that may otherwise have been a valid argument; however, with the copy of the instrument of power of attorney itself not having been refuted by the appellant, the contents thereof obviously could not be refuted by him and in fact, even before this Court, the only contention is that the interpretation given by the courts below to the recital contained in the document, is erroneous, which argument has already been rejected by this Court. Therefore, even the plaintiff not entering the witness box loses meaning, in my opinion, with the document itself, and its contents having been admitted.

16. As regards the contention that the late plaintiff, Saudagar Singh, had admitted to the Sub-Registrar telephonically that he had empowered defendant no. 2, Sukhjinder Singh (respondent no. 3 herein) to sell the suit land, that argument also cannot be accepted, with neither anything shown that such a plea was even taken before the courts below and in any case, no evidence whatsoever having been led to that effect, by examining the Sub-Registrar who allegedly had been spoken to by the late plaintiff.

Consequently, finding no error in the judgments and decrees of the learned courts below, this appeal is dismissed in limine, with no order as to costs.

05.12.2016
sonia/nitin

(Amol Rattan Singh)
Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No