

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

Decided on: 29.02.2016

1. RSA No.5415 of 2015 (O&M)

Basant Raj Bhandari		Appellant
	Versus	
Kiran and another		Respondents

2. RSA No.5418 of 2015 (O&M)

Basant Raj Bhandari		Appellant
	Versus	
Kiran and another		Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant (in both the appeals)

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL J.

This order will dispose of two appeals i.e. RSA Nos. 5415 and 5418 of 2015, as they have emerged out of the judgment and decree dated 27.05.2015 passed by the First Appellate Court, reversing the judgment and decree dated 30.04.2014 passed by the Civil Judge (Junior Division), Sohna. For brevity, the facts are taken from RSA No.5415 of 2015.

Counsel for the appellant would urge that Basant Raj Bhandari (appellant) filed a suit for declaration and permanent

injunction on the premise that he had purchased the suit property from one Rambir in the year 1996 for a sale consideration of Rs.1,00,000/-. The possession was handed-over to the appellant on receipt of money but the sale deed could not be executed as the sale deeds were not being allowed by the registering authority. Rambir executed a general power of attorney in favour of Sh. Bodh Raj Thareja and on the basis of said attorney, Bodh Raj Thareja executed a registered sale deed in favour of the appellant on 05.01.2001. Rambir executed a gift deed dated 15.07.1999 in favour of Smt. Kiran-respondent No.1 whereas he had already sold land to the appellant. Respondent No.1 executed a sale deed dated 18.05.2005 in favour of respondent No.2 in respect of land measuring 6 kanals 12 marlas. It is argued that Rambir had no right to execute the gift deed as he had already agreed to sell the suit land in favour of the appellant, received the entire sale consideration of Rs.1,00,000/-, delivered possession thereof to the appellant and executed a registered general power of attorney in favour of Sh. Bodh Raj Thareja on the basis whereof, a sale deed has been executed in favour of the appellant on 05.01.2001. It is further submitted that gift deed dated 15.07.1999 purported to be executed by Sh. Rambir in favour of Smt. Kiran-respondent No.1 has no adverse effect on the rights of the appellant in the suit property. According to learned counsel, the First Appellate Court committed a gross error rather illegality in setting-aside the well

considered and detailed judgment passed by the trial Court whereby suit filed by the appellant was decreed and that of respondent No.1 claiming ownership to the suit property on the basis of gift deed dated 15.07.1999 has been disallowed. In addition, it is argued that respondent No.1 neither personally appeared in the witness-box nor examined any of the attesting witnesses of the gift deed nor the donors under the gift deed were produced as witnesses.

I have heard counsel for the appellant and perused the records.

Respondent No.1 staked her claim *qua* ownership of the suit land on the basis of gift deed dated 15.07.1999 executed by certain persons including Rambir against whom the appellant is claiming ownership on the basis of an oral agreement executed in the year 1996 whereby Rambir received an amount of Rs.1,00,000/- and delivered possession of the suit property to the appellant. On a pointed query raised by the Court *whether the appellant is competent to challenge the correctness and legality of the gift deed dated 15.07.1999*, counsel is not in a position to substantiate that the appellant being a third party can challenge the validity of the gift deed in the present circumstances. Indisputably, there is no dispute in regard to the gift deed at the instance of donors/executants of the gift deed including Rambir. As the

appellant is a third party *qua* the gift deed in question, he cannot challenge validity of the gift deed propounded by respondent No.1 as challenge to a gift deed can be canvassed only by the donor or those who claim under the donor and not by a third party. In this view of the matter, non-examination of an attesting witness of the gift deed or the donors would neither enure to the benefit of the appellant nor cause prejudice to the rights of respondent No.1.

Much stress has been laid by counsel that Rambir executed a power of attorney in favour of Sh. Bodh Raj Thareja and as the said power of attorney was never cancelled by Sh. Rambir, sale deed executed by Sh. Bodh Raj Thareja on the basis of power of attorney, admitted to be executed by Rambir, the Court below has wrongly rejected claim of the appellant.

Counsel has fairly conceded that plea of the appellant that power of attorney in favour of Sh. Bodh Raj Thareja was irrevocable does not get substantiated from materials on record and the factual findings recorded by the Appellate Court that the power of attorney does not suggest that the GPA was irrevocable cannot be successfully challenged. Sh. Rambir executed a gift deed dated 15.07.1999 in favour of respondent No.1 on the basis whereof mutation was sanctioned in her favour. As has been noticed hereinbefore, the appellant is not competent to lay challenge to the gift deed in favour of respondent No.1. As soon as the gift deed

was executed and accepted by the donee, Rambir ceased to have any right in the suit property. Since Rambir lost title to the suit land and rendered incapacitated/incompetent to alienate the suit property, the attorney of Rambir could not have any better rights than that of the principal to execute a sale deed in favour of the appellant in the year 2001. That being so, contention of the appellant that even after execution of gift deed dated 15.07.1999, Bodh Raj Thareja as an attorney of Sh. Rambir was competent to alienate the suit land or execute a sale deed in favour of the appellant is mis-conceived and merits rejection.

So far as the contention with regard to non-cancellation of the power of attorney, the learned Appellate Court by taking into consideration the provisions of Section 207 of the Indian Contract Act has rightly held that the said power of attorney gets revoked by way of implication as Rambir, executant of the power of attorney ceased to be owner of the suit land. In this view of the matter, I do not find any error much less illegality in the findings recorded by the Appellate Court when otherwise no question of law much less a substantial one arises for adjudication.

For the foregoing reasons, the appeals are dismissed *in limine*. No order as to costs.

29.02.2016
yakub

(REKHA MITTAL)
JUDGE