

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

RSA-4062-2012 (O&M)

Date of Decision:- 24.07.2017

Sukhdev Singh

.....Appellant

Versus

Karnail Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.M. Sharma, Advocate, for the appellant.

Mr. Sharad Aggarwal, Advocate, for respondent No.1.

Mr. S.K. Jain, Advocate with
Mr. Aasheem Jain, Advocate, for respondent No.2.

Mr. Mukand Gupta, Advocate, for respondent No.3.

RITU BAHRI, J. (Oral)

CM-11074-C-2012

Heard.

For the reasons mentioned, therein the application is allowed. Delay of 60 days in re-filing the appeal is condoned.

RSA-4062-2012

Plaintiff-appellant (hereinafter to be referred as 'the appellant') has come up in Regular Second Appeal against the concurrent findings of facts recorded by both the Courts below whereby the suit of the appellant has been dismissed.

Brief facts of the case are that the appellant was claiming to be owner in possession of land measuring 16 bighas situated at village

Jalalpur as mentioned in the head note of the plaint. Defendant No.1 is real brother of the appellant and he is in collusion with scribe and attesting witness got fabricated a deed of general attorney at Ludhiana by forging the signatures of the plaintiff. The said registered deed of general attorney dated 31.08.1998 got registered with Sub-Registrar, Ludhiana. Defendant No.1 on the strength of said bogus deed of general attorney dated 31.08.1998 sold the suit land in favour of defendant Nos.2 and 3 through 2 different sale deeds dated 10.09.1998 and 11.09.1998. The appellant is seeking the above-said two sale deeds are illegal and void and has no effect on the ownership rights of the plaintiff with consequential relief of permanent injunction restraining the defendants from interfering in any manner in the suit land measuring 16 bighas situated in village Jalalpur.

On notice, defendant No.1 filed written statement and denied any collusion with the scribe or attesting witness with regard to general power of attorney dated 31.08.1998. He stated that the same was got prepared and registered by the property dealer Jaswinder Singh Suri Ludhiana with the assistance of defendant Nos.2 and 3. Neither he (defendant No.1) nor the appellant appeared before the Sub-Registrar nor purchased any stamp paper for any general power of attorney nor did Sukhdev Singh give general power of attorney in favour of defendant No.1. He further stated that in the last week of August 1998, he visited the hotel of defendant No.2 on Banur Tepla road on his request. He was given wine and thereafter continuously kept in intoxicated condition for about a month and he was permitted to leave the hotel only in the last

week of September, 1998. Defendant Nos.2 and 3 in connivance with other fraudulently obtained his photograph for affixing the same on the sale deed in respect of suit land for creating general power of attorney. He came to know about alleged sale deed when the FIR was registered against him and others and was arrested.

Separate reply was filed by defendant Nos.2 and 3 and stated that they had become owners in possession of the suit land on the basis of registered sale deeds dated 10.09.1998 and 11.09.1998, executed by defendant No.1 as general power of attorney of the appellant. Defendant No.1 in collusion with scribe and attesting witnesses got fabricated general power of attorney at Ludhiana after forging the signature of the appellant. The appellant is not at all in possession of the suit land and the appellant with his free consent has executed general power of attorney in favour of his real brother, who further sold the suit land to them.

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

- “1. Whether the general power of attorney dated 31.8.1998 allegedly executed by the plaintiff in favour of defendant No.1 is illegal, forged and fabricated as alleged? OPP
2. Whether the sale deeds dated 10.09.1998 and 11.09.1998 executed by defendant No.1 in favour of defendants No.2 and 3 are liable to be set aside.
3. Whether the plaintiff is entitled to permanent injunction by way of consequential relief? OPP
4. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
5. Relief.”

On 18.11.2006, the following additional issues were framed by the learned trial Court: -

“4A Whether the defendants No.2 and 3 are bonafide purchasers in good faith for valuable sale consideration of the suit land? OPD

4B Whether the present suit has been filed by the plaintiff in collusion with defendant No.1 to harass and blackmail defendants No.2 and 3? OPD

4C Whether the suit of the plaintiff is not maintainable in the present form? OPD”

The trial Court after going through the evidence has returned the findings on issues No.1 and 2 against the plaintiff. To prove the alleged general power of attorney dated 31.08.1998 (Ex.P2), the appellant has not examined any other witness to prove his case except he tendered report (Ex.P4) of Director Forensic Sciences Laboratory Punjab, Chandigarh, against the defendants. No one appeared for cross-examination to prove this report and no import can be given to this report Ex.P4. At the same time, the defendants examined Mani Jain, document expert, to prove his report Ex.DW7/A and gave his opinion that power of attorney Ex.P2 bears the signature of Sukhdev Singh. The defendants have examined DW Gurbachan Singh one of the marginal witness of the power of attorney Ex.PW and he is personally known to the appellant and defendants as Sukhdev Singh appellant has relation in his village. There is no doubt regarding the identity of the appellant and defendant No.1 by Gurbachan Singh lambardar. This power of attorney was scribed by S. Dalip Singh, Advocate, Ludhiana and he supported the version of the defendants No.2 and 3 and regarding the genuineness of the power of

attorney Ex.P2. In the present case the plaintiff did not examine any witness to prove the report ExP4 from the office of Director Forensic Science Laboratory Punjab, Chandigarh and this report has rightly given no importance for the purpose of recording the findings on issues No.1 and 2 by the trial Court. At the same time, the defendants examined Mani Jain, document expert, to prove his report Ex.DW7/A and marginal witness DW Gurbachan Singh as the general power of attorney (Ex.P2).

On issue No.2 with regard to sale deeds dated 10.09.1998 and 11.09.1998, executed by defendant No.1 in favour of defendants No.2 and 3, the defendants had examined sale deeds Ex.D1 and D2 and the same were proved by the marginal witnesses namely DWs Nirmal Singh and Swaran Singh . Defendant No.1 Karnail Singh filed written statement but did not bother to appear in the Court to record his statement. No evidence was led to prove that defendant Nos.2 and 3 procured his signatures on blank papers under the influence of liquor. Hence, the trial Court has rightly come to conclusion that the power of attorney dated 31.08.1998 executed by plaintiff in favour of defendant No.1 is valid and genuine document and the sale deed ExD1 and D2 executed by defendant No.1 in favour of defendants No.2 and 3 were also legal and valid document. These two findings on issue Nos.1 and 2 given by the trial Court had been rightly affirmed by the lower appellate Court.

In view of the above-said findings, rest of the issues was decided in favour of the defendants and against the plaintiff.

The judgment of the trial Court has been rightly affirmed by the lower appellate court as defendant No.1 did not choose to put in

appearance to support his version in the written statement that he was under the influence of intoxication when the sale was got executed by defendant Nos.2 and 3. The lower appellate Court has further affirmed the finding keeping in view that due execution of the power of attorney Ex.DW10/A is proved and established by the deposition of Dalip Singh, Advocate (DW11), who is the scribe of the said document and Gurbachan Singh DW5, who is the marginal witness to the documents, executed by defendant No.1 in favour of defendant Nos.2 and 3. Rachhpal Singh DW10, who is working as Registration Clerk in the office of Sub-Registrar, Ludhiana, has proved that the general power of attorney had been duly registered in the office of Sub-Registrar, Ludhiana.

Learned counsel for the respondent(s) has informed the Court that in the criminal trial defendant No.1 has since been acquitted. The registered general power of attorney was a valid document and pursuant to that the sale deeds made in favour of defendant nos.2 and 3 was valid sale deeds and the execution of the sale deeds was duly proved on record by the witnesses. Defendant Nos.2 and 3 have led sufficient evidence to prove sale deeds and general power of attorney.

After hearing the learned counsel for the parties, going through the record, this Court is of the view that in the present case no evidence was led by defendant No.1 on any of the issues. The lower Appellate Court dismissed the appeal along with an application under Order 41 Rule 27 CPC for leading additional evidence to seek the opinion of Dr. Inderjit Singh, Handwriting and Fingerprint Expert etc. The said application has rightly been dismissed as the suit was instituted

in the year 2007 and an application was filed after a lapse of long time on 30.03.2011. Moreover, the handwriting expert report was already on record and it was not a case where the plaintiff was seeking permission to lead additional evidence of a fact which was not in his knowledge despite due diligence. Further, the finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court, as in the present case, the sale deeds had been held to be legal and valid documents.

Accordingly, the concurrent finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed

July 24, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No