

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

RSA No.1678 of 2013 (O&M)

Date of Decision: 01.06.2017

Jasbir Singh

....Appellant

Versus

Karma and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. Kamal Sharma, Advocate
for respondent No.1.

DAYA CHAUDHARY, J.

Appellant-Jasbir Singh, who is one of the legal representatives of defendant-Ram Singh, has filed the present Regular Second Appeal to challenge the impugned judgment and decree dated 31.07.2012 passed by learned District Judge, Panipat, whereby, the judgment and decree dated 11.08.2011 passed by the trial Court has been reversed.

Briefly, the facts of the case, as made out in the appeal, are that respondent No.1 filed a suit for symbolic possession by way of specific performance on the basis of an agreement to sell dated 16.09.2002 regarding the land, in dispute. As per averments made in the plaint, defendants No.2 to 6 appointed defendant No.1 as their power of attorney vide documents dated 06.08.1998, 16.07.1998 and 07.08.2001. They entered into an agreement to sell dated 16.09.2002 with the plaintiff qua to suit land. Said suit was contested by the defendants and a joint written statement was filed by defendants No.2 to 6, including the present

appellant. It was mentioned in the written statement that the plaintiff as well as defendant No.1 were real brothers and the alleged agreement dated 16.09.2002 was a result of fraud played upon the appellant and his other brothers/defendants No.2 to 6. It was also denied that defendants No.2 to 6 had ever obtained any sale consideration as alleged in the agreement to sell dated 16.09.2002. Defendants no.2 to 6 cancelled the General Power of Attorney executed in favour of defendant No.1 on 27.05.2003. Said agreement dated 16.09.2002 was fabricated by two brothers in collusion with each other. Suit filed by respondent No.1/plaintiff was decreed vide judgment/decreed dated 11.08.2011.

Aggrieved by said judgment of trial Court, respondent No.1 filed an appeal before the learned District Judge, Panipat, which was allowed vide judgment and decree dated 31.07.2012.

Said judgment and decree passed by the lower Appellate Court has been challenged in the present Regular Second Appeal.

Learned counsel for the appellant submits that the lower Appellate Court has wrongly held that the agreement to sell was proved on record. As per case of the plaintiff, the agreement to sell was entered in the register of deed-writer and the evidence of deed-writer, who had written the agreement along with the record register was required to be produced and proved. Learned counsel also submits that the second witness to the agreement to sell was not produced as witness by the plaintiff to prove the agreement to sell. There are material contradictions and variations regarding payment of the sale consideration in the statements of PW-1 and PW-2. As per statement of PW1, an amount of ₹ 2 lacs was paid to Satpal on the date of execution of the agreement, whereas, an amount of ₹ 4 lacs was paid to

Ajva and others prior to the execution of the agreement. Learned counsel also submits that PW-1 has further stated that ₹ 4 lacs was withdrawn from the bank, whereas, ₹ 2 lacs was obtained from the commission agent after the sale of tractor. There were no such pleadings in the plaint. Learned counsel also submits that there is no evidence regarding the withdrawal of money from the bank or borrowing the same from the commission agent. Even the amount, which was paid, has not been proved on record. PW-2 has stated in his statement that the entire amount was paid to Satpal, which shows that there was a total contradiction regarding making payment of sale consideration. Learned counsel also submits that the lower Appellate Court has failed to take into consideration that Karma and Satpal are both real brothers and Satpal after obtaining General Power of Attorney from defendants No.2 to 6 had played a fraud upon them in collusion with his brother Karma by forging the alleged agreement to sell. Said Satpal failed to appear before the trial Court. Neither any written statement was filed by him on his behalf nor he appeared as a witness. The alleged agreement to sell dated 16.09.2002 was required to be registered and it was not adequately stamped. Accordingly, it could not have been read into evidence in view of provisions of Section 35 of the Indian Stamp Act, 1885. Learned counsel further submits that the suit filed by the plaintiff could not have been decreed on the basis of aforesaid agreement, which was not registered and the same was not admissible in evidence. At the end, learned counsel for the appellant submits that the judgment and decree passed by the first lower Appellate Court is not based on proper appreciation of evidence and as such, the findings recorded by the lower Appellate Court are illegal, perverse and contrary to the evidence available on record.

Learned counsel for respondent No.1 submits that the judgment of lower Appellate Court is well reasoned and is based on proper appreciation of evidence. The possession of the land, in dispute, was delivered to the plaintiff at the time of agreement to sell. The suit for specific performance of unregistered agreement to sell is maintainable. The execution of the agreement to sell Ex.P2 was proved on record from the statements of the plaintiff as well as PW2 Birampal Singh, Nambardar, who was the attesting witness. It has been proved on record that the agreement was executed on 16.09.2002 and not after cancellation of the power of attorney on 27.05.2003. At the end, learned counsel for respondent No.1 submits that execution of the agreement to sell Ex.P2 was proved on record executed by defendant No.1 being General Power of Attorney of defendants No.2 to 6 and as such, the defendants were under legal obligation to specifically perform the same.

Heard the arguments of learned counsel for the parties and have also perused the judgment and decree passed by both the Courts below.

Facts relating to filing of suit by plaintiff-Karma seeking decree for symbolic possession by way of specific performance of agreement to sell dated 16.09.2002 regarding share of defendants No.2 to 6 in the agricultural land are not disputed. The following issues were framed by the trial Court :-

- “1. Whether the plaintiff is entitled to specific performance of agreement to sell dated 16.9.2002 as alleged in the plaint if so to what effect? OPP*
- 2. Whether the present suit is not maintainable? OPD*
- 3. Relief.”*

The findings recorded by the trial Court are reproduced as under :-

“19. In the present case, the agreement to sell is dated 16.9.2002 and as per plaintiff possession has been delivered vide this agreement. He has even sought the decree for symbolic possession and not actual possession. The Stamp Act mandates such instruments chargeable with duty so as to make it admissible in evidence. Though there is no prohibition under Section 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose, but such document so tendered should be duly stamped or should comply with the requirement of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act. Plaintiff has alleged about the payment of entire sale consideration and delivery of possession at the time of execution of agreement to sale but as the agreement alleged to be executed in favour of plaintiff is unregistered document, Section 35 prohibits receiving such a document in evidence. Mere marking of the agreement of sale as exhibit does not make it admissible in evidence.”

Said judgment and decree passed by the trial Court was challenged by the plaintiff before the Lower Appellate Court and the appeal was allowed. The findings of the trial Court on Issues no.1 and 2 were set aside and accordingly, the judgment and decree passed by the trial Court was also set aside. The findings recorded by the first Lower Appellate Court are reproduced as under :-

“14. Admittedly, Satpal, defendant No.1 was

appointed as general power attorney by the defendants vide general powers of attorney Ex.P3 to Ex.P5. The agreement to sell Ex. P2 was executed by defendant No.1 being general power of attorney holder of defendants no.2 to 6. However, the stand of the defendants is that they got the aforesaid general power of attorney cancelled on 27.5.2003 and the agreement to sell was executed by defendant no.1, the real brother of the plaintiff, after cancellation of the powers of attorney. The execution of the agreement to sell Ex.P2 stands proved from the statements of the plaintiff as well as PW2 Birampal Singh, Nambardar attesting witness thereof. Defendants no.2 to 6 have not been able to lead any cogent evidence to substantiate their plea that the agreement to sell was executed after cancellation of the powers of attorney in favour of defendant no.1, Agreement Ex.P2 shows that the stamp for execution of the same was purchased on 16.9.2002 by Satpal. This fact indicates that the agreement was executed on 16.09.2002 and not after cancellation of the powers of attorney on 27.05.2003. Therefore, there is no reason to disbelieve the evidence of the plaintiff regarding execution of the agreement to sell Ex.P2 by defendant no.1 on 16.09.2002 being general attorney of defendants no.2 to 6. Thus, the execution of the agreement to sell dated 16.09.2002 Ex.P2 by defendant no.1 being general power of attorney holder of defendants no.2 to 6 is well proved and as such, the defendants are under legal obligation to specifically perform the same.”

Jasbir Singh, who is one of the legal representatives of Ram Singh, has filed the present Regular Second Appeal to challenge the judgment of lower Appellate Court.

On perusal of findings recorded by lower Appellate Court as well as after hearing the arguments of learned counsel for the parties, it has been proved on record that Satpal, defendant No.1 was appointed as

General Power of Attorney by the defendants vide General Powers of Attorney Ex. P3 to Ex. P5. The agreement to sell Ex.P2 was executed by defendant No.1 being General Power of Attorney holder of defendants No.2 to 6. Said agreement to sell was executed by defendant No.1 and the same has been proved from the statement of plaintiff as well as PW2 Birampal Singh, Nambardar, who was attesting witness of the agreement to sell. It was not proved on record that agreement to sell was executed after cancellation of power of attorney in favour of defendant No.1. Agreement Ex.P2 reflects that the stamp for execution of the same was purchased on 16.09.2002 by Satpal and the agreement to sell was executed on 16.09.2002 and not after cancellation of the powers of attorney on 27.05.2003. From the statements of the witnesses, the execution of the agreement to sell dated 16.09.2002 Ex.P2 by defendant No.1 being general power of attorney holder of defendants No.2 to 6 has been proved on record and as such, the defendants were under legal obligation to perform their part. The lower Appellate Court, by giving a specific finding, has set aside the findings of the trial Court and the appeal was allowed. By allowing the appeal, the suit of the plaintiff for specific performance of the agreement to sell dated 16.09.2002 was decreed with costs and the defendants were directed to execute the sale deed in terms of agreement to sell Ex.P2.

The findings recorded by the lower Appellate Court have been supported by ratio of judgment of Hon'ble the Apex Court in case ***S. Kaladevi vs V.R. Somasundaram and others 2010(3) JT 610*** as well as judgments of this Court in cases titled as ***Ram Kishan and another vs Bijender Mann alias Vijender Mann and others 2013(1) PLR 195*** and ***Haroon vs Kaley Khan 2016(2) RCR (Civil) 626, Mohinder Singh vs***

Jasvir Singh 2013(2) RCR (Civil) 780, wherein, it has been held that a suit for specific performance based on unregistered document cannot be dismissed for want of registration of the agreement to sell or it is barred under Section 17(1-A) of the Registration Act, 1908.

It has been held in said judgments that under Section 49 of the Registration Act, 1908, an un-registered sale deed could not be read in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. In Ram Kishan's case (supra), the Division Bench of this Court has held that a suit for specific performance based upon an unregistered agreement to sell which contained a clause regarding part performance of the contract by delivery of possession shall not be dismissed for want of registration of the contract/agreement to sell or it is barred under Section 17(1A) of the Registration Act.

In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the appellant and the appeal filed by the appellant, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

01.06.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes