

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

RSA No.3942 of 2013 (O & M)
Date of decision :18.08.2017

Naresh Kumar

...Appellant

Versus

Pritam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Saini, Advocate
for the appellant.

Mr. Vineet Sehgal, Advocate
for respondent Nos.1 to 3.

ANIL KSHETARPAL, J.

Plaintiff is in Regular Second Appeal against the judgment passed by learned First Appellate Court.

Plaintiff filed a suit for specific performance of agreement to sale dated 12.03.1998. It was pleaded that the entire sale consideration i.e. Rs.1,50,000/- was paid. No target date was fixed for execution and registration of the sale deed. 10 biswas plot was agreed to be sold. Defendant also executed and got registered a General Power of Attorney empowering the plaintiff with the powers of lease, mortgage, sale, exchange etc. and also executed a Will in favour of plaintiff.

Defendant No.1, who was the owner, contested the suit on the ground that the power of attorney executed in favour of the plaintiff, has been cancelled. Execution of the agreement to sell and Will were denied.

Defendant No.1 further asserted that he has executed a sale deed in favour

of defendant Nos.2 and 3 after cancellation of GPA (General Power of Attorney). Defendant Nos.2 and 3 filed a separate written statement. They further filed a counter claim to the effect that after getting the possession of the suit property have constructed a tin shed, room and boundary wall.

Learned trial court after appreciating the evidence available on the file, decreed the suit after holding that the agreement to sell and the payment of sale consideration is proved. The sale deed in favour of defendant Nos.2 and 3 was held to be illegal, null, void and not binding upon the rights of the plaintiff.

Defendant No.1 filed the first appeal. Learned First Appellate Court has set aside the judgment and decree of the trial court by assigning following reasons:-

(1) As per contents of the agreement to sell, defendant No.1 had handed over the original sale deed to plaintiff on 12.03.1998, however, the aforesaid sale deed has been produced by defendant No.1.

(2) Plaintiff has not produced and proved the bank statement of account to show payment of entire sale consideration.

(3) It appears that under the garb of General Power of Attorney, the signatures of defendant No.1 were taken on blank papers and thereafter agreement to sell and Will was drafted on these blank papers.

(4) Defendant Nos.2 and 3 are bona fide purchasers.

has been challenged by the appellant in this Regular Second Appeal. The substantial questions of law which arise in the present case are as under:-

(i) Whether a written agreement to sell duly signed by the parties can be doubted by the Court on small aberration in the oral evidence?

(ii) Whether the First Appellate Court has failed to appreciate the evidence in the proper perspective?

(iii) Whether in absence of pleadings that defendant Nos.2 and 3 are bona fide purchasers, the court can return a finding particularly when neither any issue has been framed nor evidence has been in led?

Learned counsel for the appellant has submitted that the agreement to sell is proved on the file as attesting witness has been examined. He has further submitted that plaintiff not only executed an agreement to sell but also executed a General Power of Attorney, Ex.PA on the file, which is duly registered with the Sub Registrar empowering the plaintiff with all the rights which a owner has with respect to 10 biswas land subject matter of agreement to sell. The aforesaid power of attorney is an admitted document bearing photograph of defendant No.1 as well as plaintiff.

Learned counsel for the appellant has further submitted that defendant No.1 also executed a Will in favour of the plaintiff with respect to land in dispute i.e. 10 biswas plot. Therefore, the findings of the court are based upon conjectures and surmises.

On the other hand, learned counsel for the respondent has

submitted that Will is not registered, although it is admitted position on the

record that on the same day General Power of Attorney executed and registered. He has further submitted that as per agreement to sell original sale deed should be in possession of the plaintiff but it has been produced by defendant No.1. He has further submitted that the plaintiff and defendant No.1 were working in the same factory and, therefore, defendant gave General Power of Attorney in favour of plaintiff. He further submitted that only withdrawal of Rs.80,000/- from the bank has been proved by the plaintiff.

Questions No.(i) and (ii):-

(i) Whether the written agreement to sell signed by the parties can be ignored by the Court on small aberration in the oral evidence?

(ii) Whether the First Appellate Court has failed to appreciate the evidence in the proper perspective?

In my considered opinion, the judgment passed by the learned First Appellate Court is liable to be set aside. As per agreement to sell, the sale deed was handed over to the plaintiff, but the same has been produced by the defendants in evidence. It would not make the agreement to sell in writing duly signed by the parties doubtful. The agreement to sell is in writing duly signed by the parties, attested by two attesting witnesses. The defendant has not produced any evidence to prove that agreement to sell is result of fraud. The court has overlooked the fact that on 12.03.1998 i.e. the date of execution of agreement to sell, defendant No.1 appointed the plaintiff as his General Power of Attorney, which is a registered document. It is also signed by the parties, photographs affixed. Apart there from,

respect to the same land in dispute. Therefore, in the presence of the overwhelming evidence, it will not be correct to doubt the correctness and genuineness of the agreement to sell. The findings of the learned First Appellate Court are on based up conjectures, which must be set aside.

Learned First Appellate Court has further held that the agreement to sell is suspicious as the plaintiff has failed to prove the withdrawal of the amount from the bank. Plaintiff when appeared in the witness-box stated that he had withdrawn Rs.80,000/- from the account of his father in UCO Bank, HMT and remaining amount was borrowed by him from his nephew.

In these circumstances, it cannot be said that plaintiff has failed to prove the availability of funds with him on the day of agreement to sell was executed.

Learned court has further held that it appears while executing General Power of Attorney, signatures of defendant No.1 might had been taken on blank papers. The signatures of defendant No.1 are in English. The signatures of defendant No.1 are on both the pages of the agreement to sell. Defendant No.1 has failed to prove that his signatures were taken on the blank papers, therefore, the finding of the learned First Appellate Court is based upon presumptions and assumptions.

Question No.(iii):-

Whether in absence of pleadings that defendant Nos.2 and 3 are bona fide purchasers, the court can return a finding particularly when neither any issue has been framed nor evidence has been in led?

defendant Nos.2 and 3 or even a prayer to set aside the finding that defendant Nos.2 and 3 are bona fide purchasers, set aside the finding in this respect. Learned First Appellate Court was not justified in reversing the finding without their being any challenge to the aforesaid finding on the part of defendant Nos.2 and 3 even as respondents.

Further, defendant Nos.2 and 3 have neither pleaded that they are bona fide purchasers nor they have led any evidence in this regard. Since there was no pleadings, therefore, no issue was framed by the trial Court on this aspect. Plaintiff was not required to lead negative evidence to prove that defendant Nos.2 and 3 were in knowledge of the agreement to sell. Learned First Appellate Court wrongly put the onus on the plaintiff to prove that defendant Nos.2 and 3 had knowledge of the agreement to sell.

Conclusion:-

Once a written contract is proved to be entered into between the parties with free will and volition, the courts should be very slow to doubt genuineness of such a contract. The small contradiction in the statements of the witnesses in oral evidence should not give occasion to the Court to doubt the genuineness of the written contract duly signed by the parties. Of course, in case of a Will, the propounder is bound to dispel all suspicious circumstances, however, such principle does not extend with same vigour to the other written contracts.

In view of the discussion made above, the questions of law as framed are answered in favour of the appellant. It is held that the Court should be very slow in ignoring the written contract executed and duly signed by the parties on small contradictions in the oral evidence. It is

the evidence in the proper perspective.

In view of the above, this Regular Second Appeal is allowed and the judgment and decree passed by the learned First Appellate Court dated 04.09.2013 is set aside and the judgment and decree of the trial court is restored.

18.08.2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : Yes