

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2638 of 2016
Date of decision: 11.01.2017

Pawan Kumar

... Appellant

Vs.

Swadesh Sapra @ Sudesh Sapra and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arjun Sharma, Advocate for
Mr. A.R. Takkar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendant No.5 is in appeal against the judgment of reversal, whereby suit for mandatory injunction filed by respondents No.1 to 5 was decreed by the learned First Appellate Court vide impugned judgment and decree dated 05.12.2015.

Brief facts of the case, as noticed by learned First Appellate Court in para 2 of its impugned judgment, are that the plaintiffs are the only legal heirs of Dr. Raj Kumar Sapra since deceased. Defendants No.1 and 2 advertised industrial plots in Industrial Estate Phase-II, Yamuna Nagar in the year 1978. Dr. Raj Kumar Sapra applied for the allotment of a plot and also deposited Rs.5,000/- by way of bank draft No.0043 dated 30.09.1978 being 20% initial money for allotment of the same. Defendants No.1 and 2 allotted plot No.40 to Dr. Raj Kumar Sapra vide letter dated 01.12.1978. Dr. Raj Kumar Sapra has deposited full and final payment of the plot and then he became absolute owner of the same. Thereafter, Dr. Raj Kumar Sapra had fallen ill and he could not

complete the project within the stipulated period. The plot was resumed but on the application of Dr. Raj Kumar Sapra, it was restored to him vide letter dated 15.01.1992 on the same terms and conditions. Dr. Raj Kumar Sapra was not keeping good health due to which he was unable to look after the plot and to start the project. He appointed defendant No.3 as his attorney vide General Power of Attorney dated 09.03.1992. Dr. Raj Kumar Sapra expired on 17.09.1993 leaving behind the plaintiffs as his sole legal heirs to succeed to his estate. They have become absolute owners in equal shares of movable and immovable properties left by Dr. Raj Kumar Sapra. They informed defendants No.1 and 2 regarding death of Dr. Raj Kumar Sapra and requested to transfer the plot in their names but in vain. On 05.11.1997, the plaintiffs again wrote a letter to defendant No.1 to transfer the plot in their names, but to no avail. The plaintiffs got served a legal notice upon defendants No.1 and 2 but they did not take any action. Plaintiff No.1 then contacted the office of defendant No.1 where she was informed that the case for transfer of plot is under consideration and when the competent authority would pass any order, they would be informed accordingly within short time. On 20.11.2012, plaintiff No.1 again visited the office of defendant No.1 and she was informed that one Pawan Kumar had applied for allotment of the plot in his favour on the ground that defendant No.3 had written to the office of defendant No.1 for re-allotment. She was also informed about the execution of General Power of Attorney by Dr. Raj Kumar Sapra in favour of defendant No.3. Plaintiff No.1 came to know that defendant No.3 on the basis of General Power of Attorney dated 09.03.1992 had entered into an agreement to sell the portion of plot No.40 for a total sum of Rs.90,000/- with defendant No.4 on 21.03.1992 and had received earnest money of Rs.20,000/- from defendant No.4 in cash and Rs.50,000/- through

cheque dated 21.03.1992. The date for registration of sale deed was fixed for 21.09.1992. After the death of Dr. Raj Kumar Sapra, power of attorney dated 09.03.1992 stands automatically revoked and cancelled. The legal representative of Dr. Raj Kumar Sapra never authorised the attorney holder to continue as such at any point of time and as such defendant No.3 has no right to alienate or transfer the plot in dispute. The plaintiffs have legal right to get the said plot transferred in their names from defendants No.1 and 2. The plaintiffs requested defendants No.1 and 2 to transfer the plot in question in their names but in vain and as such, necessity arose to file the present suit.

Having been put to notice, defendants appeared and filed their written statement. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs being the legal heirs of Dr. R.K. Sapra are entitled to mandatory injunction directing the defendants No.1 and 2 to transfer the plot No.40 in their favour as prayed for.
2. If issue No.1 is proved, whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the plaintiffs are stopped from filing the present suit by their own act and conduct? OPD
6. Whether the present suit is false and frivolous and is liable to be dismissed as such? OPD
7. Relief

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs failed to prove their case and accordingly their suit was dismissed vide judgment and decree dated 13.09.2011. Feeling aggrieved, plaintiffs filed their first appeal, which was allowed by the learned First Appellate Court vide impugned judgment and decree dated 05.12.2015. Hence this Regular Second Appeal at the hands of defendant No.5 only.

Heard learned counsel for the appellant.

It is not in dispute that allottee of the plot in question was Dr. Raj Kumar Sapra. Allotment was made by defendant No.1, respondent No.6 herein-Haryana State Industrial Development Corporation (for short 'HSIDC'). Since Dr. Raj Kumar Sapra-original allottee was not comfortable in managing the affairs of the plot allotted to him by HSIDC, he suffered a power of attorney in favour of one Jai Parkash Madan-respondent No.8. However, before the alienation of the plot in question by respondent No.8, on the strength of power of attorney, Dr. Raj Kumar Sapra died.

After the death of the original allottee-Dr. Raj Kumar Sapra, his General Power of Attorney dated 09.03.1992 would automatically come to an end losing its significance. It is also not in dispute that till the death of original allottee-Dr. Raj Kumar Sapra, plot No.40 measuring 1200 square yards had not been transferred in favour of anybody else, even in spite of a formal request made by Dr. Raj Kumar Sapra in that behalf.

The natural consequence of the death of original allottee would be that his legal representatives would be entitled to succeed qua the plot in

question. Having said that, this Court feels no hesitation to conclude that learned First Appellate Court was well within its jurisdiction to set aside the judgment and decree passed by learned trial Court and the suit of plaintiffs was rightly decreed, thus, the impugned judgment and decree passed by learned First Appellate Court deserve to be upheld.

Before arriving at just conclusion, learned First Appellant Court recorded its own and cogent findings dealing with each and every relevant aspect of the matter. The relevant observations made by learned First Appellant Court in paras No.22 and 23 of the impugned judgment, which deserve to be noticed herein, read as under: -

“Resultantly, it is hereby observed that after death of Dr. Raj Kumar Sapra, plot No.40, Industrial Estate, Yamuna Nagar was not validly transferred in favour of Jai Parkash Madan. The plaintiffs are the legal heirs of Dr. Raj Kumar Sapra. Smt. Swadesh Sapra, appellant/plaintiff No.1 is the widow of Dr. Raj Kumar Sapra. Appellants/plaintiffs No.2, 3 and 4 are daughters and son of Dr. Raj Kumar Sapra and appellant/plaintiff No.5 Smt. Vidya was mother of Dr. Raj Kumar Sapra, who has since died. The learned trial Court has wrongly observed that plaintiffs are not legal heirs of Dr. Raj Kumar Sapra.

Since plaintiffs are legal heirs of Dr. Raj Kumar Sapra and Dr. Raj Kumar Sapra had not validly transferred the plot in favour of Jai Parkash Madan, said Jai Parkash Madan was not competent to transfer the plot measuring 800 sq. yards out of total 1200 sq. yards of plot No.40, Industrial Estate, Yamuna Nagar in favour of Jodha Mal vide agreement to sell dated 21.03.1992 and

the plaintiffs are entitled to the mandatory injunction directing the defendants No.1 and 2 to transfer plot No.40, Industrial Estate, Phase-II, Yamuna Nagar in their favour, they are also entitled for permanent injunction restraining the defendants from alienating the said plot and the appellant/defendant No.4 is not entitled to a decree of declaration to the effect that he is owner in possession of 800 sq. yards of land out of plot No.40, Industrial Estate, Phase-II, Yamuna Nagar on the basis of agreement to sell dated 21.03.1992. Hence the findings of learned trial Court on issues No.1 and 2 are hereby reversed and issues No.1 and 2 are decided in favour of the plaintiffs and against the defendants, while findings of learned trial Court on issue No.2A are reiterated.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in any of the findings recorded by learned First Appellate Court. When the plot in question had not been validly transferred in favour of Jai Parkash Madan, he would not be competent to transfer the said plot any further in favour of anybody. Once the plaintiffs have succeeded after the death of original allottee-Dr. Raj Kumar Sapra, the plaintiffs were the absolute owners of the plot in question and only they would be competent and entitled to alienate the suit property in the manner they like.

In case anybody had purchased the plot in question from Jai Parkash Madan, who was not competent to sell the same, the purchaser would be doing so at his own risk. The law will take its own course. That is what has been rightly held by learned First Appellate Court. Under these circumstances, it can be safely concluded that learned First Appellate Court committed no error

of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

The impugned judgment and decree passed by learned First Appellate Court has not been found suffering from any patent illegality or perversity. No prejudice of any kind whatsoever has been shown, which might have been caused to the appellant by passing the impugned judgment and decree, warranting interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In fact, no substantial question of law has been found involved in the present appeal, which is sine qua non for exercising its appellate jurisdiction by this Court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality or perversity has been found in the impugned judgment and decree passed by learned First Appellate Court, the same deserves to be upheld. The Regular Second Appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.01.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No