

105

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

**RSA No. 3853 of 2016 (O&M)
Decided on: 28.07.2017**

Gurminder Singh**.....Appellant****versus****Nirmal Singh****.....Respondent****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. P.K. Kukreja, Advocate,
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the seller-defendant against the concurrent findings recorded against him regarding the agreement to sell and he has been directed to execute the sale deed by granting specific performance to the purchaser-plaintiff.

As per the facts mentioned in the appeal, the agreement to sell was entered into on 26.10.2004 by Sh. Ranjit Singh as power of attorney of the present appellant-Gurminder Singh with the respondent for selling 11½ biswa 2 biswansi out of the land measuring 16 kanals situated in Malerkotla. This agreement was entered into by Ranjit Singh on the basis of the power of attorney executed by the appellant on 05.05.2004. The date of execution of the sale deed was fixed as 28.02.2005. However, the said attorney of the appellant did not turn up to the sale deed, therefore, the present suit was filed by the respondent.

Finding the agreement to be valid, the trial Court decreed the suit. The lower Appellate Court also upheld the findings of the Trial Court and dismissed the appeal filed by the present appellant.

Learned counsel for the appellant submits that the agreement to sell is not valid because Ranjit Singh was not authorized to enter into the agreement to sell because the power of attorney in his favour was not embossed.

Second contention of the learned counsel for the appellant is that the land regarding which the agreement to sell was entered into was not the same land for which the power of attorney was executed. Learned counsel further submits that in fact, power of attorney to sell was executed regarding the residential house and not for the agricultural land. Still other argument of learned counsel for the appellant is that the transaction is in violation of the The Foreign Exchange Regulation Act, 1973 (*for brevity 'FERA Act'*) and, therefore, is void.

Next argument of the learned counsel for the appellant is that the plaintiff has prayed for alternate relief also and, therefore, instead of granting decree of specific performance, the decree of return of money should have been passed. Still further he contended that the agreement is not proved on record because the stamp vendor has not been examined. Otherwise also, as per the learned counsel for the appellant, the land could not have been sold because it has not been partitioned so far.

The arguments raised by the learned counsel for the appellant has been appreciated and the findings recorded by the the learned lower Courts below have been perused. The submission of the learned counsel that Ranjit Singh was not competent to sell the land as the power of attorney was not embossed in his favour deserves to be noticed and rejected for the simple reason that the appellant has never denied the execution of the power of attorney as such. He is only trying to interpret it in a different manner.

Therefore, so far as the third party is concerned qua him it is valid authorization. Moreover, this plea has not been raised anywhere in the pleadings before the learned Courts below by the appellant and therefore, the same cannot be raised and considered in the regular second appeal.

The other contention of the learned counsel for the appellant that the land shown in the agreement to sell is not the same land for which the power of attorney was executed, is also not worth acceptance. A perusal of the power of attorney shows that the executant of power of attorney i.e. the appellant has specifically said that he is the owner of agricultural land measuring 2 ½ acres situated at Malerkotla and by this power of attorney, he authorized Ranjit Singh to sell the 'above said' land as mentioned in the power of attorney. Ranjit Singh has sold the land at Malerkotla only and, therefore, the appellant cannot say that the land mentioned in the sale deed is not the land mentioned in power of attorney. It deserves to be mentioned here that there is no khasra number mentioned in the power of attorney and there is no pleadings on the part of the appellant that he owns any other agricultural land in Malerkotla for which the power of attorney was executed.

Learned counsel for the appellant further raised contention regarding the violation of FERA Act which is not tenable for the simple reason that it should have been pleaded or proved before the Courts below. A perusal of Section 31 of the FERA Act shows that it involves question of facts to become operational. The appellant was required to plead and prove ingredients mentioned in Section 31 of the FERA Act to plead and take advantage of this Section. However, his pleadings and arguments before both the Courts below are bereft of any such pleadings or the proof on the

point. So far as the plea of the appellant regarding the alternate relief is concerned, it is well settled law that it is the discretion of the trial Court to consider what relief is to be granted, provided the same is within the four walls of law under which it is authorized to pass the order. Considering the entire facts and circumstances, the Court has granted the relief of specific performance and learned counsel for the appellant has failed to point out as to how the exercise of discretion by the trial Court is bad.

The next submission of the learned counsel for the appellant is that stamp vendor has not been examined and therefore, the agreement is not proved. This argument has to be summarily rejected for the simple reason that no law requires that the stamp vendor has to be examined to prove the agreement to sell. It has come on record that the attesting witnesses have been duly examined to prove the agreement to sell and hence, the Courts below have rightly held the agreement to sell to be proven.

Next submission of the learned counsel is that the land would not have been sold because the land was not partitioned, is not sustainable in law. Even if the land is not partitioned, the co-sharer is entitled to sell his share in land. Therefore, merely land has not been partitioned is no ground to set aside the agreement to sell, which otherwise stands duly proved as per the record.

Another submission of the learned counsel for the appellant is that the fact that the land mentioned in the power of attorney is different than the land mentioned in the agreement is shown by the fact that the land mentioned in the power of the attorney is 2½ acres and the sale deed pertains to 16 kanals. This argument is totally irrelevant for the purpose of

present case for the simple reason that it is not the case of the appellant that the land more than what was authorised to be sold in the power of attorney has been sold by the holder of the power of the attorney. Hence, this argument also deserves to be rejected. The same is also rejected.

No other argument was raised by the learned counsel for the appellant.

In view of the above findings, there is no infirmity in the findings recorded by the Courts' below. Hence, this appeal is dismissed.

28th July, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No