

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3961 of 2016 (O&M)

Date of Decision: 22.09.2017

Col RCS Mann

... Appellant

Versus

Smt. Pushpinder Kaur & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. HPS Sandhu, Advocate
for the Appellant.

Mr. S.P. Arora, Advocate and
Ms. Neha Sharma, Advocate
for respondents No.1 and 2.

Mr. Ishrat Phulka, Advocate
for respondent No.7 – PUDA.

ANIL KSHETARPAL, J.

This judgment shall dispose of RSA Nos.3961 of 2016, 4180
of 2016 and 5261 of 2016 as the property in dispute is common.

Facts:

The dispute is with regard to Plot No.1264, Phase IX, Mohali.
This plot was allotted to late Shri S.N. Kohli. He entered into an agreement
to sell with Mrs. Narinder Mann (plaintiff in Civil Suit No. 117/24/8/2007).
Complete sale consideration was received by late Shri S.N. Kohli and he
executed three documents (i) agreement to sell dated 27.09.1988, (ii) Will of
the same date and (iii) the General Power of Attorney in favour of the
husband of Mrs. Narinder Mann i.e. Col. RCS Mann. In the General Power

of Attorney, Col. RCS Mann was given power to deal with the property in any manner including the execution of the sale deed. In other words, late Shri S.N. Kohli gave all powers to Col. RCS Mann to deal with the property in any manner whatsoever.

Col. RCS Mann on the basis of the General Power of Attorney in his favour dated 27.09.1988 entered into an agreement to sell with Col. Balwinder Singh (plaintiff in Civil Suit No.RT – 185/10/3/97). Out of the total sale consideration of Rs.16,25,000/-, Rs.2,00,000/- was paid as earnest money. As per the agreement to sell, the date for execution and registration of the sale deed was fixed as 25.11.1996 on payment of balance sale consideration. It is the case of Col. Balwinder Singh that on the request of Col. RCS Mann, another sum of Rs.2,00,000/- was sent to him through cheque, however, in the meantime, Col. RCS Mann became dishonest and refused to receive the amount. On 28.10.1996, Col. RCS Mann sent a notice to Col. Balwinder Singh along with a cheque of Rs.2,00,000/- calling upon him to take back the earnest money paid. However, the plaintiff did not agree and returned the cheque. He sent a reply. Col. Balwinder Singh filed a suit for permanent injunction restraining the defendants from alienating the property. Since 25.11.1996 was declared a holiday, therefore, Col. Balwinder Singh informed Col. RCS Mann to come to the office of the Sub Registrar along with requisite No Objection Certificate and Income-tax Clearance Certificate on the next day i.e. on 26.11.1996. Col. Balwinder Singh waited along with the sale consideration, however, Col. RCS Mann did not come present to complete the sale/execute required documents.

On 28.11.1996, Col. Balwinder Singh sent a notice calling

upon the defendant to honour the agreement to sell and execute the sale deed.

On 20.01.1997, Col. RCS Mann filed a written statement in a suit for permanent injunction specifically asserting that he has no intention to get the sale deed executed. The suit was withdrawn to avail the remedy of specific performance of agreement to sell.

Col. Balwinder Singh filed a civil suit for specific performance of the agreement to sell on 10.03.1997. The plaintiff – Col. Balwinder Singh impleaded Col. RCS Mann as defendant No.1, General Power of Attorney holder of late Shri S.N. Kohli, the owner in the records i.e. Shri S.N. Kohli was impleaded as defendant No.2 and the Punjab Urban Development Authority was impleaded as defendant No.3.

Col. RCS Mann filed a written statement admitting that he is a General Power of Attorney holder of defendant No.2. He also admitted that the agreement to sell was executed and Rs.2,00,000/- was received as earnest money. However, Col. RCS Mann asserted that the earnest money of Rs.4,00,000/- was payable but the same has not been paid. It was admitted by Col. RCS Mann that he did not visit the office of the Sub Registrar as the plaintiff violated the term of the agreement on account of non-payment of Rs.4,00,000/- as earnest money.

During the pendency of the suit, it came to the notice of the Court that Shri S.N. Kohli had died before the filing of the suit i.e. on 21.01.1997. His widow filed an application for being brought on record as legal heir, which was allowed. However, she did not choose to contest the suit.

Learned trial Court after appreciating the evidence available on the file and after noticing that the execution of agreement to sell is admitted on receipt of Rs.2,00,000/- as earnest money, decreed the suit filed by the plaintiff – Col. Balwinder Singh. The trial Court examined the agreement to sell dated 8.10.1996 and found that as per the agreement, only Rs.2,00,000/- was payable as earnest money, which has been duly paid. However, the learned trial Court while decreeing the suit committed a mistake by directing defendant No.1 i.e. Col. RCS Mann to execute the sale deed, although, the General Power of Attorney in his favour executed by late Shri S.N. Kohli had come to an end on his death.

Col. RCS Mann filed an appeal, whereas the plaintiff – Col. Balwinder Singh filed an application for correction. Unfortunately the application for correction was dismissed forcing Col. Balwinder Singh to file a civil revision before this Court i.e. CR No.6367 of 2011, which was allowed.

Col. RCS Mann withdrew the appeal filed against the judgement and decree passed by the trial Court on 31.05.2007. However, after the correction was allowed in the judgement and decree dated 31.05.2007, Col. RCS Mann filed another appeal.

On the other hand, Mrs. Narinder Mann wife of Col. RCS Mann filed a suit for permanent injunction against her husband, widow of late Shri S.N. Kohli and Col. Balwinder Singh. During the pendency of the suit, Mrs. Narinder Mann sought amendment, which was allowed and she converted the suit to a suit for specific performance of the agreement to sell dated 27.09.1988.

The suit was dismissed by the trial Court vide judgement dated 15.02.2014. Appeal preferred by Mrs. Narinder Mann was also dismissed vide judgement dated 5.09.2016.

The appeal filed by Col. RCS Mann against the judgement and decree arising out of the suit filed by Col. Balwinder Singh -appellant restricted his argument with regard to the maintainability of the suit only. Learned first Appellate Court has recorded the same, which is not being disputed before me. The same reads as under: –

“Although, in grounds of appeal, the appellant has assailed the judgement and decree on merits also but during the course of arguments, counsel for the appellant restricted his arguments with respect to maintainability of suit.”

It may be significant to mention here that before the first Appellate Court Mrs. Narinder Mann was also party as respondent No.5-A. The appeal filed by Col. RCS Mann was dismissed vide judgement and decree dated 03.02.2016 after re-appreciating the evidence available on the file.

Three appeals have been preferred, one by Col. RCS Mann i.e. RSA No.3961 of 2016, second by a Mrs. Narinder Mann, wife of Col. RCS Mann i.e. RSA No.4180 of 2016 against the judgement and decree dated 03.02.2016 and the third also by Mrs. Narinder Mann i.e. RSA No.5261 of 2016 against the judgement and decree passed by the Additional District Judge dated 05.09.2016 while dismissing the suit filed by Mrs. Narinder Mann.

I have heard learned counsel for the parties at length and with

their able assistance gone through the relevant record as produced by the counsels.

It is not in dispute that Col. RCS Mann was given General Power of Attorney by late Shri S.N. Kohli, the owner. It is also not in dispute that late Shri S.N. Kohli had agreed to sell the plot in question in favour of Mrs. Narinder Mann, wife of Col. RCS Mann. It is further not in dispute that late Shri S.N. Kohli had executed the agreement to sell on the receipt of complete payment and had also executed a Will in favour of Mrs. Narinder Mann on 27.09.1988. It is further not in dispute that Col. RCS Mann acting as General Power of Attorney holder had entered into an agreement to sell with respect to the property in question in favour of Col. Balwinder Singh and received Rs.2,00,000/- as earnest money. The execution of the aforesaid agreement to sell and receipt of the earnest money is an admitted fact. The only defence taken by Col. RCS Mann that the earnest money of Rs.4,00,000/- was payable, does not stand close scrutiny because the agreement to sell is in writing and the earnest money mentioned is Rs.2,00,000/- only.

Before me, learned counsel for the appellants have submitted as under: –

1. The decree for specific performance could not be passed against Col. RCS Mann as he was only a General Power of Attorney holder.
2. Col. Balwinder Singh had filed a suit on 10.03.1997 against a dead person i.e. late Shri S.N. Kohli – defendant No.2 and, therefore, the suit was not

maintainable.

3. Mrs. Narinder Mann was not impleaded as party defendant in the suit filed by Col. Balwinder Singh.

On the other hand, learned counsel for the respondents have supported the judgement passed by the Courts below. They have argued that once the execution of an agreement to sell is not in dispute and the receipt of earnest money is also not in dispute, the Courts have rightly decreed the suit filed by Col. Balwinder Singh.

1. The decree for specific performance could not be passed against Col. RCS Mann as he was only a General Power of Attorney holder.

The first argument of learned counsel for the appellants is wholly untenable because no doubt initially the decree was passed by the trial Court against Col. RCS Mann only. However, later on, an application for correction was filed and in CR No.6367 of 2011, the judgement and decree was modified because such error is a minor error which can be corrected by the Court under Section 152 CPC.

Still further, it is not in dispute that Col. RCS Mann and his wife Mrs. Narinder Mann are living together having no dispute inter se. The statement of Mrs. Narinder Mann in the civil suit filed by her is very significant. She states as under: –

“It is correct that I, my husband and my daughter Paramjit Kaur are fighting all the cases jointly with whom it may be.”

In fact the decree is against the legal heirs of late Shri S.N. Kohli, who are owners of the property in the records till date. The owners

have not challenged the decree passed against them. In fact, the legal heirs of late Shri S.N. Kohli have not contested the suit. Although, the widow of late Shri S.N. Kohli had come forward and brought on record as a legal heir. In these circumstances, there is no force in the argument of the learned counsel for appellants.

2. Col. Balwinder Singh had filed a suit on 10.03.1997 against a dead person i.e. late Shri S.N. Kohli – defendant No.2 and, therefore, the suit was not maintainable.

Col. Balwinder Singh had filed a suit on 10.03.1997. The suit was filed against Col. RCS Mann as defendant No.1, late Shri S.N. Kohli as defendant No.2 and the Punjab Urban Development Authority as defendant No.3. Col. Balwinder Singh did not know about the death of Shri S.N. Kohli. At the most, it can be said to be an irregularity. The aforesaid irregularity was corrected when the widow of late Shri S.N. Kohli filed an application for being brought on record as legal heir and the same was allowed. It is well settled law that if the suit is against various defendants and one of the defendants has died prior to the filing of the suit, the application for substitution can be allowed and the mistake committed in good faith can be corrected. Therefore, there is no force in the submission of the learned counsel for the appellants.

3. Mrs. Narinder Mann was not impleaded as party defendant in the suit filed by Col. Balwinder Singh.

No doubt Mrs. Narinder Mann was not impleaded as party defendant in the suit filed by Col. Balwinder Singh. However, Mrs. Narinder Mann became party in the appeal as respondent No.5-A. Her

husband Col. RCS Mann was defendant No.1. Col. RCS Mann and Mrs. Narinder Mann are living together in one house. There is no dispute between them. It is admitted by her that they are jointly litigating the cases against different persons.

Still further, as per the records, the owner was late Shri S.N. Kohli. Col. RCS Mann was the General Power of Attorney holder of late Shri S.N. Kohli. Hence, no fault can be found on account of the fact that Mrs. Narinder Mann was not added as a party defendant. Legal heirs of Late Shri S.N. Kohli were owner and Col. RCS Mann was the General Power of Attorney. No other party was necessary. Hence I do not find any force in the submission of the learned counsel for the appellants.

In RSA No.5261 of 2016, filed by Mrs. Narinder Mann, learned counsel for the appellant has tried to demonstrate before me that there is some finding by the Court against the record because the Court has doubted the correctness of the agreement to sell dated 27.09.1988 and the Will of the same date in favour of Mrs. Narinder Mann. However, the same would not help the appellant.

In the present case, the facts are crystal clear. In fact Col. RCS Mann and Mrs. Narinder Mann have jointly abused the process of the Court, denying the possession of the disputed property to Col. Balwinder Singh, who is unfortunately no more, represented by the legal heirs. Once the agreement to sell executed by Col. RCS Mann as a General Power of Attorney holder of late Shri S.N. Kohli and the receipt of Rs.2,00,000/- is not disputed, Col. RCS Mann or his wife Mrs. Narinder Mann ought to have honoured the agreement to sell in the year 1997. Mrs. Narinder Mann woke

up from slumber and filed the suit for specific performance of the agreement to sell (dated 27.09.1988) for the first time on 24.08.2007. It may be noticed that the suit filed by Col. Balwinder Singh on 10.03.1997 was decreed by the trial Court on 31.05.2007. Col. RCS Mann was defendant No.1. Thus, the suit filed by Mrs. Narinder Mann was clearly an abuse of the process of the Court. The subsequent suit was filed just to derail the wheels of justice.

Learned counsel for the appellants have, in the last, pleaded that it is a case of hardship and, therefore, Col. Balwinder Singh should only be granted alternative relief of refund of money along with interest.

I have considered the submission. However, I do not find any force in the same for three reasons (1) the facts available on the file clearly show that Col. RCS Mann along with his wife Mrs. Narinder Mann had been thoroughly dishonest while dealing with Col. Balwinder Singh (2) the defendant did not plead or seek an issue on the plea of hardship and (3) as per the record, legal owners of the property are legal heirs of late Shri S.N. Kohli. They have neither contested the suit nor filed any appeal. In fact, after having received the amount pursuant to the agreement to sell dated 27.09.1988, they did not contest this litigation. Hence I do not find any good ground to exercise my discretion in favour of the persons, who were thoroughly dishonest.

In view of the discussion made above, all the three appeals referred to above are dismissed with a special costs of Rs.1,00,000/-. The decree passed by the Courts below in Civil Suit No.RT-185/10/3/97 is upheld. Col. RCS Mann, the legal heirs of late Shri S.N. Kohli and Mrs.

Narinder Mann are directed to execute the sale deed jointly in favour of the legal heirs of Col. Balwinder Singh, failing which the Executing Court shall be entitled to execute the sale deed in favour of the legal heirs of Col. Balwinder Singh.

22.09.2017
sk

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No