

RSA No. 3317 of 2015 (O&M)

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

**RSA No. 3317 of 2015 (O&M)
Date of Decision: 12.9.2017**

Bachchu and others

.....Appellants

Vs.

Ta-Awan Trust through its attorney Shri Mohammad Sahid

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Shiv Kumar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the concurrent findings of facts, recorded by both the learned courts below, whereby suit for declaration and permanent injunction, filed by the plaintiff, was decreed by the learned trial court vide its impugned judgment and decree dated 13.6.2012 and first appeal filed by the defendants-appellants was dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 3.4.2015, defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff was owner and in possession to the extent of 1/9th share in the land comprised in khewat/khatoni No.88/126, rectangle no.17, killa nos. 6, 15, 16, 25, rectangle no.18, killa nos. 20/2, 21, total measuring 41 kanals 9 marlas, situated within the revenue estate of Firozpur, Tehsil and District Palwal. The plaintiff

RSA No. 3317 of 2015 (O&M)

purchased the suit land from Chander Prakash son of Shri Gian Chand, resident of Ballabgarh, District Faridabad on 26.4.2001. Previously, father of the defendants No.1 to 3 and husband of defendant No.4 nominated/appointed Chander Prakash son of Gian Chand, resident of Ballabgarh, as his true and lawful general power of attorney vide registered general power of attorney No.10694 dated 17.9.1999, book No.4, volume No.210. Plaintiff was going to make a Paramedical University over the suit land immediately. The plaintiff had already purchased 26 acres agricultural land for Paramedical University, adjacent to the suit land. The plaintiff could not get sanctioned the mutation of the suit property. The father of the defendants No.1 to 3 and husband of defendant No.4 expired.

The defendants in collusion with the revenue officials got sanctioned a mutation No.3938 of inheritance of late Ram Sharan in their favour. Under the garb of impugned mutation No.3938, the defendants were bent upon to dispossess the plaintiff from the suit property and mutation was also illegal, null, void and the same was liable to be quashed on the ground that father of the defendants No.1 to 3 and husband of defendant No.4 had sold land on 26.4.2001 detailed in para No.1 of the plaint through general power of attorney Chander Prakash son of Gian chand, resident of Ballabgarh, Tehsil Ballabgarh, District Faridabad, appointed by the father of the defendants No.1 to 3 and husband of defendant No.4 vide Vasika No.10694, book no.4, volume no.2010 dated 17.9.1999. Above said general power of attorney delivered actual and physical possession at the time of sale deed on 26.4.2001. The defendants have no right, title and interest in the suit land. The sale deed dated 26.4.2001 was valid, genuine document and binding on the rights of the defendants and mutation No.3938 was illegal,

RSA No. 3317 of 2015 (O&M)

null and void document and the same did not binding upon the rights of the plaintiff.

The defendants in collusion with revenue officials succeed in obtaining impugned mutation no.3938 in their favour. The father of the defendants no.1 to 3 and husband of defendant no.4 had already sold the suit land in favour of the plaintiff through general power of attorney for a valuable consideration of ₹4,50,000/-. The defendants did not have right, title and interest in the suit land. The defendants were also threatening the plaintiff to interfere in his peaceful possession of the suit land. Another mutation No.3969 of suit land was pending in the court of Assistant Collector 1st Grade, Palwal. The plaintiff asked the defendants several times to admit the claim and not to interfere in the peaceful possession of the plaintiff over the suit land but defendants were adamant.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Defendants also raised the plea of fraud and misrepresentation, taking the averments that general power of attorney dated 17.9.1999 and sale deed dated 26.4.2001 were result of fraud and misrepresentation. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of land in dispute? OPP
2. Whether the plaintiff is entitled for injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the plaintiff is estopped by his own act and

RSA No. 3317 of 2015 (O&M)

conduct from filing the present suit?OPD

6. Whether the suit is time barred? OPD

7. Whether civil court has no jurisdiction to try the present suit? OPD

8. Whether the plaintiff has concealed the material facts from the court? OPD

9. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved its case by bringing on record cogent and sufficient evidence. Accordingly, suit for declaration and permanent injunction, filed by the plaintiff-respondent, was decreed by the learned trial court, vide its impugned judgment and decree dated 13.6.2012. Feeling aggrieved, defendants filed their first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 3.4.2015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Late Sh. Ram Sharan, who was father of appellants No.1 to 3 and husband of appellant No.4, was admittedly owner of the suit property. Late Sh. Ram Sharan executed general power of attorney bearing No. 10694 dated 17.9.1999, which was a registered document. This general power of attorney was executed by late Sh. Ram Sharan in favour of Chander Prakash son of Gian Chand. On the strength of this power of attorney dated 17.9.1999, Chander Prakash executed sale deed dated 26.4.2001 in favour of the plaintiff.

RSA No. 3317 of 2015 (O&M)

This sale deed was Ex.PW1/A. Since defendants-appellants raised the plea of fraud pointing out in their written statement that the general power of attorney as well as sale deed were result of fraud and misrepresentation, plaintiff rightly examined the Fingerprint and Handwriting Expert-Dr. Satya Dev Aggarwal as PW4. This expert witness duly proved on record his report Ex.PW4/B and positives as well as negatives as Ex.PW4/C to Ex.PW4/M. This expert witness compared the signatures of Sh. Ram Sharan on his general power of attorney with his admitted signatures on 30.4.1996 which were duly proved.

All the witnesses including expert witness were put to cross-examination at the hands of defendants-appellants but nothing adverse could be elicited from the cross examination of any of the witnesses of the plaintiff which might have caused any dent in the pleaded case of the plaintiff. Plaintiff was found to be a bonafide purchaser for due consideration and the defendants-appellants could not bring on record any contradictory or better evidence to prove the contrary. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

Once the defendants-appellants were raising the plea of fraud and misrepresentation, onus was on them to substantiate said plea of fraud raised by them. However, defendants-appellants miserably failed to prove their plea of fraud. In fact, it is very easy to raise the plea of fraud but it is equally difficult to prove it because the plea of fraud is to be proved like a criminal charge. There was hardly any evidence brought on record by the defendants-appellants in this regard except their self serving statements.

RSA No. 3317 of 2015 (O&M)

Although defendants had an opportunity to file their counter-claim but they did not do so for the reasons best known to them. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85** and judgments of this Court in **Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017.**

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“Perusal of record shows that the plaintiff-trust is owner in possession of the suit land and this fact has been specifically averred in the plaint that Ram Sharan was owner of the suit land and Chander Prakash being general power of attorney of

deceased Ram Sharan executed the sale deed in his favour on 26.4.2001, which is registered document and same carries presumption of correctness. That sale deed was executed in presence of attesting witnesses namely Ganga Ram Sharma and Sunder Lal and they both have corroborated the version of the plaintiff-respondent. The attesting witnesses of sale deed dated 30.4.1996 shows that Ram Sharan, Sharwan and Budh Singh sons of Lala Ram had sold their share of the land alongwith Raghuraj Singh, Birpal Singh, Jagdish, Subhash sons of Puran and Kishan Singh son of Tula Ram through registered sale deed dated 30.4.1996 and there are thumb impression of Ram Sharan son of Lala Ram on these sale deeds. The opinion of finger print expert regarding power of attorney dated 17.9.1999, who has admittedly proved thumb impression of Ram Sharan on the sale deed dated 30.4.1996 and report Ex.PW-4/B could not be disproved at the instance of defendants-appellants. Chander Prakash being general power of attorney of Ram Sharan executed impugned sale deed in favour of plaintiff trust on 26.4.2001 vide sale deed Ex.PW-1/A.

The contention raised by learned counsel for the appellants-defendants that the sale deeds and general power of attorney are forged and fabricated documents, but no cogent and convincing evidence has been led by the defendants/appellants, which may prove that the above said documents were forged and fabricated one. It is pertinent to mention here that said General Power of Attorney Chander Prakash in whose favour Ram Sharan executed general power of attorney on 17.9.1999 and after execution of general power of attorney Ram Sharan remained alive for many years, but he did not challenge the general power of attorney during his life time, rather neither of the witnesses of the general power of attorney has been got executed at the instance of defendants-appellants.

The contention raised by learned counsel for the

*appellants-defendants that opinion of finger print expert is not reliable, but defendants-appellants remained failed to examine any other finger print expert to prove the contention raised by defendants-appellants and even no other finger print expert was summoned to cross-examine the finger print expert PW-4 examined by the plaintiff-respondent, as they had an opportunity to do so. On the other hand, finger print expert has proved the thumb impression of Ram Sharan on general power of attorney Ex.PW-6/A. Report of expert Ex.PW-/B is on the file and plaintiff-respondent had rightly placed reliance upon Maya V. Mohinder Singh and others, (2007) (3) LJR 831 (P&H) (Supra), wherein it was held that no presumption can be raised that it had been obtained by impersonation or fraud. It was valid and had given necessary authority to its holder and sale in favour of third person cannot be challenged. There is presumption that registered document is validly executed and a registered document, therefore, prima facie would be valid in law and onus of proof would be on person who leads evidence to rebut this presumption and it has also been held in **Ranganayakamma and another Vs K. S. Prakash (D) by LRs and others, 2008 (3) ACJ 281 (SC) (Supra)**. Learned lower court has rightly opined that the plea of defendants that sale deed Ex.PW-1/A was fictitious, cannot be accepted as general power of attorney, which was a valid power of attorney in favour of Chander Prakash, who sold the suit property after execution of power of attorney. As long as attorney was valid and gave the necessary authority to the holder of power of attorney and defendants-appellants cannot challenge the same. Whereas Ram Sharan never came forward for challenging the sale deed on the basis of forged power of attorney. So, if the power of attorney is held to be valid document and not obtained as a result of fraud or misrepresentation then subsequent act committed on the basis of valid power of attorney are also valid and cannot be questioned....”*

RSA No. 3317 of 2015 (O&M)

9

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

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 the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

12.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No