111.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4936-2016
Date of decision: 21.03.2017

BHAGWANT KISHORE AND ORS ... Appellants

versus

HARBANS LAL .... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Dhiraj Chawla, Advocate, for the appellants.

HARI PAL VERMA, J.

The appellants-defendants have filed present Regular Second Appeal against the judgment and decree dated 14.01.2016 passed by learned Additional District Judge, Hoshiarpur, whereby their appeal against the judgment and decree dated 04.04.2012 passed by learned Additional Civil Judge (Senior Division), Garhshankar, was dismissed.

Briefly stated, the respondent-plaintiff (herein as plaintiff) had filed a suit for declaration to the effect that he is the owner in possession of suit land as detailed in the plaint, and also sought relief of permanent injunction for restraining the defendants from interfering in the lawful and peaceful possession over the suit property. As per the plaint, the plaintiff was residing abroad and he had appointed Gurbax Kaur as his attorney vide power of attorney dated 09.07.2004. The plaintiff had averred in the suit that he is owner in possession of the suit land, as fully detailed in the headnote of the plaint, situated on the Garhshankar-Hoshiarpur G.T. Road. The plaintiff had purchased this land in the year 1993 with an intention to use the same for commercial as well as residential purposes and had raised construction over it. In the year 2000, when the plaintiff visited India, he was told by defendant No.1-Bhagwant Kishore (appellant No.1 herein), who is plaintiff's real brother, that there is a scheme of the Government to widen the G.T. Road from Chandigarh to Hoshiarpur and if the said scheme of the Government is implemented, there are chances that the property of the plaintiff may be acquired and occupied by the State Government for widening the G.T. Road. In this manner, the defendant No.1 prevailed upon the plaintiff so as to execute the power of attorney in his favour. Accordingly, the plaintiff executed a power of attorney dated 22.09.2000 in favour of defendant No.1 to manage the suit property. In July 2003, when the plaintiff visited India, on inquiry he came to know that there had been no move on the part of the Government to widen the road from Garhshankar to Hoshiarpur. The plaintiff discussed the matter with defendant No.1 and when no satisfactory reply was given by defendant No.1, the plaintiff asked him to return the original power of attorney, but the defendant No.1 evaded the plaintiff to hand over the power of attorney on the ground that he has misplaced the same. Since the original power of attorney was not returned to the plaintiff, the plaintiff executed a registered revocation deed dated 23.07.2003. In this manner, the attorney deed dated 22.09.2000 in favour of defendant No.1 was revoked and photocopy of said revocation deed was supplied to him by the plaintiff. However, defendant No.1 in connivance with his wife-Bindu Rani-defendant No.2 (Appellant No.2 herein), with an intention to grab the suit property, prepared a false, bogus, sham and fictitious sale deed dated 25.05.2004 which was registered on 26.05.2004, purporting to transfer the suit property in favour of defendant No.2. The defendants got the revenue entries recorded in their favour on the basis of said sale deed and rather threatened the plaintiff to alienate and dispossess him from the suit property. Since the claim of the plaintiff was not admitted by the defendants, the suit was filed.

On notice having been issued, the defendants appeared, filed their joint written statement taking preliminary objection to the effect that the plaintiff has no cause of action and locus standi to file the suit. The suit filed by the plaintiff is not maintainable; not within time; he has not come to the court with clean hands; he has suppressed the true and material facts and the suit is not properly valued for the purpose of court fee and jurisdiction. On merits, it has been pleaded that no doubt, the plaintiff is residing abroad, but the plaintiff had not appointed Gurbax Kaur as his attorney and the alleged power of attorney is a fictitious and forged document. The plaintiff is neither owner nor in possession of suit land. The suit land is situated at a long distance from abadi of Garhshankar town and has no commercial value.

The plaintiff has not raised any construction in the suit property and, in fact, he is residing in Germany. The defendants have further pleaded that in the year 1999, the plaintiff had informed the defendant No.1 on telephone about his intention to bring with him a car from Germany in the early month of Year 2000 and had told the defendant No.1 to remain ready with money for paying custom duty on the car by saying that he himself was not in a position to pay the custom duty in India. Then defendant No.1 had arranged some money for the plaintiff. On 23.03.2000, plaintiff came to India from Germany and had brought with him a car on which ₹5,50,000/- were spent by defendant No.1 as custom duty by arranging the same from his own sources and borrowing money from his relatives and friends etc. The defendants further claimed that while in India, the plaintiff had incurred debts because of his habit of drinking daily in the company of his many friends and on other activities. The defendant No.1 had managed huge amount of money to pay debts taken by the plaintiff in the hope of selling his car at a very high price and in the whole process, defendant No.1 had spent more than ₹10 lacs on the plaintiff and his affairs. Finally, the plaintiff could sell his car only for a sum of ₹1,50,000/- in the month of September, 2000 and out of this amount, the plaintiff could get only ₹40,000/- in cash and from the remaining amount, he got an old Ceilo car. Since the plaintiff could not get the necessary money from the sale of the car which was spent by defendant No.1 on the custom duty of the car and on the plaintiff himself, so before his departure to Germany in September, 2000, he (plaintiff) handed over the suit property to defendant No.1 by saying that he may keep the suit property with him as an owner or may sell the same to raise money for paying back the amount borrowed by him from his friends and relatives. For this purpose, on 22.09.2000, the plaintiff had executed a duly registered general power of attorney in favour of defendant No.1 authorizing him to deal with the property in dispute in any manner. The defendant No.1, after consulting the plaintiff on telephone, sold the suit property to defendant No.2 being general attorney of plaintiff, vide registered sale deed dated 25/26.05.2004 and since then, defendant No.2 is in possession of the suit property. Therefore, the sale deed dated 25.05.2004 registered on 26.05.2004 is a legal and valid document.

On the basis of evidence so adduced by the respective parties, the trial Court vide judgment and decree dated 04.04.2012 decreed the suit and has held that the defendants were well within the knowledge of revocation of power of attorney. Once the defendant No.1 had the knowledge of revocation of the power of attorney, he had no authority to sell out the suit property to his wife. It has further been found that the sale deed executed by defendant No.1 in favour of defendant No.2 was without consideration, as defendant No.2 has failed to prove on record that any consideration was passed by her in favour of defendant No.1. More interestingly, defendant No.1 did not step into the witness box to prove his case and did not turn up for his cross-examination. In this manner, the trial Court has drawn adverse inference against defendant No.1.

Aggrieved against the aforesaid judgment and decree dated 04.04.2012, the defendants filed an appeal which was also dismissed by the Lower Appellate Court vide judgment and decree dated 14.01.2016.

It is in the aforesaid circumstances, the defendants (appellants herein) have filed the present appeal.

Learned counsel for the appellants-defendants has argued that the courts below have failed to consider that defendant No.2-Bindu Rani had entered into an agreement to sell of the suit property. He has further argued that the courts below have exceeded their jurisdiction and got swayed with the fact that the respondent-plaintiff is residing in a foreign country and he may have given the power of attorney to take care of his property and the execution of the sale deed in favour of the wife of appellant No.1 is suspicious. The courts below have given perverse and contradictory findings and despite the availability of evidence in favour of appellants, the suit of the respondent-plaintiff has been decreed.

I have heard learned counsel for the appellants.

In the case in hand, the plaintiff had revoked the power of attorney executed in favour of defendant No.1 vide revocation deed dated 23.07.2003, but still vide sale deed dated 25.05.2004, i.e., after 10 months of revocation deed, defendant No.1 had executed the sale deed in favour of his wife-Bindu Rani-defendant No.2. The Lower

Appellate Court has rightly dismissed the appeal as despite General Power of Attorney having been cancelled on 23.07.2003, the defendant No.1 has got the sale deed executed on 25.05.2004 in favour of his wife. Surprisingly the defendant No.1 though has claimed that he is acting on the power of attorney, but he has not appeared as a witness to face cross-examination. Therefore, his evidence in examination in-chief was rightly discarded and an adverse inference was drawn against him.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

21.03.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No