

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

RSA No.3585 of 2015 (O&M)

Date of Decision: August 25, 2017

Pakhar Singh

..... Appellant

Versus

Manohar Lal and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anish Setia, Advocate
for the appellant.

DEEPAK SIBAL J. (ORAL)

The appellant, who was the plaintiff before the trial Court had filed a suit for possession by way of specific performance of agreement to sell dated 08.01.2007 qua land measuring 16 Marlas bearing Khasra No.6//2//1, 9/2, 6//2/1-min, 9/2 min, total land measuring 8 Kanals 10 Marlas, situated in the revenue area of village Faridpur, Tehsil and District Jalandhar (for short 'the suit property'). Alternatively, a suit for recovery of Rs.90,000/- along with 15% interest from the date of the execution of the agreement to sell till realization of the total amount, was prayed for.

The case set up by the appellant before the trial Court was that one Dharam Kaur, who was the owner of the suit property, sold the same to respondent No.1. Thereafter, through agreement to sell dated 08.01.2007 respondent No.2-father of respondent No.1 agreed to sell the suit property on behalf of respondent No.1 to the appellant for a total sale consideration of Rs.90,000/-. In pursuance to the agreement, Rs.20,000/- was paid by the appellant to respondent No.2 as earnest money. As per the agreement the sale deed was to be got executed on 31.01.2007.

Respondent No.2 projected that before the execution of the sale deed, he would get the Power of Attorney from respondent No.1 who had authorized him to execute the sale deed and on 29.01.2007, respondent No.2 informed the appellant that the General Power of Attorney had been sent by respondent No.1, who was living abroad, to respondent No.2, authorizing him to sell the property and therefore, the balance sale consideration of Rs.70,000/- be paid by the appellant to respondent No.2. Relying on the above statement by respondent No.2, the appellant paid the balance sale consideration of Rs.70,000/- to him. Thereafter, through legal notice dated 24.03.2007, respondent No.2 put the appellant to notice that he had received the General Power of Attorney from respondent No.1 and accordingly the sale deed for the suit property may now be got executed and registered on 18.04.2007. Believing the contents of the afore-referred legal notice, on the appointed day, the appellant appeared before the Sub-Registrar Kartarpur but respondent No.2 did not. Respondent No.2 again asked the appellant to come present before the Sub-Registrar Kartarpur on 23.04.2007 but on that date too though the appellant put in appearance, respondent No.2 did not. The matter was then taken up with the village Panchayat, who sided with the cause of the appellant but in spite of that, the respondents failed to execute the sale deed, leading to the filing of the suit for the afore-referred reliefs.

On being put to notice, respondent No.1 appeared before the trial Court and stated that he was the owner of the suit property. He had neither appointed respondent No.2 as his attorney nor had he given any authority to him to sell the suit property. According to respondent No.1, the agreement to sell dated 08.01.2007 was a forged and fabricated

document.

Respondent No.2 filed a separate written statement and also denied the case set up by the appellant.

The trial Court was of the view that agreement to sell dated 08.01.2007 had been executed between the appellant and respondent No.2, in pursuance to which, consideration of Rs.90,000/- had passed on to respondent No.2. However, the appellant was only held entitled to the alternate relief of recovery of Rs.90,000/- along with interest. Relief qua specific performance of the agreement was not granted as the trial Court concluded that it was respondent No.1, who was the owner of the suit property and respondent No.2 had no authority to sell the same to the appellant.

The appellant challenged the above judgment and decree passed by the trial Court by way of an appeal before the Appellate Court which affirmed the findings of the trial Court. It is in these circumstances that the appellant has knocked the doors of this Court through the present second appeal.

Mr. Anish Setia, Advocate, who appeared on behalf of the appellant, submitted that after both the trial Court and the Appellate Court had concluded that the agreement to sell dated 08.01.2007 had been duly executed between the parties, then the appellant should have been granted the relief in the form of specific performance of the agreement as it was apparent that the respondents being son and father, had colluded with each other only to deny the appellant's rights. In support of his argument, learned counsel placed heavy reliance on the legal notice sent under the instructions of respondent No.2 to the appellant which contained a

specific recital that respondent No.2 was in receipt of the General Power of Attorney from respondent No.1 authorizing him to sell the suit property on his behalf as also the fact that possession of the suit property in pursuance to the agreement to sell had been delivered to the appellant by respondent No.2.

The above argument though attractive at first blush does not stand deeper probe. It is not disputed that the owner of the suit property was respondent No.1. No consent or authorization by respondent No.1 permitting respondent No.2 to sell the suit property on his behalf is found on the record. It is further not denied by the appellant that he entered into an agreement with respondent No.2 knowing fully well that respondent No.1 was the owner of the suit property but before or even after making the full payment he never insisted upon respondent No.2 to actually produce and show to him any authority by respondent No.1 authorizing respondent No.2 to sell the suit property. The agreement was entered into by the appellant only by relying on the assertions by respondent No.2 that he would, at a later point of time, get authorization from respondent No.1 to sell the suit property which from the evidence on record, is established that it never came. It is true that the conduct of respondent No.2 in going ahead with the agreement and receiving the sale consideration without any authority from respondent No.1 lacked *bona fide* but the appellant is also found to be careless, as he entered into an agreement and then parting with the entire sale consideration without having bothered to actually have before him the authority by respondent No.1 in favour of respondent No.2 to sell the suit property on his behalf.

The legal notice sent on the instructions of respondent No.2

to the appellant which makes a mention that respondent No.2 is in receipt of the General Power of Attorney by respondent No.1 was sent through Mr. Rajinder Singh Mann, Advocate, who appeared before the trial Court and in his cross-examination admitted that he also had never seen the alleged General Power of Attorney and had got served the legal notice upon the appellant merely on the asking of respondent No.2. He further admitted that at no point of time, was he instructed by respondent No.1 to get served any legal notice qua the suit property.

In view of the above, I am not inclined to interfere with the concurrent findings recorded by both the trial Court and the Appellate Court.

Dismissed.

August 25, 2017

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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No