IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.5719 of 2016 (O&M).
Date of Decision: 16.01.2017.

Nafe Singh ....Appellant.

VERSUS

Dalip Chauhan and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ajay Kumar Kansal, Advocate for the appellant.

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SNEH PRASHAR, J.

The instant appeal had been filed by appellant-plaintiff Nafe Singh (hereinafter referred to as the "appellant") assailing the judgment and decree dated 09.08.2016 passed by learned Additional District Judge, SAS Nagar, Mohali as well as judgment and decree dated 12.08.2014 passed in Civil Suit No.133 of 08.09.2006/23.05.2014 by learned Civil Judge (Junior Division), Dera Bassi, by virtue of which suit for declaration and permanent injunction filed by the appellant against respondents-defendants Dalip Chauhan and another (hereinafter referred to as the "respondents") was dismissed and the appeal preferred by the appellant was also dismissed.

Briefly, the facts are that the appellant filed a suit for declaration to the effect that the sale deed No.9801 dated 14.01.2005 executed by Dalip Chauhan (respondent No.1) acting as General Power of Attorney (for short, "GPA") of the appellant in favour of Narottam Kumar (respondent No.2) is illegal, null and void and not binding on his rights being in violation of the terms and conditions of the agreement to sell dated

11.03.2004 executed by him in favour of respondent No.1. A prayer to restrain respondent No.2 from further alienating the house in question was also made.

The appellant pleaded that he had executed an agreement to sell in respect of a house having constructed area of 1000 square yards for a consideration of Rs.6,50,000/- in favour of respondent No.1. As per terms and conditions of the agreement to sell, respondent No.1 was to repay the loan amount outstanding against him with State Bank of India, Sector-16 Branch, Panchkula. He also executed a GPA in favour of respondent No.1 vide which he was authorized to transfer the property. However, it was made clear that unless and until respondent No.1 cleared the loan amount alongwith interest, he would not transfer the house to a third person on the basis of the GPA. On the date of execution of agreement to sell, he (appellant) received an amount of Rs.37,500/- in cash and Rs.27,500/- by cheque and the remaining amount was to be paid by repaying the outstanding loan of Rs.5,85,000/-. Initially, respondent No.1 paid the loan installments, but subsequently he stopped depositing the same. Copy of the statement of loan account taken in the month of May, 2005 showed that an amount of Rs.82,110/- was outstanding in the loan account as on 13.05.2005.

The appellant further pleaded that he gave a legal notice to respondent No.1 on 31.08.2005 asking him to clear the loan within a period of seven days from the date of receipt of the notice failing which the agreement to sell as well as the GPA would be cancelled and the amount already paid would be forfeited. Despite notice, respondent No.1 failed to clear the loan amount and in the month of October, 2005 he (appellant) came to know that the house had been sold by respondent No.1 to respondent No.2 in January, 2005. The terms and conditions of the agreement to sell dated 11.03.2004 were violated by respondent No.1 by selling the house to respondent No.2 for consideration of Rs.3,50,000/-. Thereafter, despite assurance given, respondent No.1 failed to deposit the balance loan amount. Alleging that respondent No.1 was not competent to sell the house without clearing the outstanding amount of loan, a prayer was made for declaring the sale deed executed by respondent No.1 as illegal, null and void.

The respondents appeared and contested the suit. Respondent No.1 submitted interalia, that he had deposited the entire amount of loan standing in the name of the appellant and nothing was outstanding in that behalf. He also averred that due to fraud committed by the appellant, he had to sell the house on a lesser price as he was in need of money and that he had sold the house on the basis of the GPA executed by the appellant in his favour.

Similar were the pleadings of respondent No.2 in the written statement filed by him. He alleged that the sale deed executed in his favour by respondent No.1 on the basis of GPA dated 11.03.2004 is legal and valid and that he is a bonafide purchaser for consideration and is in peaceful possession of the house since January, 2005.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the plaintif is entitled for injunction as prayed for? OPP

3. Whether the plaintiff has not come to the Court with clean hands and has not stated true facts from the Court? OPD

4. Whether the has no locus-standi and cause of action to file the present suit? OPD.

5. Whether the suit of the plaintiff is not legally maintainable in the present form? OPD

6. Whether the present suit has been filed by the plaintiff simply to harass the defendants as such, the defendants are entitled to get compensatory costs under Section 35-A CPC? OPD

7. Relief

Both the parties adduced evidence in support of their rival contentions.

Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court dismissed the suit of the appellant vide impugned judgment and decree dated 12.08.2014.

Appellant preferred an appeal against the judgment and decree dated 12.08.2014 which was dismissed by learned Additional District Judge, SAS Nagar, Mohali vide judgment and decree dated 09.08.2016.

Feeling aggrieved, the appellant filed the instant Regular Second Appeal.

The submissions made by Mr. Ajay Kumar Kansal, learned counsel representing the appellant have been considered.

At the very outset, learned counsel for the appellant argued with vehemence that although the appellant admitted execution of an agreement to sell and a GPA in respect of the house in question in favour of respondent No.1-purchaser on 11.03.2004, but as per terms and conditions of the agreement to sell it was agreed between the parties that respondent

No.1 would pay the entire loan amount outstanding in the loan account of the appellant with the Bank and only thereafter respondent No.1 would be entitled to get the house in question transferred in his name and the appellant would be bound to execute and get registered the sale deed. Learned counsel contended that since respondent No.1 sold the house to respondent No.2 before clearing the loan account of the appellant and getting the house transferred in his name, the sale was invalid. Even though subsequently respondent No.1 paid the loan amount due against the appellant but much prior to that the appellant had filed the instant suit for cancellation of the agreement to sell as well as the GPA. Since the house had not been transferred in the name of respondent No.1, he was not competent to sell the house, further to a third person. To support his arguments, learned counsel relied upon ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr., 2011 LawSuit (SC) 1107*** and ***State of Punjab and others vs. Ajmer Singh, (2009)2 RCR (Rent) 169.***

There is hardly any force in the arguments of learned counsel for the appellant and the case law relied upon is also of no help to him. It was pleaded by the appellant himself that he had executed an agreement to sell and a GPA in respect of the house in question in favour of respondent No.1 on 11.03.2004. Indeed, as per terms of the agreement to sell, respondent No.1 was to repay the amount of loan outstanding in the name of the appellant with the bank. It was also agreed between the parties that only after clearing the loan account respondent No.1 would get the house transferred in his name, but it is noteworthy that no time limit was fixed for repayment of the loan. The agreement to sell may be an insufficiently stamped and unregistered document which could be used for no other purpose except for institution of a suit for specific performance on its basis, but importantly as per the contents of the agreement to sell neither a date was fixed for payment of the loan amount and execution of the sale deed nor payment of the loan amount was a precondition to the right given to respondent No.1 to further sell of the house.

Be that as it may, admittedly besides executing an agreement to sell a GPA was also executed by the appellant in favour of respondent No.1 and as noticed by learned first appellant Court in Para No.14 of the impugned judgment, the GPA executed by the appellant was in the form of an irrevokable document. As per its contents, respondent No.1 was given a right to live in the house, give the house on rent, receive token money or sell of the same. It is an admitted fact and was not denied by him that possession of the house was handed over by him to respondent No.1 at the time of execution of the agreement to sell. Therefore, for all intent and purposes all ownership rights relating to the house were given to respondent No.1.

However, there could be no denial of the fact that respondent No.1 was to pay of the loan amount outstanding against the appellant with the bank which as per terms of the agreement to sell formed part of consideration amount. However, by virtue of the recital in GPA the appellant had authorized respondent No.1 to exercise all rights relating to ownership and possession of the house and to even sell the same.

It may be added that even when there was default of payment of the loan amount on part of respondent No.1, the appellant took no step to get cancelled the GPA executed by him in favour of respondent No.1. Since respondent No.1 held a legal and valid GPA on behalf of the appellant authorizing him to deal with the house in the manner he liked, the sale deed executed by respondent No.1 in favour of respondent No.2 was a legal, valid and effective document and the appellant had no right to seek cancellation of the same.

Admittedly, respondent No.1 has paid of the entire loan amount standing in the name of the appellant. Even if it is accepted for the sake of argument that the outstanding amount was deposited by respondent No.2 and not by respondent No.1 or was deposited after the appellant had given a notice to respondent No.1 before filing the present suit, yet it is not the case of the appellant that the entire outstanding amount alongwith interest had not been paid of. In case respondent No.1 delayed payment of the loan amount, it is he, who paid interest on the delayed payments. As such, no right of the appellant had been infringed and there was no ground for him to ask for cancellation of the sale deed.

Resultantly, there being no merit in the appeal and also as no substantial question of law arises for intervention in the concurrent findings of learned trial Court and learned first appellate Court, the instant appeal is dismissed.

Since the main appeal itself has been dismissed, the Civil Miscellaneous No.14978-C of 2016 stands disposed of.

(SNEH PRASHAR)
JUDGE

16.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**