

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

**RSA No.6761 of 2016
Date of decision: 22.12.2017**

Krishna

.....Appellant

Versus

Karam Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jarnail Singh Saneta, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 04.11.2016 passed by the Additional District Judge, Panipat, dismissing an appeal filed by defendant No.2-appellant against the judgment and decree dated 04.08.2014 passed by the Civil Judge (Senior Division), Panipat, whereby suit filed by plaintiff-respondent No.1 has been decreed.

Karam Singh-plaintiff (respondent No.1 herein) filed a suit for declaration with consequential relief of permanent injunction alleging herein that he was owner in possession of the land measuring 20 Kanals 1 Marla being 1/8th share out of land measuring 160 Kanals 8 Marlas. He along with other co-sharers sold land measuring 5 Kanals 18 Marlas. Further, he along with other three co-sharers sold land measuring 4 Kanals 19 Marlas. Thereafter, he independently sold 3 Kanals 4 Marlas of land vide sale deed dated 03.05.2007. In this way, he had sold land measuring 5 Kanals 19 Marlas out of the land of his share i.e. 20 Kanals 1 Marla and he had left with ownership of land measuring 14 Kanals 2 Marlas. He had also

leased out land measuring 8 Kanals to one Bhulan Singh vide lease deed dated 29.04.2010 and had left with land measuring 6 Kanals 2 Marlas. As per plaintiff, he is illiterate and rustic villager having no worldly knowledge. He took loan of Rs.1 lac twice from PLMB Branch, Bapoli against the land of his share. Raj Kumar, his real nephew, had approached him in the month of June, 2010 and represented that the Government had made a notification of waiving the loan to poor farmers. Therefore, he was required to accompany him and would have to make a representation personally. He believed Raj Kumar and accompanied him. He was taken to a place where Sahab Singh (defendant No.1), father-in-law of Raj Kumar was, also there. Sahab Singh too represented that the Government was waiving off loan and he was required to thumb mark certain papers, whereupon the loan would be waived. Thereafter, plaintiff was made to thumb mark certain printed as well as blank papers and was taken in an office for some time. Defendant No.1 and Raj Kumar informed him that he would be receiving intimation about waiving off loan of Rs.2 lacs. It was further submitted that about a month back, Krishna (defendant NO.2), mother of Raj Kumar, claimed that they have purchased the land of the share of plaintiff and henceforth, he shall not enter into their land. When the plaintiff approached the Halqa Patwari, he was informed that on the basis of General Power of Attorney dated 24.06.2010, executed at Chhachhrauli (Haryana) in favour of defendant No.1, a sale deed dated 07.10.2010 rectified vide deed dated 15.10.2010, registered with Sub Registrar, Bapoli qua his share had been executed in favour of defendant No.2 through defendant No.1. Defendants have, thus committed fraud upon the plaintiff. Plaintiff never executed any General Power of Attorney dated

24.06.2010 in favour of defendant No.1. He had not received any amount from defendant No.1 towards the sale consideration of the land. Therefore, the General Power of Attorney dated 24.06.2010, the sale deed dated 07.10.2010 and rectification deed dated 15.10.2010 were liable to be set aside. The plaintiff had requested the defendants to accede to his request, but to no avail. Hence, the suit.

Upon notice, defendants filed joint written statement, wherein it was stated that the plaintiff had sold the suit land to defendant NO.2 with his free will and consent and at that time, suit land was free from all sorts of bank encumbrances. The plaintiff executed the General Power of Attorney in favour of defendant No.1 in respect of his land. He got the total sale consideration of his land from defendant No.2 through defendant No.1. Therefore, General Power of Attorney, sale deed and rectification deed are legal and valid. Defendant No.1 never represented the plaintiff about waiving of any loan by the Government. Plaintiff was aware of the execution of General Power of Attorney, sale deed and rectification deed. Since the date of execution of the sale deed, defendant No.2 was in peaceful possession of the suit land. Plaintiff has now become dishonest and is harassing the defendants with ulterior motive. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether G.P.A. dated 24.06.2010 vasika no.203/4, sale deed vasika no.855 dated 07.10.2010 and rectification deed dated 15.10.2010 vasika no.889 are illegal, null and void and not binding upon the rights of the plaintiff, as alleged in the plaint?
OPP
2. Whether the plaintiff is entitled to the alternative relief of

possession/joint possession of 1/8th share in the land, as alleged in the plaint, in case defendants succeeds in dispossessing him during pendency of suit, as has been alleged? OPP

3. If issue nos.1 and 2 are decided in favour of plaintiff, whether plaintiff is entitled for the relief of permanent injunction, as prayed for in the plaint? OPP
4. Whether suit is not maintainable? OPD
5. Whether plaintiff has no locus-standi or cause of action to file the present suit? OPD
6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. While decreeing the suit, it was observed that sale deed dated 07.10.2010 Ex.DW3/1 executed by defendant No.1 on the basis of General Power of Attorney in favour of defendant No.2 revealed that the suit property was sold to defendant No.2 for a sale consideration of Rs.15,50,000/-. However, payment of sale consideration of Rs.15,50,000/- had not been proved by the defendants by any sufficient or cogent evidence. From the testimony of Sahab Singh (DW-1) and Krishna (DW-3), it revealed that no sale consideration was passed at the time of execution of the sale deed and hence, the sale deed Ex.DW3/1 was a sham and bogus transaction. As per recital of sale deed, amount of Rs.15,50,000/- was paid by defendant No.2 to the plaintiff at his house. Sahab Singh(DW-1) stated that the said amount was paid to the plaintiff by defendant No.2 at his house before the execution of sale deed and out of that amount, plaintiff had paid the installments of loan. However, Krishna (DW-3) stated that the sale

sale deed when they returned to the village. Sahab Singh (DW-1) further stated that the plaintiff was not present at the time of execution and registration of the sale deed, whereas DW-2 stated that the plaintiff was present in Tehsil complex when the sale deed was executed and registered in their favour. It was not understandable, as to why the plaintiff himself did not get the sale deed executed and registered in favour of defendant No.2 when he had already received the alleged sale consideration. From the perusal of receipts of loan documents Ex.DX and Ex.DY, it revealed that the amount of Rs.1,20,350/- and Rs.77,945/- were not deposited by plaintiff-Karam Singh, rather the said amount was deposited in bank by Raj Kumar, son of defendant No.2. Sole intention of Raj Kumar was to clear the loan taken by the plaintiff and to make the property free from all encumbrances, so that the sale deed could be executed in favour of his mother by his father-in-law on the basis of general power of attorney obtained by them from the plaintiff. The plaintiff is a simple and rustic villager. This fact was evident from his deposition while appearing as PW-1, wherein he had stated that he was residing with Pale Ram and he used to look after him and arrange food for him. He had no reason to repose faith in Sahab Singh-defendant No.1, who is father-in-law of his nephew. There was no evidence to show that the plaintiff was having cordial relations with defendant No.1, so as to trust him and to execute General Power of Attorney qua his entire property in his favour. The plaintiff had taken a plea that the defendants, on false pretext that some documents were being prepared for waiving off the loan, had taken him to the office of Sub Registrar, Chhachhrauli. He had specifically stated that Raj Kumar had taken him to the office of Sub Registrar and got signed some papers under a misrepresentation.

Since, Raj Kumar and all the defendants were in fiduciary relationship with the plaintiff, they had to prove that the alleged documents were executed by the plaintiff with his free will and consent. However, they were failed to prove, as to why the General Power of Attorney was given by the plaintiff in favour of defendant No.1 at Chhachhrauli with regard to his entire property for the purpose of sale. Moreover, in the absence of any evidence with regard to payment of Rs.15,50,000/- as sale consideration, suit of the plaintiff has been rightly decreed and the alleged General Power of Attorney and sale deeds have been declared illegal, null and void.

The lower appellate Court has affirmed the finding of fact recorded by the trial Court and dismissed the appeal. While dismissing the appeal, it has been observed that execution of General Power of Attorney was surrounded by suspicion as it had been executed and registered in the office of Sub Registrar, Chhachhrauli, District Yamuna Nagar, whereas plaintiff-Karam Singh was resident of village Chhajpur Khurd, Sub Tehsil Bapoli, District Panipat. In the General Power of Attorney Ex.P2/Ex.DW2/1, plaintiff-respondent No.1 represented himself to be resident of village Memudpur, Tehsil Chhachhrauli, District Yamuna Nagar. During cross-examination, Sahab Singh (DW-1) had admitted that at the time of execution of General Power of Attorney, Raju nephew of Karam Singh was with him and he was not accompanied by any other person. The plaintiff was an illiterate person and hence, he was taken to the office of Sub Registrar by Raju alone, where Sahab Singh was already present and by misrepresentation, General Power of Attorney Ex.P2/Ex.DW2/1 was got executed. Thereafter, Raj Kumar deposited the loan amount of Rs.1,20,350/- and Rs.77,945/- in the loan account of plaintiff with the bank

vide receipts Ex.Dx and Ex.DY.

After going through the impugned judgments, it is apparent that defendants have failed to lead sufficient evidence to prove that sale consideration of Rs.15,50,000/- had been paid by defendant No.2 to the plaintiff at the time of execution and registration of sale deed Ex.DW3/1. Moreover, power of attorney dated 24.06.2010, alleged to be executed by plaintiff in favour of defendant No.1 is also surrounded by suspicious circumstances, as the same has been executed at Chhachhrauli, District Yamuna Nagar, whereas plaintiff is resident of village Chhajpur Khurd, Sub Tehsil Bapoli, District Panipat. There was no occasion for him to travel such a long distance in order to execute the said power of attorney in favour of defendant No.1. In the absence of any evidence with regard to payment of sale consideration of Rs.15,50,000/-, the suit of the plaintiff has been rightly decreed by both the Courts below.

No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

22.12.2017
ajp

(RITU BAHRI)
JUDGE

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