In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 2927 of 2014 (O&M)
Date of Decision: 13.2.2017

Baljinder ....Appellant

Versus

Sharda Gupta and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajnish Gupta, Advocate
for the appellant.

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ANITA CHAUDHRY, J

This is an appeal by the unsuccessful plaintiff against the judgments of both the Courts below. The appeal has been filed with a delay of 163 days. The question whether sufficient cause had been shown will be deliberated little later. Before that, a brief sketch of the facts is necessary.

A suit was filed by the plaintiffs asserting that they were owners of the suit property to the extent of share mentioned therein. It was pleaded that the power of attorney dated 17.11.1990 executed in favour of defendant No. 2 and the sale deed dated 21.7.2003 did not affect their rights and a prayer for permanent injunction was made restraining the defendants from interfering in their possession. It was pleaded that Telu Ram, their predecessor, had died on 26.5.2001 leaving behind plaintiffs No. 1 to 7 who had inherited the entire estate of Telu Ram and they were in possession to the extent of the share disclosed in the plaint. It was pleaded that plaintiff No. 8 namely Ram Kumar who was earlier arrayed as defendant No. 3 had gifted his half share to plaintiff No. 7 but during the pendency of the suit, plaintiff No. 7 gifted the same land back to Ram Kumar now plaintiff No. 8 and the possession was also delivered to plaintiff No. 8. The plaintiffs came to know of the sale deed dated 21.7.2003 allegedly executed by defendant No. 2 on the basis of a power of attorney dated 27.11.1990 executed by Telu Ram in favour of defendant No. 2. A challenge was made to the sale deed on the plea that it was null and void and not binding on the rights of the plaintiffs and Telu Ram had not executed any attorney in favour of defendant No. 2 nor they had authorised defendant No. 1 to alienate the suit land and the power of attorney was forged and fabricated. It was also pleaded that the power of attorney came to an end on the death of Telu Ram and defendant No. 2 had no right to alienate the land on behalf of Telu Ram after his death. It was also pleaded that no sale consideration had passed.

The defendants filed their written statement along with a counter claim and it was pleaded that Telu Ram and Ram Kumar had executed the agreement to sell in favour of defendant No. 2 and possession was delivered to defendant No. 2 and a registered power of attorney had been executed in favour of defendant No. 2 which was irrevocable as the entire consideration under the agreement had been paid and possession had been delivered and defendant No. 2 became the owner. It was pleaded that defendant No. 2 on the basis of irrevocable power of attorney had executed an agreement to sell on 25.11.2000 for a consideration of Rs. 1,16,000/- and he had received Rs. 16,000/- as earnest money and the date of sale was fixed for 15.5.2001 and possession had been delivered. It was pleaded that the date of execution of the sale deed was extended from 15.5.2001 to

31.7.2003 and a writing was made on the reverse side of the first leaf of the agreement to sell. It was pleaded that the suit was collusive between the plaintiffs and defendant No. 3 (now plaintiff No. 8) and, therefore, a bogus gift deed was prepared.

In the counter claim, prayer was made that defendant No. 1 was the owner and in possession of the land. In the alternative a prayer for specific performance of the agreement to sell was made.

In reply to the counter claim it was pleaded that defendant No. 1 was not entitled to execute the sale deed as the authority to execute the sale deed had come to an end.

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

1. *Whether the sale deed no. 2064/1 dt. 21.7.2003 is null, void and not binding on the rights of the plaintiff and is liable to be set aside as alleged in the para no. 6of the plaint? OPP*
2. *Whether the plaintiffs are owner in possession of suit land as detailed in para no. 1 of the plaint to the extent of ½ in equal share, whereas plaintiff no. 8 is owner in possession of the same to the extent of remaining ½ share and further the power of attorney no. 617/4 dt. 27.11.990 in favour of defendant no. 2 and sale deed no. 2064/1 dt. 21.7.2003 are not binding upon the rights of the plaintiff and is liable to be set aside as alleged in the plaint? OPP*
3. *Whether the defendants no. 1 and 2 are liable to be restrained from interfering into the lawful and peaceful*

possession of the plaintiffs over the suit land as alleged in the plaint ? OPP

4. *Whether plaintiffs have concealed the true and material facts from the court ? OPD*
5. *Whether the suit is collusive of the plaintiffs and defendants no. 3 ? OPD*
6. *Whether the suit of the plaintiffs is not maintainable in the present form ? OPD*
7. *Whether the suit is barred by law of limitation ? OPD*
8. *Whether the suit is not properly valued for the purposes of the court fees ? OPD*
9. *Whether the defendant no. 1 is bona fide purchaser for a valuable consideration ? OPD*
10. *Relief.*

The trial Court after affording an opportunity to both the sides recorded a finding that the plaintiffs had taken the plea of fraud but could not establish it. A finding was recorded that the power of attorney that was executed by Telu Ram was irrevocable and it had been challenged after 11 years after the death of Telu Ram. It rejected the contention that the person who had appeared in the witness box as Bal Kishan was an imposter. It was noted that the application filed by the plaintiffs in this regard was withdrawn later. A finding was recorded that defendant No. 1 was a *bona fide* purchaser for consideration and the agreement had been executed during the lifetime of Telu Ram and the earnest amount had been received and possession had been handed over and defendant No. 2 had the authority to enter into any agreement to dispose of the property. The suit of the plaintiffs was dismissed while the counter claim was allowed and defendant No. 1 was held to be the owner and in possession of the property.

Only one appeal was preferred by the plaintiffs which was dismissed by the Appellate Court.

Para 24 and 25 of the judgment passed by the Appellate Court read as under:-

> *"24. In the present matter a registered General Power of Attorney dated 27.11.1990 was executed by Shri Telu Ram, the predecessor-in-interest of plaintiffs no. 1 to 7 and plaintiff no. 8 in favour of defendant no. 2. Later on defendant no. 2 sold the property to defendant no. 1 on the basis of General Power of Attorney. Now, the plaintiffs are alleging that the said General Power of Attorney and sale deed dated 21.7.2003 executed by defendant no. 2 in favour of defendant No. 1 Smt. Sharda are wrong, illegal, null and void. It is the contention of plaintiffs-appellants that first of all the said General Power of Attorney was never executed and it is false and frivolous. Apart from that Telu Ram, predecessor-in-interest of plaintiffs no. 1 to 7 died on 26.5.2001 and thereafter, power of attorney in favour of defendant no. 2 had come to an end and the sale on the basis of said power of attorney is wrong and illegal. On the other hand, the defendants/respondents alleged that the alleged general power of attorney absolutely correct and legal. On the basis of said power of attorney agreement to sell was executed on 25.11.2000 by defendant no. 2 in favour of defendant no. 1 and the sale deed was to be executed on*

15.5.2001, which was extended later on to 31.7.2003 on 10.5.2001. On the date of execution of the agreement to sell i.e. 25.11.2000 and on the date of extension i.e. 10.5.2011, the executant of the power of attorney i.e. Telu Ram was alive and no notice was issued to the defendants regarding cancellation of General Power of Attorney, therefore, the transaction is alleged to be valid. It is further argued by the ld. Counsel for the defendants that the execution of the registration of sale deed dated 21.7.2003 was correct and legal because the said power of attorney was irrevocable and there was no notice to the power of attorney holder regarding the cancellation of the power of attorney. In this regard, this court is of the view that the execution of the power of attorney is well proved on the record. Therefore, it can not be said that the alleged General Power of Attorney was not executed. One of the attesting witness Dalip Singh has been examined as DW-8 and the thumb impression and signatures available on the General Power of Attorney were duly compared with the thumb impression of Telu Ram, which were found to be correct. In such circumstances, the execution of the power of attorney is well proved. Now, it is to be seen that whether the execution of the sale deed on the basis of said power of attorney is correct and legal. The power of attorney, which was irrevocable was executed on 27.11.1990 on the basis of that power of attorney, defendant no. 2 entered into an agreement to sell on 25.11.2000 with defendant no. 1 and the date of registration of *the sale deed was fixed for 15.5.2001, later on this dated was extended to 31.7.2003 on 10.5.2001, one of the principal namely Telu Ram died on 26.5.2001. In such circumstances, the transaction upto 10.5.2001 are not effected in any manner because upto that date the said Telu Ram was alive. The said sale deed was executed on 31.7.2003 and now it is to be seen that what is the effect of death of Telu Ram on the execution of sale deed. In this regard, this court is of the view that the said power of attorney was irrevocable, therefore, it does not come to an end due to cancellation or due to death of one of the principal. Reliance in this regard can be given of the Hon'ble Punjab and Haryana High Court in Ramesh Mohan's case (supra). The ld. Counsel for the appellant has relied upon the law laid down by Hon'ble Supreme Court of India in Suraj Lamp and Industries Pvt. Ltd. case (supra), wherein it was held that immovable property can be legally and lawfully transferred only by way of registered deed of conveyance and not by power of attorney. However, it is mentioned in the said authority itself that if the power of attorney is irrevocable in any manner known to law then transaction is of binding. In the present case, the General Power of Attorney was made irrevocable, therefore, the said case law is not applicable on the facts and circumstances of the present case and the law Ramesh Mohan's case (supra) is squarely applicable.*

25. Apart from that the power of attorney was having no notice regarding the cancellation or death and on this ground *also the act done by General Power of Attorney holder is correct and legal particularly in the circumstances when the agreement was partly performed during life-time of the principal. Reliance can be given of the law laid down by Hon'ble Punjab and Haryana High Court in Swaran Singh's case (supra), law laid down by Hon'ble Delhi High Court in I.C.Mehta's case (supra) and the law laid down by Hon'ble Punjab and Haryana High Court in Smt. Ram Asri alias Nikko's case (supra). Hence, the appeal is liable to be dismissed."*

Counsel for the appellant has urged that the appeal was filed only by plaintiff No. 7 while the rest of the plaintiffs were arrayed as proforma respondents. It was urged that the delay had occurred in filing the appeal as the appellant was not pursuing the case and the case was being looked after by Ram Kumar-uncle of the appellant. It was urged that the family did not come to know of the decision and they made enquiries from their uncle in November 2012 but they did not come to know about the fate of the case and they had been pursuing their uncle and had been calling him up and also the lawyer but came to know about the status of the case only in March 2013 as the appellant's uncle had gone for a pilgrimage to Allahabad and had returned only after 1½ month and there was sufficient cause for condoning the delay of 163 days.

I have heard the counsel for the appellant at great length on the application and the main appeal.

The appellant has to first overcome the issue of limitation and has to show that there was sufficient cause for not filing the appeal on time.

The meaning of the word 'sufficient' is adequate or enough. In this context, sufficient cause means that the party should not have acted in negligent manner or there was want of *bona fide* on its part. Each case has to be examined and the circumstances are to be seen to enable the Court to exercise the discretion. The applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the Court will not allow the application for condonation of delay. The Court has to examine whether the mistake is *bona fide* or merely a ruse to cover an ulterior purpose. No doubt the Courts give a liberal interpretation to the expression sufficient cause but it has to be applied with all its rigour. The Court has no power to extend the period of limitation on equitable grounds.

Para 9, 11, 12 and 13 of ***'Basawaraj and another versus The Spl. Land Acquisition Officer (2013) 14 SCC 811'*** are relevant and they are reproduced for ready reference:-

> *9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of*

the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v.Veena @ Bharti AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.)

10. x x x x x x

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal, AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR

2002 SC 1201.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 24, p. 181: "330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) *that persons with good causes of actions should pursue them with reasonable diligence".*

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches."

I find that there are no grounds to condone the delay. Even otherwise the appellant has no case on merits. The power of attorney had been executed by Telu Ram in favour of defendant No. 2 in 1990. Telu Ram died in 2001. There was no challenge to it during his lifetime. Defendant No. 2 on the basis of irrevocable power of attorney had entered into an agreement to sell, he had received earnest money and handed over its possession. The sale deed was to be executed in May 2001. For some reason the date was extended. Defendant No. 2 did not have notice that Telu Ram had died. The transaction entered by him was complete in all respects except the execution of regular sale deed and registration thereof. Interest was created in the property under the agreement. Though mere execution of agreement to sell will not create any interest but where the vendor (attorney duly authorized) had in pursuance to the agreement delivered possession, received earnest amount, it could not be argued that no interest was created. Only one of the plaintiff has filed this appeal and the other plaintiffs had accepted the verdict and the judgment had become final as against them. The appellant has been unable to satisfy that there was satisfactory explanation to condone the delay.

The application seeking condonation of delay and the appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 13, 2017
Gurpreet

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