

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

**RSA No.4913 of 2014 (O&M)
Date of Order:17.08.2017**

Deepak Bagga and others

..Appellants

Versus

Balraj Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

C.M.No.386-C of 2016

Prayer in this application is for re-calling of the order dated
17.12.2015.

The appeal was dismissed in default that on account of non-
prosecution as the arguing counsel did not appear on that day and a request
was made to adjourn the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the application is allowed and the appeal is
restored to its original number and stage.

With the consent of learned counsel for the appellant, the
appeal itself is taken up on the Board.

RSA No.4913 of 2014

Heard.

Plaintiffs have filed this regular second appeal against
concurrent findings of fact arrived at by the Courts below.

Plaintiffs had filed a suit for possession by way of specific performance of agreement to sell dated 12.06.1992, with respect to land measuring 66 kanals 5 marlas. It was a case of the plaintiffs that Sohan Singh, predecessor-in-interest of the defendants had entered into an agreement on behalf of himself, as attorney of defendants no.1, 2 and Nasib Kaur wife. It may be noticed that defendant no.2 is son of Sohan Singh, whereas defendant no.1 is grand son of Sohan Singh. It was pleaded that the land was agreed to be sold @ Rs.60,000/- per acre and plaintiffs paid a sum of Rs.40,000/- as earnest money. It has further come on record that Sohan Singh executed a sale deed with respect to land measuring 18 kanals 9 marlas on 24.06.1992 in favour of plaintiffs.

Defendants appeared and contested the suit. It was pleaded that the agreement to sell is forged and fabricated. It was further pleaded that Sohan Singh has no authority to enter into an agreement with respect to the share of the defendants, namely, Balraj Singh, grand son and Gurdip Singh, son as the defendants never issued any attorney in favour of Sohan Singh. It was further asserted that Balraj Singh was less than 12 years old when attorney dated 05.07.983 is alleged to have been executed by him.

Learned trial Court after appreciating the evidence available on the file and particularly noticing that the alleged power of attorneys dated 05.07.1983 and 14.07.983 have not been produced by the plaintiffs, dismissed the suit. Learned trial Court further noticed that Balraj Singh, who was a minor, could not have appointed anyone as power of attorney holder on his behalf. Further no permission for the sale of the property of the minor was taken from the Court.

An appeal was preferred by the plaintiffs before the learned

District Judge. Learned District Judge also after re-appreciating the evidence available on the file, upheld the findings of the trial Court and dismissed the suit filed by the plaintiffs.

I have heard counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Counsel for the appellants has submitted that the plaintiffs have produced on file a sale deed which was executed by Sohan Singh while acting as General Power of Attorney holder of the defendants. On the basis thereof, he submitted that it must be assumed that Sohan Singh holding a power of attorney of the defendants. He further submitted that the Courts below have further erred in refusing to pass order for refund of the earnest money.

I have considered the submissions of learned counsel for the appellants. However, I am unable to agree.

It is not in dispute that Balraj Singh was not even 12 years old when plaintiff claims that he had executed General Power of Attorney in favour of Sohan Singh. The date of birth of Balraj Singh is 08.09.1971. Merely because Sohan Singh executed a sale deed on the basis of some attorney, the General Power of Attorney in favour of Sohan Singh with respect to the land in dispute cannot be assumed. It is not in dispute that General Power of Attorneys dated 14.07.983 and 05.07.1983 have not been placed on record. The Court is not in a position to draw assumption that since Sohan Singh has executed a sale deed acting as a attorney, therefore, he had a valid attorney with respect to the land in dispute also.

I have also considered the arguments of learned counsel for the appellants that the refund has not been ordered. It is not in dispute that

Sohan Singh executed a sale deed in favour of the plaintiffs with regard to land measuring 18 kanals 09 marlas, which is Ex.P5 on the record. In the aforesaid sale deed, it is recorded that a sum of Rs.1,63,500/- has already been paid. No payment was made before the Sub Registrar. Therefore, the Courts have rightly drawn a conclusion that the earnest money of Rs.40,000/- paid by the plaintiffs had been adjusted.

In view of the discussion herein above, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be set aside.

August 17, 2017
nt

(ANIL KSHETARPAL)
JUDGE

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