

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

**RSA No.2119 of 2017 (O&M)
Date of decision: 18.08.2017**

N.K. Kapil

... Appellant

Vs.

Upkar Singh Sandhu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Ekta Thakur, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 17.03.2017 passed by the learned Additional District Judge, whereby first appeal of defendant No.2 was allowed, setting aside the judgment and decree dated 26.09.2014 of the learned trial Court, dismissing the suit for declaration, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 5 of its impugned judgment, are that defendant No.4 floated a scheme for allotment of dwelling units in Chandigarh and plaintiff being interested person for the house, applied under the said scheme as per his application dated 28.02.1980 with defendant No.4. On 29.03.1983, a draw was held by defendant No.4, in which plaintiff was allotted Dwelling Unit No.3114/2, MIG-II, Sector

44-D, Chandigarh vide allotment letter No.R 160 EM DO(AA V) 83522 dated 31.10.1983 for a consideration of ₹70,800/- which was to be paid in monthly installments. The plaintiff paid all the installments and accordingly, he was issued No Due Certificate in the year 2008. The plaintiff appointed defendant No.1 as his General Power of Attorney as per GPA dated 31.01.1985. Defendant No.1 had given the flat in question on rent to defendant No.2 and now to defendant No.3 and also executed Sub-General Power of Attorney in favour of defendant No.2 without the permission of plaintiff. Due to the acts being done against the interest of plaintiff, it was cancelled by plaintiff on 08.08.2007 and intimation was given to defendant No.1 vide letter dated 07.09.2007. On 19.12.2008, plaintiff issued a letter to defendant No.1 to get the flat vacated immediately, as he being no longer attorney of plaintiff. Presently, defendants No.1 and 2 had given the dwelling unit in question to defendant No.3 Satbir Kaur, although they had no right to do so. The plaintiff when approached defendants No.1 to 3 for possession of said flat, they threatened him that they would alienate the said flat and create charge upon the same and would further rent out to other persons. Defendants No.1 to 3 had no right, title or interest in any manner in the said flat and they could not retain its possession.

Defendants were put to notice. Defendants No.1 and 4 failed to appear before the learned trial Court and they were proceeded against ex-parte. Defendant No.2 put appearance and filed his contesting written statement, raising more than one preliminary objections. Defendant No.3 also appeared and filed her written statement, admitting the claim of defendant No.2, pointing out that he was sole and absolute owner of the dwelling unit. Defendant No.3 stated that she was residing in the dwelling unit only as a licensee of defendant

No.2.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
4. Whether the plaintiff has not approached the court with clean hands and has concealed the material facts from this court? OPD
5. Whether the present suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the plaintiff executed the irrevocable GPA, SPA, affidavit in favour of defendant No.1? OPD
7. Whether the defendant no.1 has entered into agreement to sell with defendant No.1? OPD
8. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has proved his case. Accordingly, suit for declaration filed by the plaintiff was decreed by the learned trial Court vide its judgment and decree dated 26.09.2014. Feeling aggrieved, defendant No.2 filed his first appeal, which came to be allowed by the learned first appellate Court, vide its

impugned judgment and decree dated 17.03.2017. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that dwelling unit in question was allotted to the plaintiff-appellant by the Chandigarh Housing Board-respondent No.4. The dwelling unit was allotted vide allotment order dated 31.10.1983 with a specific stipulation therein that the allottee-plaintiff (appellant herein) shall not dispose of the dwelling unit in any manner upto a period of 10 years after its allotment. It is also a matter of record that within a period of less than one and half year, after allotment in his favour, plaintiff executed a general power of attorney dated 31.01.1985 in favour of defendant No.1. It was also one of the conditions of allotment that the dwelling unit shall not be transferred even by way of power of attorney.

The moment plaintiff executed the general power of attorney dated 31.01.1985 in favour of defendant No.1, he glaringly violated the terms of allotment. On the strength of said power of attorney dated 31.01.1985, defendant No.1 disposed of the dwelling unit by executing the sub general power of attorney dated 16.06.1992 in favour of defendant No.2. As a consequence of this sale transaction, defendant No.2 was put in possession of the dwelling unit. Since the plaintiff-appellant was fully satisfied about all these transactions, he never objected to either possession of defendant No.2 in the dwelling unit nor he approached to any of the authorities lodging any complaint against either defendant No.1 or defendant No.2. Having said that, this Court feels no hesitation to conclude that the learned first appellate Court was well within its jurisdiction to pass the impugned judgment and decree and the same

deserve to be upheld.

Narration of the abovesaid peculiar fact situation of the case in hand would make it crystal clear that plaintiff-appellant was not a bonafide litigant right from day one. Further, while appearing as his own witness as PW1, plaintiff-appellant was left with no other option except to admit his signatures on all the relevant documents produced before the learned trial Court in evidence of the plaintiff as well as that of the defendants. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment of reversal and the same deserves to be upheld, for this reason also.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 12 to 14 of the impugned judgment, which deserve to be noticed here, read as under: -

“Before making discussion regarding findings of learned trial Court, it is necessary to go through the evidence on record led by both the parties. Plaintiff N.K. Kapil himself stepped into witness box as his own witness as PW1 and proved his affidavit Ex.PW1/A along with documents photo copy of allotment letter Ex.P1, No Due certificate Ex.P2, General Power of Attorney Ex.P3, copy of letter for cancellation of General Power of Attorney Ex.P4, another copy of letter addressed to Gurinder Singh Sidhu Ex.P5.

In his affidavit proved in his examination-in-chief, the facts taken in the plaint has been reiterated. However, testimony of plaintiff is totally shaken while he answered to the questions in cross-examination. He has admitted that total consideration amount was fixed by Chandigarh Housing Board as ₹70,800/- and he deposited ₹26,000/- initially. Although he has stated that he deposited installments of this Dwelling Unit and ground rent, but no such receipt has been produced by him in the court. Initially his cross-examination was deferred for producing such record and on next hearing when he was again recalled for further cross-examination, he categorically stated that except photo copy of allotment letter and No Due Certificate he has no other document with him. He has been confronted with question and he admitted that he is not in possession of any receipt vide which installments has been deposited by him. Rather, he has admitted the case of defendants when admitted that he sold this Dwelling Unit to Gurinder Singh Sidhu on the basis of Agreement to Sell, General power of Attorney, affidavit and other such documents. All these documents have been put to him in original and he admitted his signatures on receipt Ex.R3, affidavit Ex.R4, Original General Power of Attorney again marked as Ex.R4 as got registered with Sub Registrar, Chandigarh, Special Power of Attorney Ex.R5 in favour of Sarwan Singh Sidhu, his own Will executed in favour of Gurinder Singh Sidhu as Ex.R6. He has also admitted his signatures on original Agreement to Sell Ex.R2. He has admitted

that possession of Dwelling Unit is with defendant No.2 and failed to rebut and simply stated that he does not remember whether he himself handed over vacant possession of dwelling unit to Gurinder Singh Sidhu after execution full of and final sale documents in his favour. Although he has stated that he has cancelled General Power of Attorney in favour of defendant No.1. He has also admitted that he has given Power to appoint Sub attorney to Gurinder Singh Sidhu in respect of the said dwelling unit.

Contesting defendant No.2 hereby appellant has examined Kuldeep Verma clerk, office of Sub Registrar, U.T. Chandigarh as RW1, who proved record regarding all these documents General Power of Attorney Ex.R4, Special Power of Attorney Ex.R5, Original Will Ex.R6, Sub General Power of Attorney Ex.RW1/A. This witness is official and produced the record being lawful custodian.

Appellant defendant No.2 before learned trial court stepped into witness box as DW1 and proved his affidavit Ex.R1 along with receipts Ex.R7 to Ex.R47. He has also produced original receipts Ex.R9 to Ex.R47 vide which various installments were paid. In cross-examination nothing untoward has been stated by him, rather he has substantiated this fact that Dwelling Unit is in his possession through his caretaker Satbir Kaur, now Shri Parmod Kumar Mishra. These documents Ex.R9 to Ex.R47 should have been in possession of plaintiff if he would have paid installments

every year. This shows that plaintiff in fact parted with possession after acceptance of full and final payment and after execution of Agreement to Sell, General Power of Attorney, Affidavit and his own Will. All these documents have been executed way back in 1985 and suddenly in 2007 he has obtained No Due Certificate and then cancellation of General Power of Attorney in favour of defendant No.1. The cancellation deed of General Power of Attorney has not been produced and proved on record. Once plaintiff N.K. Kapil has parted with possession after accepting full and final payment way back in 1985, it is not in his hand that he has cancelled such General Power of Attorney in 2007 by taking No Due Certificate as property was still in his name in official record of defendant No.4. First of all, he has concealed all the true facts before learned trial Court and estoppel is also applicable to him. He cannot question that he has not sold the same when this fact has been admitted by him. In cross-examination he has admitted execution of all the related documents. It is established from this evidence that plaintiff-respondent No.1 has not come to the court with clean hands and he has concealed all the material facts just for the sake of grabbing this property regarding which he has already given his right way back in 1985. Such type of person is not entitled for any kind of relief in the court of law.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment of reversal passed by the learned first appellate Court. He also failed to raise

any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

18.08.2017
vishnu

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