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

**RSA No.4605 of 2017 (O&M)
Date of Decision: 29.09.2017**

Gurdeep Singh

.....Appellant

Vs

Harwinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Batra, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below, decreeing the suit of the plaintiff for recovery of Rs.40 Lakhs along with interest @ 6% per annum from the date of filing of the suit till final realization of the amount.

[2]. Brief facts are that plaintiff filed a suit for recovery against the defendant, who is brother of the plaintiff. Plaintiff alleged that he was doing business at Delhi whereas defendant used to reside in Punjab. In the month of May 2006, defendant shifted from village Rampur to Mahalpur. He was appointed as general power of attorney with a power of sale of the property by

the plaintiff on 29.02.2000. The power of attorney was registered with the office of Joint-Sub Registrar, Banga, Tehsil and District Nawanshahar. Defendant sold the land of the plaintiff measuring 65 *Kanals* 6 *Marlas* for a consideration of Rs.40 Lakhs vide registered sale deed dated 09.01.2006. After selling the property defendant retained the entire sale consideration under the pretext that he will purchase some profitable land out of this consideration in the name of plaintiff. Nothing was done by the defendant which prompted the plaintiff to demand for return of the amount with interest. Defendant kept on postponing the issue of payment and ultimately the suit came to be filed by the plaintiff.

[3]. The suit was resisted by the defendant on numerous grounds. Defendant contested the claim of the plaintiff that the plaintiff was doing joint business at Delhi. He had some dispute with his wife and a criminal case under Sections 498-A, 406 IPC was registered against the plaintiff. A divorce petition was also filed. Maintenance and litigation expenses were answered by the defendant. Defendant alleged that the plaintiff had already received the amount and was playing in the hands of one Charanjit Kaur in whose house he was living at Delhi. Defendant further alleged that the property was purchased *benami* by the defendant in the name of the plaintiff.

[4]. Both the Courts below have found that execution of sale deed was an admitted fact. Property was not proved to be *benami* with reference to any evidence on record. Defendant was duly appointed as general power of attorney by the plaintiff. Partition of the joint land was not proved by any metes and bounds or by the order of any competent Court. The receipt of payment by the plaintiff was not proved by way of any cogent evidence. Both the Courts below also found that the Court at SBS Nagar was competent to decide the *lis* as the power of attorney was executed at the office of Joint Sub Registrar, Banga.

[5]. I have heard learned counsel for the appellant.

[6]. It is found that the appellant has taken contradictory stand. On the one hand factum of general power of attorney in respect of joint land was admitted. Sale deed dated 09.01.2006 was also an admitted fact. Defendant has tried to project a case that he was looking after the affairs of the plaintiff in respect of criminal case and liability to pay maintenance arising out of his matrimonial dispute with his estranged wife. Defendant also pleaded that the plaintiff has already received the payment. At the same time, the defendant has also tried to project that sale to be a *benami* in nature.

[7]. Having considered the submissions made by learned counsel for the appellant, I find that the factum of sale already stood admitted on record. The land was not proved to be *benami* by any stretch of imagination inasmuch as that no evidence was led on record to prove that the land was purchased by the defendant from his own funds in the name of the plaintiff. The general power of attorney executed by the plaintiff has been proved on record. The land was not proved to be partitioned by metes and bounds and the evidence led by the defendant was totally discrepant with regard to the payment made to the plaintiff by any mode and mechanism.

[8]. Cause of action is dependent upon bundle of facts. Both the Courts below have rightly concluded the necessary issues in favour of the plaintiff including the issue of territorial jurisdiction. Since the power of attorney dated 29.02.2000 was executed at Banga and on the basis of said power of attorney the sale deed dated 09.01.2006 was executed by the defendant, therefore, it was rightly concluded by both the Courts that the cause of action being the outcome of bundle of facts, the Court at SBS Nagar has all the jurisdiction to decide the case.

[9]. In terms of Section 20(c) CPC, the defendant cannot question that the Court at Nawanshahar was not competent to decide the suit in any manner. Both the Courts have

concurrently decreed the suit of the plaintiff thereby entitling the plaintiff to recover the decretal amount of Rs.40 Lakhs along with interest @ 6% per annum from the defendant from the date of filing of the suit till final realization of the amount.

[10]. In view of material on record, no law point worth cognizance could be argued by learned counsel for the appellant. Finding no merit in the appeal, the same is dismissed in *limine*.

September 29, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No