

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

**RSA No.744 of 2017 (O&M)
Date of decision: 14.07.2017**

Ram Singh (deceased) through LR

... Appellant

Vs.

Bimla Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

Mr. Vishal Gupta, Advocate
for the caveator-respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

It is defendant's regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for possession on the basis of title filed by the plaintiff-respondent No.1 was decreed by the learned trial Court vide its impugned judgment and decree dated 09.10.2013 and first appeal of the defendant was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 25.10.2016.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the case set up by the plaintiff that she purchased House No.32, situated at Housing Development Scheme Gobind

Nagar, (old city, Karnal) measuring 250.77 square yard from Smt. Saroj Bala wife of Sh. Dharambir son of Sh. Ram Mehar, resident of house No.296, Gali No.2, Moti Nagar, Karnal vide registered sale deed dated 08.11.2000 for a consideration of Rs.2,01,000/-. The defendant Sh. Ram Singh was residing along with his family members in the aforesaid house and he had been asked on many occasions to vacate the aforesaid house and to hand over the vacant possession of the same to the plaintiff, as the plaintiff was an absolute owner of the house in question and she also needed accommodation to settle her family. After the purchase of the house by the plaintiff, the defendant had also filed a suit for permanent injunction against the persons who had no concern right or interest in the house in question and in that suit the plaintiff had filed an application under order 1 rule CPC for impleading herself as a party in the array of defendants which was allowed by the learned civil court, the aforesaid suit was for restraining the defendants from interfering into the peaceful possession of defendant-plaintiff and to get the possession of the suit property forcibly. The plaintiff (defendant in the above noted suit) had made a statement in the above noted suit that she will get the possession of the suit land under due course of law being the owner of the suit property. The plaintiff so many times approached the defendant to vacate and hand over the possession of the suit property to the plaintiff but to no effect. Hence the plaintiff had left with no other alternative except to file the suit.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to a decree for possession as

prayed for? OPP.

2. Whether the suit of the plaintiff is not maintainable? OPD.
3. Whether the plaintiff has got no locus-standi to file the present suit? OPD
4. Whether the suit has not been filed as required by law? OPD
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced 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 plaintiff has duly proved her case. Accordingly, her suit for possession on the basis of title was decreed by the learned trial Court, vide impugned judgment and decree dated 09.10.2013. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 25.10.2016. Hence this regular second appeal at the hands of the unsuccessful defendant.

Heard learned counsel for the appellant.

It is a matter of record that the entire case of the parties, and particularly the appellant, was revolving around the general power of attorney Ex.P4. The pleaded and argued case on behalf of the appellant throughout had been that the plaintiff could not prove this general power of attorney on the basis of which her vendor sold the suit property to her by way of registered sale deed bearing No.5562/1 dated 08.11.2000 Ex.P2. The second argument raised by learned counsel for the appellant was that even if the general power of attorney and sale deed were treated to be proved for the sake of arguments, the

area covered thereunder was only 250.77 square feet and not 250.77 square yards.

Having considered the arguments raised by learned counsel for the appellant, this Court is of the considered view that the arguments raised on behalf of the appellants are wholly misplaced, being contrary to the true facts of the case as well as the evidence available on record. It is so said because general power of attorney Ex.P4, available at page 163-167 of the lower Court record, was a registered document. Registered document is a public document and its copy is per-se admissible in evidence. It cannot be ignored only for the want of any witness produced to prove the same. Presumption of truth would attach to such a registered document.

Plaintiff-respondent has successfully discharged her onus on issue No.1 by leading cogent and convincing evidence. Plaintiff was a bonafide purchaser for due consideration. Defendant-appellant never challenged the sale deeds Ex.P2 and Ex.P3, which were executed on the basis of general power of attorney Ex.P4. It was neither pleaded nor argued case on behalf of the appellant that he was not aware about the general power of attorney Ex.P4. It was also not his case that he ever challenged said general power of attorney. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

In case the defendant-appellant was raising the plea of fraud qua the general power of attorney, a heavy onus would be on him to plead and prove the allegation of fraud. However, he failed to do so. Mere pleadings in this regard would not be sufficient. Appellant failed to bring on record any cogent

and convincing evidence to discharge the heavy onus on him. In such a situation, defendant was bound to fail. That is what has been held by both the learned Courts below. Under these circumstances, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments: -

1. *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (Civil) 350 (SC).*
2. *Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC).*
3. *Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan, 2015 (1) SCC 705 (SC).*
4. *K.A. Pradeep Vs. Branch Manager, Nedungadi Bank Ltd., Manjeri and others, 2009 (1) CivCC 48 (Kerala).*
5. *Swaran Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505 (P&H).*
6. *Gajjan Singh Vs. Virsa Singh and others, 2007 (3) RCR (Civil) 3 (P&H).*
7. *Chanan Singh Vs. Mit Singh, 2010 (40) RCR (Civil) 279 (P&H).*
8. *Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H).*
9. *Gulwant Singh Vs. Gurbakshish Singh and others, 2012 (13)*

RCR (Civil) 159 (P&H).

10. *M/s Machhi Ram Kishan Singh Sidhana Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506 (P&H).*

11. *Birmati Vs. Naseeb Singh, decided on 16.02.2017 by this Court in RSA No.341 of 2016.*

So far as the argument raised about the area under the sale deed is concerned, a bare perusal of the general power of attorney Ex.P4 itself would make it crystal clear that there were three rooms and kitchen constructed in the said property and this much construction would never be possible in an area of 250.77 square feet. When learned counsel for the appellant was confronted with this material fact, he had no answer and rightly so, it being a matter of record. It is also not in dispute that defendant-appellant never challenged the sale deed Ex.P2, Ex.P3 and general power of attorney Ex.P4 at any point of time, therefore, it cannot be said by any stretch of imagination that the said documents were the result of any fraud or misrepresentation. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld.

Before arriving at its judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence brought on record, in correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 12, 13 and later part of para 17 of the impugned judgment, which deserve to be noticed here, read as under: -

“The stand taken by the plaintiff-respondent is that she is owner of

the suit property as she has purchased the suit property from Smt. Saroj Bala vide registered sale deed No.5562/1 dated 8.11.2000 Ex.P2 for a sale consideration of Rs.2,01,000/-. Smt. Saroj Bala has purchased the suit property from Surjan Singh vide registered sale deed no.2424/1 dated 28.6.2000 Ex.P3. It has been further averred by the plaintiff-respondent that Surjan Singh has sold the suit property being GPA of Ram Singh defendant-appellant. The registered GPA no.402/4 dated 21.6.1976 Ex.P4 shows that Ram Singh has executed GPA in favour of Surjan Singh son of Mir Singh in respect of the suit property.

The defendant-appellant has alleged that the sale deed Ex.P2 in favour of the plaintiff-respondent is the result of fraud and misrepresentation. It is pertinent to mention here that earlier Ram Singh has filed a suit for permanent injunction against Sham Lal etc. In that case the plaintiff-respondent has moved an application under Order 1 Rule 10 CPC for impleading the applicant as party in the array of defendant no.5 Ex.DX1. The plaintiff-respondent has filed the written statement in that case i.e. Ex.DX2 wherein it has been categorically mentioned that the applicant-answering defendant has purchased the house no.32 under Housing Development Scheme, at Gobind Nagar Jundla Gate, Karnal measuring 250.77 Sq. feet for a sale consideration of Rs.2,01,000/- vide registered sale deed dated 8.11.2000 from Smt. Saroj Bala wife of Dharambir, resident of Moti Nagar, Karnal. Photocopy was also attached. This written statement was filed in

the month of August, 2002. Meaning thereby that it had come in to the notice of defendant-appellant that sale deed was executed in favour of plaintiff-respondent. But he has not challenged the same till date. Moreover, Bimla Devi plaintiff-respondent has filed a suit for possession of the suit property on 15.2.2006. Written statement was filed by the defendant-appellant on 12.10.2007. But the defendant-appellant even has not filed counter claim in respect of the sale deed Ex.P2 is the result of fraud and misrepresentation.

*Mere pleadings in the written statement that the sale is the result of fraud and mis-representation is not sufficient to hold that sale deed Ex.P2 is the result of fraud and mis-representation. Moreover, the Hon`ble Punjab & Haryana High Court has held in case titled as **Gulwant Singh vs. Gurbakshish Singh & Ors. 2013(1) CCC 174 (P&H)**, that:-*

"Plea of fraud or forgery-Even in civil cases, plea of fraud or forgery is required to be proved beyond reasonable doubt like a criminal charge."

Keeping in view the dictum laid down by the Hon`ble High Court in the above said judgment, coupled with the facts of the present case and in the considered view of this court, the defendant-appellant has never challenged the sale deed Ex.P2, Ex.P3 and GPA Ex.P4 at any point of time, therefore, it can not be said from any stretch of imagination that the above said documents are the result of fraud and mis-representation.

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.....Moreover, the plaintiff-respondent has given description of the suit property as in North 75.6 feet house no.33, in South 76.6 feet house no.31, East 28 feet road 30 feet wide and West 32 feet water works. One Roshan Lal had filed a petition under Section 13 of Rent Act against Ram Singh and the judgment of the same is Ex.D10 in which the suit property is also having the same dimensions. There is no pleading on behalf of the defendant-appellant that excess area has been sold by the GPA. Moreover, perusal of the whole of the file shows that the suit property is having area 250.77 Sq. feet and due to typographical mistake, it was mentioned in the sale deed as 250.77 Sq. yards. Therefore, I do not find any merit in the appeal filed by the defendant-appellant.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the 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.

14.07.2017
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[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No