

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

**RSA No.2081 of 1990 (O&M)
Date of Decision.28.09.2018**

Hardip Singh and others

...Appellants

Vs

Gurdwara Shri Guru Hargobind Sahib Jee (Jathedar since deceased)
through LR's and others

...Respondents

2. RSA No.2082 of 1990 (O&M)

Santokh Singh (since deceased) through LR's and others ...Appellants

Vs

Veero and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for the appellants.

Mr. Sarju Puri, Advocate
for the respondents.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second
appeals bearing Nos.2081 and 2082 of 1990.

RSA No.2081 of 1990 has been preferred by defendants
five in numbers, out of which appeal against defendant No.1 Teja
Singh has already been dismissed as withdrawn vide order dated
18.08.2009, against the judgment and decree of the lower Appellate
Court whereby the judgment and decree of the trial Court dismissing
the civil suit bearing No.346 of 12.6.1980/7.12.1981 titled as
“Gurdwara Shri Guru Hargobind Sahib Ji and another Vs. Teja Singh
and others” had been set aside, meaning thereby, the suit of the

plaintiffs was decreed whereas RSA No.2082 of 1990 has been preferred by the plaintiffs against the judgment and decree dated 3.9.1990 rendered by the lower Appellate Court whereby the judgment and decree of the trial Court passed in civil suit filed bearing No.15 of 3.1.1983 titled as “Santokh Singh and others Vs. Kashmir Singh and others” decreeing the suit, has been set aside, meaning thereby, the suit has been dismissed.

Since parties and the property in question are identical in both cases, facts are being taken from RSA No.2081 of 1990.

Veero daughter of Santa Singh, plaintiff No.2 along with Gurdwara Shri Guru Hargobind Sahib Ji through Jathedar Baba Bishan Singh arrayed as plaintiff No.1 instituted the suit claiming declaration of the suit land on the premise that on 15.1.1980, Veero gifted the land in dispute along with some other land situated at village Khabba Rajputan in favour of plaintiff No.1 and was put into possession. The defendants alleged that they had purchased the land in dispute through one Gurdial Singh arrayed as defendant No.6 to be attorney of Veero, plaintiff No.2. She was not aware of the sale deeds nor appointed defendant No.6 as attorney, much less, gave any power of alienation. Gurdial Singh was none else but real brother of Kulbir Singh, real *sandu* of Teja Singh and defendant No.2 is brother in law of Teja Singh. Santokh Singh was closely related to Teja Singh. Kashmir Singh and Balbir Singh are sons of Teja Singh. All the aforementioned persons entered into a conspiracy to deprive the plaintiffs from the suit land on the basis of fictitious and false sale deeds executed without considerations and therefore, claimed

declaration to be owner in possession of 69 kanals 6 marlas of land (hereinafter called “suit property”).

The aforementioned suit was contested by defendant No.1 to 5 by filing separate written statements whereas defendant No.6 filed separate written statement. Defendants No.1 to 5 took numerous preliminary objections including non-payment of court fee, estoppel, locus standi of plaintiff No.1 etc. On merit, it was alleged that attorney of Veero sold the suit land to defendant No.1 to 5 by virtue of registered power of attorney dated 03.08.1979. The alleged relationship of defendant No.6 with defendant Nos.1 to 5 was emphatically denied. Plaintiff No.2 was living in village Chetq. Nihang Sikhs had been putting constant pressure upon her to give land to them in collusion with her second husband Sohan Singh and in this regard, a case under Section 364 of the Indian Penal Code was registered.

Defendant No.6 in his written statement supported the case of defendant No.1 to 5 and denied any relationship with them. Veero executed a power of attorney dated 3.8.1979 in his favour by virtue of which he executed the aforementioned sale deeds in favour of defendant Nos.1 to 5.

After receipt of replication and on the basis of pleadings, the trial Court framed the following issues:-

“1. Whether the plaintiff No.1 has got locus standi to sue and a right so sign and verify the pleadings in its own name? OPD

2. *Whether the suit is maintainable in the present form?*

OPD

3. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*

4. *Whether the plaintiff No.2 is estopped by her act and conduct from filing the present suit? OPD*

5. *Whether Smt. Veero plaintiff No.2 has executed a valid gift dated 15.1.1980 in favour of plaintiff No.1? OPP*

6. *Whether Smt. Veero executed a power of attorney dated 3.8.79 in favour of Sh. Gurdial Singh defendant No.6? OPP*

7. *If issue No.6 is proved then the sale deeds executed by Gurdial Singh are valid and legal documents? OPP*

8. *Whether the sale deeds are fraudulent as alleged in para No.6 of the plaint? OPP*

9. *Relief.”*

Plaintiff No.2, Veero stepped into the witness box as PW1, Niranjana Singh as PW2, Bishan Singh as PW3 and Mohinder Singh as PW4.

On the contrary, defendants examined following witnesses:-

DW1 Rattan Singh

DW2 Swaran Singh, Nambardar

DW3 Bakshish Singh, Nambardar

DW4 Gurdial Singh, attorney

Veero appeared in rebuttal on 22.02.1983 and also brought on record gift deed dated 15.1.1980 as Ex.P1. Defendants also brought on record revocation deed cancelling the power of attorney dated 12.12.1979 Ex.DW1/2.

On the preponderance of evidence, the trial Court dismissed the suit by holding that mere suit for declaration without seeking cancellation of the sale deed was not maintainable and cancellation of the registered power of attorney was post execution of sale deeds. On issue Nos.4, 5, 6, 7 and 8, after noticing the cross-examination of the Veero, found that the power of attorney was proved on record but the plaintiffs failed to prove on record inadequacy of the consideration. Defendants No.1 to 5 were held to be bona fide purchasers, in result dismissed the suit. Both the plaintiffs challenged the aforementioned judgment and decree before the lower Appellate Court. It is the judgment of the lower Appellate Court, which has been challenged by the defendants owing to the fact that the suit had been decreed by setting aside the sale deeds.

Mr. Amarjit Markan, learned counsel appearing on behalf of the appellants-defendants submitted that the lower Appellate Court committed illegality and perversity in not noticing the fact that the simpliciter suit for declaration without seeking cancellation of the sale deeds much less payment of court fees, was not maintainable. The power of attorney dated 03.08.1979 had been duly proved on record through the attesting witness, which was a registered document and carried presumption of truth. No ingredients of fraud and misrepresentation as per the provisions of Order 6 Rule 4

CPC have been pleaded or proved. The sale deeds were executed on 2.11.1979 and 6.11.1979, which were prior to the revocation of power of attorney. Gurdial Singh admitted regarding execution of the sale deeds with consideration. Therefore, the plaintiffs failed to prove that sale deeds were without or inadequate consideration. If at all, plaintiff No.2-Veero had any grievance, she could have filed suit for recovery against Gurdial Singh-respondent No.6. Respondent No.3 herein could not challenge sale deeds as the act done by an agent on behalf of principal as per the provisions of Section 218 of the Indian Contract Act is permissible in law. Recital in the sale deed was a clincher, which has not been noticed by the lower Appellate Court as it was clearly mentioned that there was no stipulation in the sale deed that if payment was not made before the Magistrate, the title shall not pass to the appellants, thus, urges this Court for dismissal of the suit by setting aside judgment and decree of the lower Appellate Court.

In support of aforementioned submission, relied upon unreported judgment of this Hon'ble Court dated 02.02.2016 rendered in RSA No.3229 of 2014 titled as "*Ram Chand Vs. Smt. Kela Devi and others*" to contend that in the absence of any ingredients of basic fraud and misrepresentation or coercion, the suit was held to be not maintainable.

Maya Vs. Mohinder Singh and others 2007(1) RCR (Civil) 536 to contend that any act done by an agent in selling the property during the currency or validity of the power of attorney, principal cannot challenge the sale on the ground that the sale was without consideration, particularly, when the power of attorney was

held to be valid document and was not proved to have been obtained as a result of fraud or misrepresentation.

Per contra, Mr. Sarju Puri, learned counsel appearing on behalf of the respondents-plaintiffs supported the judgment and decree of the lower Appellate Court by submitting that being last court of fact and law and after examining the oral as well as documentary, found that the suit was maintainable. It is settled law that sale deeds can be declared null and void without seeking their cancellation, even if the sale deeds had been executed by the agent. Even the court fee can be paid at any point of time, therefore, the trial Court should not have dismissed the suit. No sale consideration was passed by Gurdial Singh to plaintiff No.2-Veero. Bakshish Singh DW3, attesting witness in his examination-in-chief simply stated that Gurdial Singh, attorney of Veero, had executed sale deed in favour of Santokh Singh and others. It was read over to Gurdial Singh, who after admitting it to be correct signed the same. He was also attesting witness of another sale deed dated 6.11.1979 executed for ₹5000/- in favour of Kashmir Singh and Balbir Singh, Ex.DW3/2 and DW3/3. He was silent with regard to passing of the consideration by the vendees to the vendor Veero or Gurdial Singh alleged attorney. In cross-examination, he stated that out of the sale consideration of ₹47,000/- as mentioned in sale deed Ex.DW3/1, only a sum of ₹20,000/- was paid before the Sub Registrar but did not see any document regarding payment of ₹27,000/-. Therefore, testimony of said witness has rightly been brushed aside.

Testimony of Rattan Singh, DW1, scribe of one of the

sale deeds was not creditworthy. The defendants examined Swaran Singh, Lambardar as DW2, who had attested the power of attorney as marginal witness. He was not resident of the village where the land was situated.

Veero had stepped into the witness box firstly in examination-in-chief and secondly in rebuttal and was consistent and coherent despite extensive cross-examination. Sale deeds were without consideration and therefore, were not binding upon the plaintiff.

In support of aforementioned contentions, relied upon ratio decidendi culled out by Hon'ble Supreme Court in **Prem Singh and others Vs. Birbal & others (2006) 5 SCC 353; 2006(3) RCR (Civil) 381** to contend that when a document is void, question does not arise for its cancellation. It is only to be declared as null and void. Reference was made to finding rendered in paras 15, 16 and 17.

He also referred to judgment of Hon'ble Supreme Court rendered in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others AIR 2010 SC 2807**, thus, urges this Court for affirming the judgment and decree rendered by the lower Appellate Court.

This appeal was admitted vide order dated 09.11.1990, which reads as under:-

“Admitted.

Respondents are restrained from alienating the property in dispute till further orders.

Notice re. Stay.

Stay matter to be listed after completion of

service.”

Regarding stay, on 20.11.1991, counsel for the respondents made a statement that his clients would not alienate the land and therefore, the application for stay was disposed of. However, during the pendency of the appeal, on 01.06.2016, counsel for the appellants filed application for placing on record substantial questions of law, which were taken on record. The same reads as under:-

“C.M. No.5337-C-2016

Prayer in the application is for placing on record the substantial questions of law.

For the reasons mentioned in the application, the same is allowed. Substantial question of law are taken on record.

RSA No.2081-1990

On request of learned counsel for the appellants, adjourned to 22.07.2016.”

Though there is no need to frame substantial questions of law in view of the judgment of Hon'ble Supreme Court rendered in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213** but since, the substantial questions of law were taken on record by this Court, I am of the view that following substantial questions of law arises for determination:-

“1. Whether the lower Appellate Court gravely erred in holding that the power of attorney dated 03.08.1979 Ex.DW2/1 is a fraudulent transaction and the sale deeds

were without consideration?

2. Whether the findings contained in the impugned judgment dated 03.09.1990 are perverse, especially when the power of attorney dated 03.08.1979 Ex.DW1/2 has been legally proved by examining Gurdial Singh Mukhtiar-e-Aam, DW4 as well as Swaran Singh Lambardar DW2?

3. Whether the findings contained in the impugned judgment of lower Appellate Court are perverse, especially when specific power of alienation were given therein by Veero to her attorney Gurdial Singh and the impugned judgment is not legally sustainable in the light of judgment reported in AIR 1977 SC 737?

I have heard learned counsel for the parties, appraised the paper below, records of the Courts below as well as judgments cited at bar and of the view that there is force and merit in the submissions of Mr. Markan.

Plaintiffs have proved the case of the defendants by putting specific question in cross-examination to DW4, Gurdial Singh, agent/attorney of Veero. Relevant portion of his cross-examination reads as under:-

“....Veero got me introduced with defendant Nos.1 to 5 for execution of the sale deeds...” (emphasis mine)

The tenor and mode of cross-examination leaves no manner of doubt that Veero had actually executed the power to attorney in favour of Gurdial Singh for the purpose of alienation/sale.

To a specific question with regard to receipt of earnest money or the sale consideration, he was candid enough to say that the same was received by Veero. The relevant lines read as under:-

“....I did not receive it myself but was received by Veero. There was no receipt passed by Smt. Veero regarding payment of amount of ₹27,000/-. The entire consideration of the sale deeds dated 6.11.1979 were received before the Sub Registrar. I handed over that money to Smt. Veero but did not take any receipt to that effect nor any other document in writing...”

DW2 Swaran Singh, Lambardar in cross-examined stated that Gurdial Singh was relative of Veero as he was son of maternal uncle of Veero. Veero was literate and could sign the documents and therefore, nothing contrary surfaced in the cross-examination vis-a-vis testimony in the examination-in-chief.

The tenor and mode of cross-examination of Rattan Singh, DW1, attesting witness was to the following effect:-

“...It is correct that Gian singh, Gurdial Singh and myself along with Veero first went to the scribe, got the power of attorney scribed and thereafter immediately went to the Sub Registrar to have the power of attorney registered...”

The aforementioned cross-examination leaves no manner of doubt that Veero had voluntarily executed the power of attorney. In the absence of any direct and cogent evidence, much less, pleadings vis-a-vis fraud, misrepresentation and coercion, which are

required to be pleaded as per the provisions of Order 6 Rule 4 CPC, plaintiffs miserably failed to discharge the onus. In such circumstances, the suit cannot be permitted to be decreed as it is clearly a case of aggrandizement.

Veero in cross-examination did not utter a word with regard to misrepresentation or fraud nor does the contents of cancellation deed reveals the same. It was a normal cancellation/revocation of the attorney. If at all, some fraud had been committed, she would not have rested here but required to make a complaint to the police. All these factors, in my view, have escaped notice of the lower Appellate Court, therefore, there is abdication, illegality, capriciousness, much less, perversity. The lower Appellate Court had read the cross-examination in isolation but not entire tenor and mode, which is a requirement of law.

As regards the contention of Mr. Markan for maintainability of suit as it was simplicitor suit for declaration without seeking cancellation, the same was not required in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Prem Singh's case** (supra), for, the plaintiff No.2 had admitted execution of the power of attorney and the act done by the agent. For the sake of brevity, paragraph 15, 16 and 17 of the aforementioned judgments are reproduced as under:-

“15. Section 31 of the Specific Relief Act, 1963, thus, refers to both void and voidable document. It provides for a discretionary relief.

16. When a document is valid, no question arises of its

cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the eye of law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary Article would be.”

As an upshot of my finding, substantial questions of law are decided in favour of the appellants-defendants and against the respondents-plaintiffs. The judgment and decree passed by the lower Appellate Court suffers from illegality and perversity, thus, the same is hereby set aside and that of the trial Court is restored.

Both the appeals are allowed.

(AMIT RAWAL)
JUDGE

September 28, 2018
Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No