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

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Date of decision : 10.08.2018

Kaushalaya Devi (deceased) through LRs

... Appellant

Versus

Kartar Chand

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aman Bahri, Advocate
for the appellant.

Ms. Hemani Sarin, Advocate
for the respondent.

AMIT RAWAL, J.

The appellant-plaintiff has not been successful in seeking possession of the shop i.e. suit property and recovery of ₹3,600/- as damages for use and occupation, before the trial Court and the lower Appellate Court.

The facts which are revealed from the pleadings of the parties are that the suit for possession of the shop, in dispute, was filed on the premise that the aforementioned shop was an evacuee property vested with Rehabilitation Department. Tarlok Chand and Gian Chand being displaced persons and holder of verified claims, sold their claim to one S.D. Gupta son of Gian Chand and in this regard, executed relevant documents i.e. agreement and irrevocable power of attorney. S.D. Gupta submitted a bid and purchased the shop, in dispute, in open auction, conducted by the

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Rehabilitation Department. S.D. Gupta, being attorney holder of attorney of Tarlok Chand and Gian Chand, agreed to sell the shop, in dispute, to the plaintiff after receipt of the sale certificate from the Department. However, the plaintiff, in the meantime, let out the shop, in dispute, to the defendants at the rate of ₹ 40/- per month vide rent deed dated 30.09.1961. The plaintiff instituted an application for ejectment against the defendant before the Rent Controller, which was dismissed as the shop was held to be evacuee property and therefore, present suit was filed. The sale certificate was issued on 19.08.1975 in favour of the vendee in view of the bid submitted on 03.02.1960, whereas share of Gian Chand was ₹590.80 paise and Tarlok Chand ₹2409.20 paise. It was averred that the plaintiff again preferred an application for ejectment of defendant before the Rent Controller and in those proceedings, relationship of landlord and tenant was denied and the Rent Controller relegated the party to Civil Court as the question of title was involved.

The defendant contested the suit by raising numerous preliminary objections in the written statement i.e. with regard to the court fees, non-joinder of proper parties and jurisdiction. On merit, it was averred that Tarlok Chand and Gian Chand did not sell their verified claim to S.D. Gupta or any agreement to sell, irrevocable power of attorney was executed. Even possession of shop was never delivered to Gian Chand or Tarlok Chand or S.D. Gupta. It was averred that the defendant was displaced person and occupied the shop as tenant from the Rehabilitation Department much before and had been paying rent to the Department and in this regard, a sale deed in favour of Gian Chand and Tarlok Chand was executed on 19.08.1975 i.e. on the basis of the bid given by Gian Chand and later on,

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vide sale deed 03.10.1975 sold the shop to defendant.

On the basis of the pleadings of the parties, the trial Court framed the fourteen issues including the issue of relief.

Both the parties brought on record numerous documents, but the emphasis was laid on the following documents:

Ex.DW3/A/PE Sale certificate dated 19.08.1975.

Ex.PC and PD Power of attorney executed by Tarlok Chand
and Gian Chand in favour of S.D. Gupta.

The defendant relied upon the rent receipts Ex.DW-4/1 to 25 in favour of Rehabilitation Department and in favour of Gian Chand.

The trial Court on the basis of the oral and documentary evidence brought on record dismissed the suit and the appeal as noticed above was also dismissed.

Mr. Aman Bahri, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in dismissing the suit as the defendant failed to challenge the sale deed dated 15.09.1975 in favour of the plaintiff. Subsequent sale deeds does not carry any value as the vendor did not have right, title and interest. Gian Chand had 20% share, whereas Tarlok Chand 80%. If power of attorney of Gian Chand in favour of S.D. Gupta, was cancelled, the plaintiff was still the owner of 80% share viz-a-viz share of Tarlok Chand.

Sale certificate was not only in favour of Gian Chand, but it was endorsed to the associates Tarlok Chand. Both the Courts below have erred in not noticing the fact that the irrevocable power of attorney was a contract of sale as per the provisions of Section 202 of the Indian Contract Act, 1872. S.D. Gupta in evidence stated that Gian Chand and Tarlok

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Chand had sold their verified claims to him, but his testimony has been ignored for the reasons best known. The Courts below could not have rejected the suit of the plaintiff for want of relief of declaration as in view of the Order 7 Rule 7 of the Code of Civil Procedure, the Court had power to mould the relief at any stage of the suit. Nothing contrary surfaced despite extensive cross-examination of PW-3 Devi Dayal, scribe of the document. Non-registration of the rent deed could not have been fatal for determining the relationship of landlord and tenant, particularly the possession of the shop was with the defendant. The Courts below have misinterpreted the judgment dated 30.12.1974 (Ex.PB) of the Rent Controller, it is, under these circumstances, the suit for possession was filed. The defendant failed to prove the sale deed dated 03.10.1975 and therefore, no reliance could be laid, thus, urges this Court for setting aside the findings under challenge.

Per contra, learned counsel appearing on behalf of the respondent submitted that simpliciter suit for possession in the absence of ownership by way of declaration in view of the fact that the defendant was holder of the title by virtue of sale deed dated 03.10.1975, was not maintainable. In support of the aforementioned submissions, reliance has been laid to the judgment of Hon'ble Supreme Court rendered in **"Anathula Sudhakar V/s P. Buchi Reddy (Dead) by LRs & Ors" AIR 2008 Supreme Court 2033.**

The property could not be transferred through registered power of attorney or agreement, but has to be through registered sale deed in view of the law laid down by Hon'ble Supreme Court in **"Suraj Lamp & Industries (P) Ltd. V/s State of Haryana and another" AIR 2012**

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She further submitted that the order of the Rent Controller dated 08.03.1980 was assailed before this Court in CR No.1360 of 1982, which was dismissed vide order dated 13.08.1992 as the Rent Controller had relegated the party to seek adjudication through competent court of law, for, the title was in question. The suit was not properly framed. No relief could have been granted under Order 7 Rule 7 of the Code of Civil Procedure.

The lower Appellate Court being the last court of fact and law, on examination of the evidence brought on record, found that the sale certificate (Ex.DW-3/A/PE) showed that Gian Chand was owner of the property, whereas Tarlok Chand had no right and title. The certificate was also endorsed to Gian Chand. Gian Chand, who appeared in the witness box, denied that S.D. Gupta was given an authority to make any bid. The power of attorney (Ex.PD) given by Tarlok Chand was executed on 17.01.1961, whereas sale certificate showed the bid was given on 03.02.1960, S.D. Gupta, thus, had no authority on behalf of Tarlok Chand to give bid on 03.02.1960. On the other hand, the defendant had been paying rent to the Rehabilitation Department and rent receipts have been proved Ex.DW4/1 to 24 and thereafter, to the Gian Chand, before the defendant acquired the ownership by virtue of sale deed dated 03.10.1975, thus, urges this Court for upholding the concurrent findings of fact as there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Aman Bahri, on account of the

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following reasons:-

1. Simpliciter suit for possession in view of the fact that both the parties were asserting a title in the suit property by virtue of sale deeds dated 15.09.1975 and 03.10.1975 and in the absence of declaration and ownership, was not maintainable.
2. There is no challenge to the sale deed dated 03.10.1975.
3. Gian Chand had belied the averment made in the plaint, much less, evidence of the plaintiff to the effect that at any point of time S.D. Gupta, had not given an authority to submit bid.
4. Tarlok Chand had executed power of attorney on 17.01.1961, whereas the bid was given on 03.02.1960, therefore, S.D. Gupta, did not have any authority to give bid, though it has not been found from any documents that SD Gupta gave bid.
5. On plain and simple perusal of the sale certificate dated 19.08.1975, it has been issued in favour of Gian Chand son of Udhu Ram proving acknowledgment of the bid on 03.02.1960.
6. The appellant-plaintiff should have claimed the appropriate relief, particularly in view of the observations of the Rent Controller made in order dated 08.03.1980, whereby, ejectment proceeding was dismissed relegating the party to seek relief in appropriate forum as the question of title was involved.
7. In my view, the plaintiff miserably failed to claim the appropriate relief in the suit, instead only chose possession under the presumption that he had acquired the ownership by virtue of sale deed dated 15.09.1995.
8. The argument of Mr. Bahri that the share of Tarlok Chand to

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the extent of 80% should have been kept intact, pales into insignificance, for, he had executed an attorney on 17.01.1961, whereas the bid was given on 03.02.1960, therefore, question of giving bid, as pleaded by S.D. Gupta is totally falsified.

9. Even otherwise, the provisions of Section 202 of the Indian Contract Act does not come to the aid of the beneficiary of the registered holder of irrevocable power of attorney in view of the findings rendered by Hon'ble Supreme Court in "Suraj Lamp's case" (surpa), wherein, it has expressly been held that registering authority cannot execute the sale deed on the basis of the power of attorney.

All these factors have been taken into consideration in extenso by both the Courts below.

As an upshot of my observations, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, argument of Mr. Bahri is not able to bring the case within the parameters of perversity and arise any substantial question of law for determination.

Accordingly, the present regular second appeal is dismissed.

10.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**