

RSA-4261-1999 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-4261-1999 (O/M) with  
Cross Objections-4434-C-2000 (O/M)  
Date of decision : 19.11.2018

Tript Rajinder Singh Bajwa

..... Appellant

Versus

Chander Bhushan Singh and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. M.L. Saggar, Senior Advocate, with,  
Ms. Armaan Saggar and Ms. Veenu Garg, Advocates,  
for appellant.

Mr. B.R. Mahajan, Senior Advocate, with,  
Mr. Prateek Mahajan, Advocate,  
for respondents No. 1 and 2 and  
in Cross Objections-4431-C-2000  
for respondents No. 1 and 2.

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KULDIP SINGH J.

This judgment shall dispose of RSA-4261-1999, filed by plaintiff (appellant herein), against the judgment dated 29.5.1999, passed by lower appellate Court and Cross Objections-4434-C-2000, filed by respondents No. 1 and 2, against some adverse finding given by lower appellate Court on issue No. 1.

Facts of the case are that originally plaintiff Tript Rajinder Singh Bajwa filed a civil suit against defendants No. 1 to 8 (respondents No. 3 to 10 herein), who are legal heirs of Amar Singh Bedi for specific performance of agreement dated 6.6.1983, regarding land measuring 49 kanals 3 marlas, fully detailed in head note of suit, situated in village Qadian, H.B. No. 177, Tehsil Batala, District Gurdasur, as per jamabandi for the year 1979-80.

The case of plaintiff/appellant is that Amar Singh son of Mela

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Ram son Gulab Singh, resident of Qadian, was owner of the suit land. The said Defendants No. 1 to 6 and defendants No. 7 and 8 are daughters and sons respectively of Amar Singh. Said Amar Singh died on 8.12.1970. Mutation No. 1275 was sanctioned in their favour on 13.12.1983. It is stated that defendants No. 1, 7 and 8, being general power of attorney dated 16.4.1983 of all defendants, entered into agreement of sale dated 6.6.1983 in favour of plaintiff/appellant. Through said agreement of sale, defendants agreed to sell suit land for Rs. 1,90,000/-. Rs. 5,000/- was paid as earnest money to defendant No. 1/respondent No. 3. The sale deed was to be executed and registered after expiry of 15 days from the date of sanction of mutation. Mutation No. 1275 was sanctioned on 13.12.1983. Defendants also agreed to sell tubewell alongwith land. Defendants have committed breach of agreement by not executing the sale deed. Plaintiff was always ready and willing to perform his part of contract.

In the said suit, all defendants did not appear and after recording ex parte evidence, an ex parte decree was passed on 1.3.1985, by learned Sub Judge 1<sup>st</sup> Class, Gurdaspur. The application for setting aside ex parte order dated 1.3.1985 was filed by defendants on 25.3.1985 and same was dismissed by learned Sub Judge 1<sup>st</sup> Class, Gurdaspur, but in appeal, ex parte judgment and decree was set aside by learned Additional District Judge, Gurdaspur, on 27.9.1989. As it was disclosed that defendants No. 1 to 8 had already sold the land to defendants No. 9 and 10, vide sale deed dated 13.10.1983, registered on 25.2.1983, therefore, amended plaint was filed whereby prayer was added that defendants No. 9 and 10 should be directed to join the execution of sale deed.

Defendants No. 1 to 8, in written statement, stated that they had

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already sold the land to Chander Bhushan Singh and Virender Deep Singh (defendants No. 9 and 10), vide sale deed dated 13.10.1983 for Rs. 1,60,000/-. The sale deed was executed on the basis of agreement dated 25.2.1983, executed by defendants in favour of said vendees and sum of Rs. 25,000/- was paid as earnest money. The agreement claimed by plaintiff was denied. Receipt of earnest money from plaintiff was also denied. However, defendants admitted that mutation No. 1275 has been sanctioned regarding estate of Amar Singh.

Defendants No. 9 and 10, in written statement, while denying the agreement claimed by plaintiff, stated that there was no valid general power of attorney on the basis of which agreement to sell was executed. They claimed that they have purchased the land and are bonafide purchasers of land for without notice of any such agreement. There was no valid agreement in favour of plaintiff.

In the replication, plaintiff denied agreement of sale with defendants No. 9 and 10.

From the pleadings, following issues were framed :-

1. Whether the defendants No. 1 to 8 executed an agreement to sell dated 6.6.1983 in favour of the plaintiff ? OPP
2. Whether the plaintiff always remained ready and willing and is still ready and willing to perform his part of the agreement?  
OPP
3. Whether defendants No. 1 to 8 have breached the terms of the agreement to sell dated 6.6.1983 ? OPP
4. Whether the defendants No. 9 and 10 are bonafide purchasers for value, without notice ? OPD

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5. Whether the plaintiff is entitled to the recovery of Rs. 55000/- in the alternative ? OPP
6. Whether the suit is within limitation ? OPP
7. Relief.

The trial Court took up issues No. 1, 2, 3 and 5 together and held that plaintiff has proved agreement in his favour. The agreement set up by defendants No. 9 and 10 was discarded. The testimony of M.T. Joseph (LCW 1), Advocate, who had scribed the agreement dated 25.2.1983, was discarded. It was also held that no permission of legal guardianship from Court was taken for and on behalf of Jyoti Nirmal Singh Bedi, who was minor at that time. It was held that in agreement set up by defendants dated 25.2.1983 in favour of defendants No. 9 and 10 is forged and fabricated. Consequently, all issues were decided in favour of plaintiff.

Issue No. 4 was decided against defendants. Consequently, suit of plaintiff was decreed for possession by way of specific performance of agreement (Ex.P1).

Defendants No. 9 and 10 preferred an appeal. The learned Additional District Judge, Gurdaspur, vide judgment dated 29.5.1999, reversed the findings and held that defendants No. 9 and 10 are bonafide purchasers without any notice of sale agreement dated 6.6.1983. It was also held that execution of sale agreement dated 25.2.1983 stands proved. It was further held that suit against defendants No. 9 and 10 is barred by limitation. The appeal was preferred against original ex parte decree against defendants No. 1 to 8 on 31.1.1984, and, therefore, under Section 21 (1) of Limitation Act, suit against defendants No. 9 and 10 deemed to have been instituted when amendment application was filed. Consequently, judgment of lower Court was set aside and suit filed by plaintiff was dismissed.

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It is against said judgment that plaintiff preferred appeal before this Court, whereas defendants No. 9 and 10 (respondents No. 1 and 2 herein) have filed cross objections, as discussed above.

I have heard the learned senior counsel for parties and have also carefully gone through file and lower Court record also.

Following law points involved in present RSA are as under :-

- (i) whether judgment of lower appellate Court is perverse and against record or not ? ; and
- (ii) whether adverse findings recorded against defendants are perverse, against record and judgment requires modification in findings ?

There are two agreements on file. Defendants No. 9 and 10 set up agreement dated 25.2.1983, in which defendants, which include Miss Jyoti Nirmal Singh Bedi, through her guardian Kumari Mohani i.e. defendant No. 1, agreed to sell suit land to plaintiff for Rs. 1,60,000/-. Rs. 25,000/- were paid as earnest money. The sale deed was to be registered within one year. Kumari Mohani was to obtain legal guardianship from the Court before execution of sale deed. The agreement is signed by all defendants and Kumari Mohani on behalf of minor Miss Jyoti Nirmal Singh Bedi. It is, on the basis of said agreement with defendants No. 9 and 10, that said defendants executed sale deed dated 13.10.1983 in favour of defendants No. 9 and 10, which was presented on the same day before Registering Authority, Mumbai, was ultimately registered on 25.3.1984. Admittedly, at that time, sale deed of land in any part of India, could be registered at Mumbai. Defendants No. 1 to 8 are also residents of Mumbai. Against this, plaintiff had set up agreement dated 6.6.1983, vide which defendants No. 1, 7, 8 i.e. Kumari Mohani, Partap Singh and Charan Singh, agreed to sell suit land for sum of Rs. 1,90,000/- to plaintiff. Rs. 5,000/- was paid as earnest money. The sale deed was to be executed within 15 days from the date of mutation of inheritance of Amar Singh Bedi. Admittedly, mutation was sanctioned on 13.12.1983. Plaintiff had proved

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agreement by examining Gurmukh Singh Malli, attesting witness of agreement (Ex.P1) and scribe Narinder Pal. Plaintiff Tript Rajinder Singh Bajwa also entered into witness box to prove the executant. In this way, agreement of plaintiff was proved.

Now, question is as to whether said agreement dated 6.6.1983 is binding on all defendants ?

The agreement dated 6.6.1983 shows that it was executed by defendants No. 1, 7, 8 i.e. Kumari Mohani, Partap Singh and Charan Singh. Admittedly, Partap Singh did not sign agreement. In the agreement, it is stated that they are executing the agreement on the basis of power of attorney dated 16.4.1983. The photocopy of power of attorney is placed on file, which shows that all legal heirs of said Amar Singh Bedi, namely, defendants No. 1 to 8, except Miss Jyoti Nirmal Singh Bedi, executed said power of attorney whereby all five daughters of said Amar Singh Bedi gave up their right in favour of their sister Kumari Mohani Amar Singh Bedi (defendant No. 1) and two brothers Pratap Singh son Amar Singh Bedi (defendant No. 7) and Charan Singh son of Amar Singh Bedi (defendant No. 8) and further defendants No. 1 to 8 nominated Kumari Mohani, Pratap Singh and Charan Singh (defendants 1, 7, 8) their true and lawful attorneys and solely or jointly could do the acts, which include power to enter into agreement. Defendants have raised serious objection regarding validity of power of attorney, stating that same has not been proved in accordance with law. The original power of attorney was with defendants No. 1, 7, 8. Plaintiff claims that power of attorney was given to them at the time of execution of sale deed. It comes out that plaintiff had filed an application under XIV CPC during trial, stating that original power of attorney, which

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is in possession of defendants No. 1 to 8, is required to be produced.

Defendants did not produce said power of attorney.

Now, question would arise as to whether plaintiff could prove the photocopy of power of attorney by way of secondary evidence ?

I am of the view that when defendants No. 1 to 8 had executed power of attorney in favour of defendants Kumari Mohani, Pratap Singh and Charan Singh. Power of attorney is bound to be in their possession. They did not produce it despite notice. Therefore, plaintiff could prove photocopy of power of attorney by his statement. Defendants were always at liberty to state and prove that it is not correct copy. Therefore, power of attorney executed by defendants in favour of defendants No. 1, 7, 8 was legally proved. Therefore, the authority of Apex Court relied by learned senior counsel for respondents No. 1 and 2 in *Smt. J. Yashoda Versus Smt. K. Shobha Rani*, 2007 AIR (SC) 1721 is not attracted in present case, wherein despite notice, power of attorney set up by defendants was not produced. Admittedly, Kumari Mohani, Charan Singh and Pratap Singh could solely or jointly exercise the power given in the power of attorney. In this way, Kumari Mohani and Charan Singh (defendants) signed the agreement of sale. Therefore, agreement of sale set up by plaintiff is proved.

To examine the background of case, it comes out that when mutation of inheritance of Amar Singh Bedi was sanctioned, it was sanctioned not in favour of defendants No. 1 to 8 only, but also in favour of another person, namely, Nathu, who was son of Amar Singh Bedi. Nathu is stated to have died and Jyoti Nimral Singh Bedi, minor daughter of said Nathu is stated to have succeeded Nathu. Nathu was not party to the

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execution of power of attorney by defendants in favour of Kumari Mohani, Charan Singh and Pratap Singh. Therefore, Jyoti Nirmal Singh Bedi (minor) is not bound by agreement of sale. The copy of mutation is Ex.D.

Now, coming to agreement set up by defendants, trial Court has discarded the same as fabricated. However, appellate Court held that defendants are bonafide purchasers. Copy of agreement dated 25.2.1983 shows that defendants No. 1 to 8 and Miss Jyoti Nirmal Singh Bedi (minor) through Kumari Mohani had executed said agreement, as discussed above. It was duly typed and signed by all executants and Kumari Mohani on behalf of minor Miss Jyoti Nirmal Singh Bedi. All said vendees are residents of Mumbai. They also executed receipt showing that Rs. 25,000/- have been received as earnest money. In pursuance to said agreement, sale deed dated 13.10.1983 was executed at Mumbai by said defendants and Kumari Mohani on behalf of minor Miss Jyoti Nimral Singh Bedi. Sale deed was presented by Shri M.T. Joseph (LCW 1), Advocate, on said date before Registering Authority. The Registering Authority kept sale deed pending and registered same on 25.3.1984. Therefore, once sale deed is presented for registration and it is registered later on, its date back to execution i.e. 13.10.1983. In this regard, I am supported by a Division Bench authority of Karnataka High Court in *Veerabhadrappe and another Versus Jagdishgouda and others*, 2003 (1) CivCC 546 and another authority of Single Bench of Andhra Pradesh High Court in *Smt. Potti Rajeshwari and another Versus Quader Mohiuddin and another*, 2010 (1) ALT 827.

The trial Court has discarded the testimony of Shri M.T. Joseph (LCW 1), Advocate, on the ground that he did not sign the agreement and that agreement was not executed by a regular draftsman and that Shri M.J.

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Joseph, Advocate, has not maintained a register. Shri M.T. Joseph (LCW 1), Advocate, while appearing as CW1, on being examined on commission 10.7.1993, stated that he has seen agreement-cum-receipt (Ex.LCW1/A) and sale deed ( Ex.LCW1/B). These were drafted by him and he is also attesting witness of sale deed (Ex.LCW1/B). He clearly stated that he had attested these documents and these were executed in his presence and some amount was paid as earnest money at the time of execution of said agreement.

In the cross examination, he had stated that he has got no licence for deed writing as same is not required in Mumbai. There are no deed writer in Mumbai. The drafting is being done by solicitors as well as by advocates.

I find, there is nothing wrong in assertion made by Shri M.T. Joseph (LCW 1), Advocate. Plaintiff has failed to show that there are deed writers at Mumbai. An advocate does not require a licence for writing a document. Therefore, statement of Shri M.T. Joseph, Advocate, cannot be disbelieved to discard agreement and sale deed set up by defendants.

Defendants have also examined Shri Hari Devi Bhargava, who is attesting witness of agreement (Ex.LCW1/A). He also proved that agreement was executed in his presence. He also proved the sale deed as he is attesting witness of sale deed (Ex.LCW1/B).

I am of the view that in view of practice in Mumbai that agreement and sale deed can either be drafted by an advocate or by a solicitor, agreement and sale deed set up by defendants No. 9 and 10 cannot be discarded, as done by lower Court.

The learned senior counsel for appellant has vehemently argued

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that in this case, vendees joined hands with defendants Chander Bhushan Singh and Virender Deep Singh, who are residents of Qadian and ante dated agreement of sale in their favour was created. It is stated that there is no reason why defendants No. 1 to 8 will execute agreement and sell suit land to defendants No. 9 and 10 when earlier agreement in favour of plaintiff is executed by Kumari Mohani, Charan Singh and Partap Singh on behalf of defendants No. 1 to 8.

I am of the view that there is no evidence that defendants No. 1 to 8 have joined hands with defendants No. 9 and 10. Defendants No. 1 to 8 are residents of Mumbai. Therefore, naturally it will be their favourite place to execute the documents. Therefore, there is nothing wrong if defendants No. 1 to 8 alongwith Miss Jyoti Nirmal Singh Bedi (minor) executed agreement in favour of defendants No. 9 and 10 at Mumbai and also executed sale deed at Mumbai, which was legally permissible at that time.

The learned senior counsel for appellant has vehemently argued that agreement on behalf of Jyoti Nirmal Singh Bedi (minor) and execution of sale deed thereof by Kumari Mohani without getting permission of Guardian Judge are illegal and cannot be acted upon.

On the other hand, the learned senior counsel for respondents No. 1 and 2 has argued that only Jyoti Nirmal Singh Bedi (minor) could challenge said agreement and sale deed. Jyoti Nirmal Singh Bedi did not challenge same and did not claim before any authority that agreement and sale deed is not binding upon her. The agreement and sale deed were executed in the year 1983. Now, 35 years have elapsed. Jyoti Nirmal Singh Bedi (minor) has become major and she has not challenged agreement and

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sale deed against defendants No. 9 and 10. Therefore, third party cannot challenge same.

I am of the view that it was for Jyoti Nirmal Singh Bedi (minor) to challenge agreement and sale deed. Plaintiff being stranger to agreement cannot challenge that agreement and sale deed on behalf of Jyoti Nirmal Singh Bedi (minor) on the ground that it was executed without completing legal formalities.

In this case, Jyoti Nirmal Singh Bedi (minor) is not party. She is one of the co-owners of suit land. Therefore, decree could not be passed against her. Defendants No. 9 and 10 are stated to be in possession of suit land. In such circumstances, only right of plaintiff is for refund of earnest money alongwith interest. Since agreement of defendants No. 9 and 10 is not ante dated, therefore, it will take precedent over the agreement set up by plaintiff.

The learned senior counsel for plaintiff has vehemently argued that defendants No. 9 and 10 had filed civil suit for restraining them from interfering in their possession and that when civil suit was filed, they knew that there is an agreement in favour of plaintiff.

It comes out that sale deed was executed by defendants in favour of defendants No. 9 and 10 on 13.10.1983. Civil Suit was filed on 1.2.1994 i.e. after execution of sale deed. Defendants No. 9 and 10 filed civil suit for injunction on 25.8.1985. Therefore, the sale deed in favour of defendants No. 9 and 10 is prior to filing of civil suit by plaintiff. Consequently, findings on issues No. 1, 2, 3 are recorded in favour of plaintiff. However, they are not entitled to execution of sale deed in their favour in view of prior agreement in favour of defendants No. 9 and 10.

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Defendants No. 9 and 10 are therefore held to be bonafide purchasers. Issue No. 4 is decided in favour of defendants No. 9 and 10. As a result thereof, plaintiff will be entitled to recovery of earnest money alongwith interest at the rate of 12 per cent per annum. Issue No. 5 is accordingly decided in favour of plaintiff.

Regarding limitation part, suit against defendants No. 1 to 8 is admittedly within limitation. Ex parte order was passed against defendants on 1.3.1985. As per Section 21 (2) of Limitation Act, nothing in subsection (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff. It was only after receipt of suit by trial Court on 27.9.1989 that plaintiff could amend suit. Therefore, suit is within limitation.

The law points raised above are accordingly answered.

As a result of forgoing discussion, cross objections are allowed. The appeal filed by plaintiff is partly allowed and partly dismissed. In view of findings recorded above, plaintiff is entitled to alternative relief of recovery of earnest money i.e. Rs. 5,000/- from defendants No. 1 to 8 with 12 per cent per annum interest from 6.6.1983 till date of passing of present judgment and 6 per cent future interest. Suit against defendants No. 9 and 10 is dismissed.

(KULDIP SINGH)  
JUDGE

19.11.2018  
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No