

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

**RSA No.1103 of 2010 (O&M)
Date of Order:15.01.2018**

Rattan Singh (deceased) through LRs

..Appellants

Versus

Tilak Raj Dhir and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil K. Ahluwalia, Advocate,
for the appellant.

Mr. R.S.Bajaj, Advocate,
for respondent nos.1 and 2.

Mr. Manish Prabhakar, Advocate,
for LRs of respondent no.5.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession on the basis of title of Building No.13, constructed over plot measuring 7½ marla. Plaintiff also challenged the sale deed dated 22.05.1990, executed by Balwinder Singh as attorney of the plaintiff as also registered sale deed dated 16.10.1990 executed by defendant no.5 in favour of defendant nos. 1 and 2 and for recovery of Rs.1,80,000/- towards mesne profit @ Rs.5000/- per month with effect from 15.04.1993 to 15.04.1996.

The case set up by the plaintiff is that the property in question was allotted to him and to his wife on 04.07.1975 by Jalandhar Improvement Trust. Plaintiff and his wife constructed a double storied

building and started running a restaurant on the ground floor and started using five living rooms on the first floor as a hotel. Plaintiff has been running hotel till 1985 and in the year 1989 plaintiff along with his family members had shifted to Delhi after locking the premises. It is further the case of the plaintiff that in December, 1993, he came to Jalandhar and was astonished to see that the defendants were in possession of the same. Plaintiff asked them to vacate but they refused to oblige.

Plaintiff further pleaded that he and his wife never appointed Jagtar Singh as their attorney on 08.01.1990 and the registered power of attorney is forged and fabricated, which was got cancelled by the appellant on 17.09.1993. It is further the case of the appellant that Jagtar Singh on the strength of General Power of Attorney, appointed Balwinder Singh as Special Power of Attorney vide attorney dated 16.02.1990. Balwinder Singh, in turn, executed a sale deed in favour of defendant no.5 vide sale deed dated 22.05.1990. Defendant no.5, thereafter, further sold the property in favour of defendant nos.1 and 2 on 16.10.1990.

Defendant no.1 and 5 contested the suit, whereas defendant nos.2 to 4, did not appear despite service.

After appreciation of the evidence available on the file, both the courts below dismissed the suit filed by the plaintiff after recording the following findings:-

- (i) Plaintiff has not come to the Court with clean hands and is telling lie. Plaintiff has gone even to the extent of denying his signatures on the plaint of this suit, vakalatnama executed in favour of the defendants and affidavit filed in support of the

plaint;

- (ii) It is the case of the plaintiff that he came to know of all the transactions in 1993 when he noticed that defendants no.1 and 2 are in possession, however, the plaintiff still waited for a period of 3 years and filed a suit on 10.04.1996;
- (iii) Defendants no.1 and 2 are bonafide purchasers of the property;
- (iv) Plaintiff has failed to prove that the alleged attorney dated 08.01.1990, was not executed by him and was result of impersonation;
- (v) The General Power of Attorney in favour of Jagtar Singh was executed by the plaintiff and his wife, however, neither the wife filed any suit nor did she appear in the witness box;

These concurrent findings of fact arrived at by the courts below have been challenged in this appeal.

At the time of admission of the regular second appeal, following substantial questions of law were framed:-

- i) Whether any reasoning have been given by the courts below while discarding the evidence of Hand writing expert PW-2 and his report Ex.PW-2/A which is the root of the case?
- ii) Whether in the absence of evidence of respondents No.3 & 4 (Jagtar Singh and Balwinder Singh) attorneys Ex.D/1 and Ex.D/7 can be proved or not?

- iii) Whether the plaintiff is entitled to recovery of Rs.1,80,000/- from respondents/defendants along with market interest or not?
- iv) Whether the sale deeds dated 22.05.1990 executed by Balwinder Singh in favour of Pran Nath Sharma/respondent no.5 and further sale deed dated 16.10.1990, executed by Pran Nath Sharma in favour of respondents no.1 and 2 are valid documents or not because the first sale deed has been executed by Balwinder Singh who was not authorised to execute the sale deed?
- v) Whether contesting respondents are bona fide purchaser or not?"

The appellant has also filed written arguments, which have been carefully considered.

Now the stage is set for discussing the questions of law.

QUESTION NO.(i)

Whether any reasoning have been given by the courts below while discarding the evidence of Hand writing expert PW-2 and his report Ex.PW-2/A which is the root of the case?

Both the Courts below have considered the report of the private Handwriting and Finger Print Expert Sh. Arvind Sud, who appeared as PW2. Both the Court have found that opinion given by the private expert cannot be relied upon as the private experts have normal tendency to give report in favour of the party who had engaged them. Learned trial Court as well as the first appellate Court have compared the signatures of the plaintiff and his wife on the power of attorney with other signatures on the

record and both the Courts have recorded that the signatures of Rattan Singh and Manjit Kaur, plaintiff and his wife are similar and comparable. The Court has further noticed that Rattan Singh, the plaintiff, is in the habit of giving power of attorneys to different persons, which is proved on the file. The Court further found that both the attorneys Ex.D/1 and Ex.D/7, the attorneys dated 08.01.1990 and 16.02.1990 are registered documents.

In view of the discussion made above, question no.1 is answered against the appellant.

QUESTION NO.(ii)

Whether in the absence of respondents No.3 & 4 (Jagtar Singh and Balwinder Singh) attorneys Ex.D/1 and Ex.D/7 can be proved or not?

Attorneys dated 08.01.1990 and 16.02.1990 are registered documents. Plaintiff on the one hand asserted that he had not executed the attorney dated 08.01.1990, however, in the same breath, he pleaded that attorney was cancelled on 16.02.1990. Thereafter, during the course of evidence, defendants proved on record that in fact the attorney was got cancelled by him on 07.09.1993, Ex.D6. If the attorney dated 08.01.1990, was never executed by the plaintiff, there was no need of cancellation thereof in the year 1993. Power of attorney dated 08.01.1990, was executed by the plaintiff and his wife. Wife did not file any suit to assert that she has not executed the attorney. She has not even stepped into the witness box. Both the courts on appreciation of evidence have found that execution of the attorneys Ex.D/1 and Ex.D/7 are proved. Attorneys dated 08.01.1990 and 16.02.1990 are executed in favour of defendant nos.3 and 4. Merely because defendant nos.3 and 4 have not appeared, it cannot be said that the

execution of the attorney is not proved particularly when official from the office of Sub-Registrar has been examined and the courts have compared the signatures of the plaintiff and his wife and found to be similar.

Hence, question no.2 is also answered against the appellant.

QUESTION NO.(iii)

Whether the plaintiff is entitled to the recovery of Rs.1,80,000/- from respondents/defendants along with market interest or not?

Plaintiff is claiming mesne profit on the assumption that the defendants are in unauthorised possession. Plaintiff has failed to prove that defendants no.1 and 2 are in unauthorised possession. Hence, suit for recovery of mesne profit cannot be decreed.

Hence, question no.3 is also answered against the appellant.

QUESTION NO.(iv)

Whether sale deeds dated 22.05.1990 executed by Balwinder Singh in favour of Pran Nath Sharma/respondent no.5 and further sale deed dated 16.10.1990, executed by Pran Nath Sharma in favour of respondents no.1 and 2 are valid documents or not because first sale deed has been executed by Balwinder Singh who was not authorised to execute the sale deed?

In this respect, both the courts have concurrently found that in the General Power of Attorney executed on 08.01.1990, plaintiff had permitted power of attorney holder to further authorise anyone. Jagtar Singh, power of attorney holder, appointed a Special power of attorney vide power of attorney dated 16.02.1990. During the course of arguments, learned counsel for the appellant, admitted that no doubt in the registered General Power of Attorney executed on 08.01.1990, Jagtar Singh was given power to appoint further attorney. However, it was argued that

appointment of further attorney does not authorise Jagtar Singh to give further power to Balwinder Singh to execute the sale deed. Once, Jagtar Singh, the power of attorney holder, was authorised to delegate his powers, therefore, execution of the power of attorney in favour of Balwinder Singh by Jagtar Singh cannot be questioned by the appellant.

QUESTION NO.(v)

Whether contesting respondents are bona fide purchaser or not?

In this regard, both the courts have concurrently recorded a finding that defendants no.1 and 2 are bonafide purchasers of the property in dispute. Defendants no.1 and 2 have purchased the property from defendant no.5, who in turn, has purchased the property from the plaintiff and his wife, of course through attorney. Both the courts have further noticed that the plaintiff had initiated criminal proceedings on the same ground and ultimately he had compromised with defendant no.5 and hence defendant no.5 was acquitted.

This questions is also answered against the appellant.

In view of the discussion made hereinabove, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

January 15, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No