

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3233 of 2010 (O&M)
Date of Decision:01.11.2018

Gurbax Singh

...Appellant(s)

Versus

Gurbachan Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Karan Nehra, Advocate for the appellant.
Mr.R.S.Mamli, Advocate for respondents No.1 and 2.

ANIL KSHETARPAL, J.

CM-12390-C-2018

Applicant seeks permission to bring on record the legal representatives of respondent-Gurbachan Singh.

The application is allowed subject to all just exceptions and only for the limited purpose of decision of the present appeal. Amended memo of parties is also permitted to be placed on record.

CM stands disposed of.

Main case

The plaintiff through his legal heirs is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

In the present case, both the courts have recorded a concurrent finding that the plaintiff did not come to the court with clean hands and tried to play fraud with the court.

The plaintiff filed a suit for declaration to the effect that the general power of attorney dated 1.5.1998 executed by him in favour of

defendant No.1 and subsequent lease deed executed by defendant No.1 in favour of defendant No.2 for a period of 90 years with respect to land measuring 51 kanals and 19 marlas are illegal, null and void and not binding on the rights of the plaintiff who is the owner in possession of the said land with consequential relief of permanent injunction, restraining the defendants from interfering in his peaceful proprietary possession.

The plaintiff Late Gurbax Singh claimed that he is owner in possession of land measuring 147 kanals and 2 marlas and he had mortgaged land measuring 43 kanals and 9 marlas on 11.7.1989 in favour of proforma defendants. Defendant No.1 requested the plaintiff to execute a surety bond in his favour for raising a loan from a bank and for that purpose he was taken to Tehsil Office at Safidon for execution of the surety bond and thumb impressions of the plaintiff were obtained on some papers without disclosing contents thereof. Photographs of the plaintiff were also pasted on the said papers and plaintiff trusted genuineness of the demand of defendant No.1 and thumb marked the papers under the impression that he is executing a surety bond, whereas he later on came to know that a fraud has been played by defendant No.1 with him and a general power of attorney dated 1.5.1998 has been executed and on the basis thereof, a lease deed has been executed by defendant No.1 in favour of his son defendant No.2 dated 4.5.1998 for a period of 90 years.

Defendant contested the suit and pleaded that plaintiff has filed the suit after concealing material facts. It was brought to the notice of the court that the plaintiff initially entered into an agreement with defendant No.1 on 28.1.1995 with respect to land measuring 44 kanals and received

earnest money of Rs.4,00,000/-. Thereafter plaintiff entered into another agreement to sell with defendant No.1 on 12.2.1998 with respect to land measuring 26 kanals and received the earnest money of Rs.2,25,000/-. It was pleaded that the general power of attorney dated 1.5.1998 was executed by the plaintiff giving powers to defendant No.1 to sell /mortgage/gift/lease and to all other acts which are permissible for the plaintiff himself. The mortgage deed executed in favour of proforma defendants was claimed to be illegal and not bindings on the rights of defendant Nos. 1 and 2.

Both the courts, after appreciation of evidence, have found as a matter of fact that agreements to sell dated 28.1.1995 and 12.2.1998 and general power of attorney dated 1.5.1998 are duly proved to have been executed by the plaintiff with his free will and volition. In fact in the cross examination, the plaintiff admitted that he had executed the agreements to sell and also executed general power of attorney dated 1.5.1998. On the basis of the aforesaid admission of the plaintiff, the learned trial court dismissed the suit.

First appeal preferred by the plaintiff has been dismissed after re-appreciating evidence, while upholding the decree passed by the learned trial court. However, observed that the lease deed dated 4.5.1998 is void and accordingly set aside on the ground that the property in question was under attachment pursuant to a decree and, therefore, as per Section 64 of the Code of Civil Procedure, the lease deed of the property for 90 years is void.

The plaintiff had filed this appeal in which notice was issued.

During the pendency of the appeal, application for additional

evidence was filed by the respondents-defendants No.1 and 2 in order to produce order of the court dated 16.4.2013 which ordered attachment and statement of the counsel for the decree holder to establish that attachment of the land which had ceased to exist. Application after notice and receipt of reply was allowed while noticing that factum of property having come out of the attachment is not being disputed by the learned counsel for the appellant. Counsel for the appellant was granted opportunity to file documents in response to the additional evidence allowed. However in spite of two opportunities granted, no evidence has been produced by the appellant.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the courts below and the record.

Learned counsel for the appellant has submitted that as per Section 207 of the Contract Act, 1872, on filing of the suit, the general power of attorney would be deemed to have been revoked and the courts below have failed to grant that declaration. He further submitted that since the agency through power of attorney given to the defendant No.1 has been misused, therefore, the plaintiff has a right to repudiate the agency. He further submitted that the plaintiff has never admitted execution of the general power of attorney and the learned trial court has wrongly recorded these findings which are result of misreading the evidence. He has further submitted that lease amount has not been paid to the plaintiff and therefore, the lease is without consideration.

On the other hand, learned counsel for the respondents has

pointed out that plaintiff, while appearing in the evidence, has admitted his signatures and not only on two agreements to sell but also on the power of attorney. Plaintiff even goes to the extent of admitting that the scribe had read over the general power of attorney and after admitting the same to be correct, he had put his thumb impression. He submitted that in view of the aforesaid, there is no substance in the appeal filed by the appellant.

As regards the first argument of learned counsel for the appellant, it will be noted that the plaintiff has never pleaded or proved or even submitted before the courts below that the power of attorney be deemed to have been revoked on the filing of the suit. The argument raised by the learned counsel for the appellant is without laying down any foundation either in the pleadings or in evidence. Further, no issue on this aspect was ever framed by the courts below. Still further, the plaintiff has sought declaration that general power of attorney is illegal, null and void and mere paper transaction based upon fraud and misrepresentation. The plaintiff has never sought on filing the suit, the general power of attorney be deemed to have been revoked. Hence reference to Section 207 of the Contract Act, 1872, is wholly misplaced as in the present case, Section 207 of the Contract Act has no applicability.

As regards the second argument of the learned counsel that since agency has been misused, therefore, the action of the agent has been repudiated having been taken without the consent of the principal is also to be noticed and rejected because in the general power of attorney dated 1.5.1998, appellant has specifically authorised and empowered defendant No.1 not only to sell/gift the property but also give it on lease. Still further,

it is established on the file that prior to the execution of the general power of attorney, plaintiff had executed two agreements to sell dated 28.1.1995 and 12.2.1995. In such circumstances, it cannot be held that the general power of attorney has been misused without the consent of the plaintiff.

Next submission of learned counsel that the plaintiff has not admitted execution of the general power of attorney is also factually incorrect because on careful reading of the statement of the plaintiff who has appeared as PW-1, it is clear that he has specifically admitted execution of agreement to sell as well as general power of attorney. He even makes an admission that the scribe had read over the contents of general power of attorney and the plaintiff had thumb marked the same after admitting it to be correct. The general power of attorney is in Hindi and plaintiff nowhere says that he does not understand Hindi.

Last argument of the learned counsel is also to be noted and rejected because if lease amount has not been paid by the general power of attorney to the plaintiff, it is for the plaintiff to file a suit for recovery but on that basis, the lease deed or general power of attorney cannot be cancelled. In the facts of the present case, it is apparent that plaintiffs had agreed to sell land measuring 70 kanals in favour of defendant No.1 and received total earnest money of Rs.6,25,000/-. Therefore, the general power of attorney was with reference to the aforesaid two agreements to sell.

It will be noted that no doubt defendants have not filed any cross-objections, however, the finding of the learned first appellate court declaring the lease deed to be void, is clearly erroneous as the attachment of the land is already over, because the execution proceeding in which

attachment has been ordered, had been withdrawn on satisfaction of the decree. In additional evidence, it has come on file that on 16.4.2013 the execution proceedings have been withdrawn on the basis of compromise.

Since the suit filed by the plaintiff has been dismissed by the learned first appellant court, therefore, this Court is well within its jurisdiction to set aside the aforesaid finding in exercise of powers under order 41 Rule 33 of the Code of Civil Procedure.

In view of the aforesaid discussion, the judgments and decrees passed by the courts below are upheld, while dismissing the present appeal. However, the finding of the first appellate court with regard to setting aside lease deed dated 4.5.1998, the same is reversed.

The present appeal is dismissed in the above-said terms. Pending application(s), if any, shall also stand disposed of, in terms thereof.

01.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No