

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.116 of 2012 (O&M)

Date of decision: 11.07.2018

Swarn Kanta

..... Appellant

Versus

Nirmal Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate
for the appellant.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Vikram Gupta, Advocate
for respondents No.1 and 2.

Mr. Kabir Sarin, Advocate
for respondent No.3.

Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate and
Ms. Janya Sirohi, Advocate
for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

CM-4857-C-2018

Prayer in the application is for impleading Smt. Tripta Rani as a party respondent being subsequent vendee during the pendency of the appeal. Nirmal Kumar and Neelam Rani, respondents No.1 and 2 are alleged to have transferred the property. Although, this application has been opposed, however, taking into consideration that there is assignment of rights during the pendency of the appeal, Smt. Tripta Rani is ordered to be impleaded as respondent No.5.

Application is allowed.

Main Case

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court while reversing the judgment and decree passed by the learned trial Court.

Plaintiff-Smt. Swarn Kanta and her son late Sh. Mohit Singla were running a business in partnership under the name of M/s Canrod Steels. It is the pleaded case of the plaintiff that she along with her son entered into a new partnership with Tarsem Chand Jindal and Harbans Lal. Hence, a fresh partnership deed was executed on 10.11.1987 Ex.DW-3/B on the record. It was specifically noted in the partnership deed that the existing partners were facing financial crises to run the existing business smoothly and have agreed to admit Sh. Tarsem Jindal and Sh. Harbans Lal into partnership. A new partnership deed is signed by Mohit Singla and Swarn Kanta.

On 11.11.1987, Smt. Swarn Kanta and late Sh. Mohit Singla executed three documents.

1. A full payment agreement to sell in favour of Nirmal Kumar and Neelam Rani agreeing to sell shop-cum-flat No.19, Sector 19, Chandigarh for a sum of Rs.1,92,000/-. It was also specifically mentioned in the agreement to sell that the sellers i.e. Smt. Swarn Kanta and late Sh. Mohit Singla have executed a General Power of Attorney in favour of Tarsem Jindal which shall not be revoked or cancelled. The agreement to sell runs into two pages and both the pages have been signed by Smt. Swarn Kanta and late Sh. Mohit Singla. On the reverse of first page, a separate receipt of Rs.1,92,000/- has been executed and Smt. Swarn Kanta and late Sh. Mohit Singla have also signed in a manner that half of the signatures are on the paper and half are on the adhesive revenue stamp affixed.

2. Smt. Swarn Kanta and late Sh. Mohit Singla also execute a General Power of Attorney appointing Sh. Tarsem Jindal as Power of Attorney holder. In the General Power of Attorney, it is specifically written that the Power of Attorney holder shall be entitled to sell, transfer the property and enter into any agreement to sell and execute/sign the sale/transfer deed.

3. An affidavit was sworn by Smt. Swarn Kanta and late Sh. Mohit Singla which was got attested from the Oath Commissioner wherein it is acknowledged by them that they have sold the property to Nirmal Kumar and Neelam Rani and received the full amount of consideration and delivered possession. Both of them also admit that they have executed a General Power of Attorney agreement and an affidavit and the said documents are irrevocable.

On the basis of the aforesaid General Power of Attorney, Tarsem Chand executed a registered sale deed in favour of defendants No.1 and 2 i.e. Nirmal Kumar and Mrs. Neelam Rani (his sister and brother-in-law) on 22.02.1989.

Smt. Swarn Kanta filed a suit for declaration claiming that the aforesaid sale deed is illegal, null, void, invalid, ineffective and is of no consequences and the plaintiff continues to be exclusive owner of the property. In the plaint, she admitted that Tarsem Jindal was appointed/constituted as General Attorney, however, such Attorney was only to run and manage the business and to raise loan for the firm, if necessary. It is further pleaded that General Power of Attorney was never intended to authorize sale of SCF and power to sell has been fraudulently got inserted by Tarsem Chand. The execution of the full payment agreement to sell, receipt and affidavit were not disclosed in the plaint. It will be significant to note

here that General Power of Attorney is not with respect to the property which was being used for business. The firm M/s Canrod Steels was being run from plot No.152, Industrial Area, Phase-II, Chandigarh and not from SCF No.19, Sector 19, Chandigarh. The property SCF No.19, Sector 19, Chandigarh was jointly owned by Smt. Swarn Kanta and late Sh. Mohit Singla. In the written statement, the defendants pleaded that Smt. Swarn Kanta and late Sh. Mohit Singla had also executed a full payment agreement to sell and had also acknowledged execution of the General Power of Attorney. In the replication, the plaintiff-Swarn Kanta pleaded that the agreement to sell is forged and fabricated document and the signatures of the plaintiff were obtained by misrepresentation.

After framing of the issues, the parties were permitted to lead evidence. Learned trial Court decreed the suit whereas the learned First Appellate Court after analysing the evidence available on the file has accepted the appeal and dismissed the suit filed by the plaintiff. Learned First Appellate Court in short has noticed the following facts:-

1. In the General Power of Attorney executed on 11.11.1987, power to sell was given to Sh. Tarsem Jindal and execution of this document is not being disputed.
2. The property i.e. SCF No.19, Sector 19, Chandigarh has no connection/relation with the partnership business.
3. A full payment agreement has been executed by the plaintiff and her son in favour of Tarsem Chand.
4. The plaintiff and her son had also executed a receipt on the reverse of the first page of the agreement to sell.
5. The plaintiff has not stepped into the witness-box to face cross-examination.

6. The plaintiff and her son late Sh. Mohit Singla has also executed an affidavit wherein agreement to sell, General Power of Attorney and a receipt for entire sale consideration is admitted.

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

1. Learned senior counsel appearing for the appellant has submitted that as per Section 215 of the Contract Act, an agent is required to act with the knowledge and consent of the Principal. He submitted that no evidence has been led to prove that the sale deed was executed by defendant No.3-Tarsem Jindal with the knowledge and consent of Smt. Swarn Kanta and late Sh. Mohit Singla. Therefore, the sale deed was not valid.

2. He has further submitted that the property could not be sold as it was under mortgage with the bank.

3. The sale deed was executed without getting no objection certificate from the estate office.

4. Harbans Lal who is attesting witness has denied his signatures on the agreement to sell.

5. Report of the document and fingerprint expert has been misread.

6. Register of the Oath Commissioner has not been produced.

7. Smt. Swarn Kanta was semi literate as she studied upto 8th standard only, therefore, she has been duped.

8. Once the entire sale consideration has been paid as per the case of the defendants, there was no need to wait and defendants No.1 and 2 could get executed the sale deed in their favour.

9. The consideration as per the sale deed dated 22.02.1989 is

inadequate and there is no evidence that the consideration was paid. Hence, the sale is liable to be set aside.

10. In the sale deed, it has been wrongly recited that the property is not under charge and no objection certificate has been received from the estate office. The tenants who were in possession of the premises continue to pay the rent to Smt. Swarn Kanta.

On the other hand, learned senior counsels appearing for the respondent have pointed out that the plaintiff has not appeared into the witness-box and hence, adverse inference is to be drawn. It has further been contended that the plaintiff has not approached the Court with clean hands. It has further been contended that Section 215 of the Contract Act would have no application in the facts and circumstances of the present case. It has further been submitted that the attesting witness of the agreement to sell i.e. Harbans Lal has been examined as DW-4 and has deposed that on 11.11.1987, agreement to sell was executed with free will and volition and the entire payment was paid. It has further been submitted that husband of the plaintiff-Pawan Kumar has appeared in evidence and admit the signatures of Mohit Singla, his son. He also admit that General Power of Attorney was executed by Smt. Swarn Kanta and late Sh. Mohit Singla. It has further been submitted that Smt. Swarn Kanta is not a parida nashin lady rather she is running a business in partnership with her son. Therefore, the plaintiff cannot plead that she did not know what was written in the General Power of Attorney. Learned counsel has further drawn attention of the Court to the statement of Pawan Kumar wherein he admits that his wife was made to understand contents of the General Power of Attorney and his wife and his son had signed the same after admitting the contents to be correct. It has further been submitted that although private handwriting and fingerprint

expert has been examined, however, signatures of Smt. Swaran Kanta, the plaintiff have never been got compared. It has further been pointed out that the purchasers had undertaken to clear the loan and therefore, merely because the property was under mortgage, such property could be sold.

With regard to the first argument of learned counsel for the appellant, it will be noted that Section 215 of the Contract Act would not be applicable in the peculiar facts. In the present case, it is established that the plaintiff along with her diseased son had executed four documents and received the entire sale consideration. It was in these circumstances, General Power of Attorney was given to Sh. Tarsem Jindal specifically authorizing Tarsem Jindal to sell the property or deal with the property in any manner he likes. The General Power of Attorney was with respect to SCF 19, Sector 19, Chandigarh which has no connection or relevance with the partnership business which was being run from plot No.152, Industrial Area, Phase-II, Chandigarh.

Second submission of learned counsel for the appellant also has no substance as the property under mortgage can always be sold subject to rights of the mortgagee. There is no legal bar in alienating the property which is under mortgage.

Next submission of learned counsel for the appellant is also without substance because a Division Bench of this Court has conclusively held that in case of free hold property, there is no requirement of no objection certificate. Reliance in this regard can be placed on the judgment passed by the Division Bench in the case of Amritpal Singh Vs. Chandigarh Administration and others 2012(4) RCR (Civil) 784.

Next submission of learned counsel for the appellant also does not have substance because learned senior counsel is trying to read one

sentence in the statement of Harbans Lal, the attesting witness who has appeared as DW-4 in isolation. Sh. Harbans Lal has specifically stated that he is the attesting witness of the agreement to sell and the entire sale consideration was paid. He has further stated that the executant and the other witness has read over the contents of the agreement to sell and after admitting the correctness thereof, had signed the agreement to sell. He has further stated that he had even seen the signatures on the receipt which is also attested by him. It will be significant to note here that Harbans Lal is known to the parties as he was introduced/inducted as a partner in the partnership business.

Next submission of learned counsel for the appellant is with regard to report of document and fingerprint expert which is stated to have misread by the learned First Appellate Court. It will be noted that signatures of Smt. Swarn Kanta-plaintiff had not been got compared. Only signatures of late Sh. Mohit Singla has been got compared. The report of document and fingerprint expert has been considered by the learned First Appellate Court. Enlarged photographs of the signatures of late Sh. Mohit Singla have been placed on the file. All the signatures are with free flow of pen. There is some difference as pointed out by the expert, examined by the plaintiff in the signatures which is marked Q-2 half of which are on the agreement to sell and half of which is on the adhesive revenue stamp affixed. Mohit Singla has signed all the four documents namely agreement to sell, receipt, affidavit and General Power of Attorney. There is a small error in reading the report by the learned First Appellate Court but however, that is insignificant. Even Sh. N.K. Jain, who has been examined as expert by the plaintiff has admitted in the cross-examination that the signatures marked Q-1 and Q-3 to Q-5 are genuine signatures of late Sh. Mohit Singla.

Next submission of learned counsel is with regard to the argument that register of the Oath Commissioner has not been produced. It will be noted that Oath Commissioner has informed the Court that he has lost the register. Oath Commissioner has only attested the affidavit. The plaintiff and her son have signed the affidavit at two places each. Hence, non-production of the register does not adversely effect the case of the defendants.

Next argument of learned counsel is that Smt. Swarn Kanta is a semi literate not knowing English. It will be noted that all the signatures of Smt. Swarn Kanta are in English. She is a business woman who was running a partnership business along with her son. The General Power of Attorney is registered with the Sub-Registrar. She while appearing before the Sub-Registrar has admitted that contents of the documents had been read over and explained to her, correctness whereof is being admitted. The General Power of Attorney is also signed by late Sh. Mohit Singla who is not alleged to be illiterate.

Next submission of learned counsel is just to be noticed and rejected. The parties to this litigation were known to each other. Tarsem Jindal and Harbans Lal were inducted as partners in the partnership business. In these circumstances, even after the payment of the entire sale consideration, if the sale deed was not got registered, but four documents executed by the plaintiff and her son, the transaction between the parties cannot be said to be doubtful.

Next submission of learned counsel is that the sale consideration is inadequate is also to be noticed and rejected. The same sale consideration has been mentioned in the agreement to sell which has been executed by the appellant and her son in the aforesaid agreement to sell, hence, the same sale

consideration has been mentioned in the sale deed. Still further, no evidence has been led to prove that on 11.11.1987, the price of the property was shockingly disproportionate to what was agreed to.

Last submission of learned counsel is that certain wrong recitals have been made in the sale deed with regard to existence of charge and no objection certificate. In the considered opinion of this Court, such minor wrong recital cannot be reason to set aside a valid registered sale deed particularly when these recitals do not have any effect on the title to be transferred.

In view of the discussion made above, there is no ground to interfere with the judgment passed by the learned First Appellate Court.

All the pending miscellaneous applications, if any shall stands disposed of accordingly.

Appeal is dismissed.

11.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No