

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 598 of 2011
Date of decision : August 29, 2018

Chirmoli and another

Appellants

Versus

Nawab Ali Khan

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Arora Advocate
for the appellants.

Mr. Shiv Kumar, Advocate
for the respondent.

AMIT RAWAL, J (oral).

The appellants-defendants had not been successful before the court below in defending the suit for declaration and relief of permanent injunction instituted by Nawab Ali Khan assailing the General Power of Attorney dated 28.3.1990 and sale deed dated 5.9.1989 executed by defendant No.1 in favour of defendant No.2 who is none else but wife of defendant No.1. It was alleged that the plaintiff had not executed the General Power of Attorney in favour of defendant No.1. Defendant No.1 played fraud upon the plaintiff and got executed false and fabricated General Power of Attorney, for, the respondent-plaintiff could not sign being illiterate person. No consideration allegedly received by the attorney of defendant No.1 from defendant No.2 was passed on to the plaintiff.

Defendants contested the suit and raised the objections qua jurisdiction locus standi, maintainability, cause of action and proper valuation of suit for the purpose of court fees etc. On merits, it was stated

that General Power of Attorney was attested, registered and executed in the presence of the witnesses when plaintiff signed. Ram Saran, deed writer prepared the aforesaid General Power of Attorney. It was read over and explained to Nawab Ali Khan and then the GPA was registered by the Sub Registrar. Defendant No.1 had raised the constructions over the house in the suit property with the roof of asbestos sheets and had been in possession of the suit property and since then it was in the knowledge of the plaintiff.

The trial Court on the basis of the pleading of the parties framed the following issues:-

- “1. Whether the Power of Attorney dated 28.3.1990 as well as sale deed dated 3.9.1989 is wrong, illegal and not binding on the plaintiff?OPP*
- 2. Whether the plaintiff is in possession over the suit property, if so to what effect?OPP*
- 3. Whether the suit is not maintainable in the present form?OPD*
- 4. Whether the civil court has not jurisdiction to entertain and adjudicate the present suit?OPD*
- 5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*
- 6. Relief.”*

The plaintiff in support of the aforementioned pleadings examined Satya Dev Aggarwal as PW-1 and examined himself as PW-2 and Kamal Singh as PW-3 and brought on record documents Ex. P-1 to Ex. P-12 and affidavit Ex. PW-1/A, PW-2/A and Ex. PW-3/A certified copy of sale deed and copy of GPA Ex. PW3/B. On the other hand, defendant examined two witnesses and brought on record Ex. D-1 to Ex. D-3. The trial court on the basis of evidence decreed the suit and found possession of the suit property with the defendants. The appeal filed by them also met the same

fate.

Learned counsel appearing on behalf of the appellants submitted that the appellants-defendants before the appellate court submitted an application for additional evidence for examining the deed writer of the General Power of Attorney to establish that Nawab Ali Khan, plaintiff had actually intended to execute the General Power of Attorney but the said application was dismissed on account of having not exercised due diligence, therefore that order is also challenged in view of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure. The hand writing expert also proved the thumb impression of Nawab Ali. In essence, the plaintiff did not discharge the onus in proving the averments by leading the evidence in tandem with the pleadings. Copy of the original sale deed in favour of the plaintiff was handed over to the defendants, therefore it was a complete sale as per provisions of Section 202 of the Indian Contract Act, 1872.

Per contra, learned counsel appearing on behalf of the respondent-plaintiff submitted that defendants miserably failed to prove the alleged consideration of ₹ 51,500/- as shown on the back side of the sale deed executed by the attorney in favour of defendant No.2 having passed on to the plaintiff not a single penny of sale consideration was exchanged at the time of registration of the sale deed or any witness was examined to the contrary. Defendant No.1 played a fraud by taking advantage of the simplicity and innocence of the plaintiff. Even the trial court could have moulded the relief as per provisions of Order 7 Rule 7 CPC, thus urges this Court for modification of the judgment and decree as plaintiff would pay the court fees with regard to the aforementioned documents which would

suffice the requirement of the Court Fees Act, 1870.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is no force and merit in the submissions made by learned counsel for the appellants. During the course of hearing, this Court had an occasion to browse the sale deed dated 3.9.2001 executed by defendant No.1 in favour of defendant No.2 where stamp duty of ₹7,982.50 on the valuation of the property, fixed as ₹51,500/-, had been paid but no consideration was passed on in the presence of the Sub Registrar. No witness has been examined to establish that it was received by defendant No.2 or actually determined at the time of execution of the General Power of Attorney, thus plea of learned counsel for the appellants that it was a complete contract of sale as per provisions of Section 202 of the Indian Contract Act, 1872 is rejected. The suit was filed on 22.9.2001 and sale deed was executed on 3.9.2001. No doubt, that the plaintiff has not sought the relief of possession and as per provisions of Order 7 Rule 7 CPC which enables the Court to modify the relief in case not specifically stated subject to the compliance of the provisions of law. For the sake of brevity Order 7 Rule 7 CPC is reproduced hereinbelow:-

“Order VII Rule 7: Relief to be specifically stated- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

It would be futile exercise to put the clock back by

round of litigation.

Thus, I deem it appropriate to mould the relief granted by the courts below upholding findings viz-a-viz the General Power of Attorney and sale deed, additionally grant the relief of possession subject to the condition that the plaintiff shall pay adequate court fees within a period of one month from the date of receipt of certified copy of judgment. On deposit of court fees, appellants-defendants are directed to hand over the possession of the suit property to the respondent-plaintiff within a period of two months. Any constructions raised on the suit property on behalf of the appellants shall be deemed at their cost.

The appeal stands disposed of. Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

August 29, 2018
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No