

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

**RSA No.2103 of 2016 (O&M)
Date of Decision.21.11.2018**

Rupinder Singh @ Harinder Singh and others ...Appellants

Vs

Sukhdev Singh and others ...Respondents

2. C.R. No.3824 of 2017

Harbinder Singh @ Rupinder Singh @ Harinder Singh and another
...Petitioners

Vs

Sukhdev Singh and others ...

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Dogra, Advocate
for the appellants in RSA No.2103 of 2016 and
for the petitioners in C.R. No.3824 of 2017.

Mr. Sandeep Khunger, Advocate
for the caveator-respondent No.1.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two cases; Regular
Second Appeal bearing No.2103 of 2016 arising out of Civil Suit
No.191-1 of 19.8.1998 and Civil Revision No.3824 of 2017.

The respondents-plaintiffs instituted the suit for specific
performance of agreement to sell dated 02.09.1997 with alternative
prayer for recovery of ₹7,77,750/- whereby the vendor had agreed to
sell land measuring 36 kanals 12 marlas @₹1,70,000/- per acre.

The present appeal has been preferred at the instance of
defendants No.14 to 16, subsequent vendees against the concurrent

finding of fact. As per the averments, Idda (deceased) represented by legal representatives had executed an agreement to sell dated 02.09.1997 in favour of plaintiffs against the payment of earnest money of ₹4 lakhs. The stipulated date for execution and registration of the sale deed was 16.03.1998. During his life time, Idda had executed a General Power of Attorney dated 30.09.1997, Ex.D5 in favour of his son Mukhtiar Singh but the same was cancelled by registered document on 18.11.1997. On the basis of the aforementioned attorney, the agent-son executed three sale deeds dated 23.10.1997, which was before the cancellation of attorney and 18.12.1997 and 19.12.1997 i.e. post cancellation. In these circumstances, the challenge was laid to the aforementioned sale deeds.

The plaintiffs alleged that despite having appeared before the Registrar, the legal representatives of Idda did not come forward, resulting into filing of the suit on 19.08.1998.

The appellants-defendants opposed the suit and claimed themselves to be bona fide purchasers of the land in dispute, objected to the agreement being fraud and fabricated and ante dated document. Even the payment of sale consideration or earnest money was also opposed.

On preponderance of the evidence, the trial Court found that the sale deeds were not as per the wish of the principal but plaintiffs were ready and willing, granted the discretionary relief. The appellants-defendants were not successful before the lower Appellate Court.

During the interregnum, the appellants-defendants had filed the suit under Section 6 of the Specific Relief Act for recovery of possession as they were alleged to have been dispossessed within six months from the date of alleged date of possession. The same was decreed by the trial Court and in these circumstances, the revision petition bearing No.1964 of 2017 at the instance of the defendants on account of dismissal of the execution application seeking implementation of the judgment and decree dated 5.1.2015 in suit filed under Section 6 of the Specific Relief Act has been filed, which after granting interim stay is pending adjudication.

Mr. Dogra, learned counsel appearing on behalf of the appellants-defendants in support of the memorandum of appeal has raised following submissions:-

(i) Both the Courts below have committed illegality and perversity in not appreciating the fact that the appellants are bona fide purchaser of suit property as it has been proved that they were not having the knowledge of the existence of the agreement to sell dated 02.09.1997.

(ii) The trial Court out not to have set aside the sale deed dated 23.10.1997 as it was prior to the cancellation of the General Power of Attorney.

(iii) It was dispute amongst the father and son and therefore, in view of collusion, appellants should not be made to suffer.

(iv) The subsequent purchasers are at liberty to take all pleas, which the original vendor can take and in these circumstances, submitted that readiness and willingness

was not proved as no evidence has been brought on record with regard to payment or equipment of balance sale consideration, therefore the trial Court should not have dismissed the execution application.

I am afraid the aforementioned argument is not sustainable, for, the reason for setting aside of the sale deeds, particularly 30.10.1997 was that the General Power of Attorney breached trust reposed by the father by alienating the property in favour of his minor son along with one Sukhwinder Singh. The other sale deeds, in my view, could not have been executed as there was no authority in view of the cancellation of the power of attorney dated 30.09.1997. The agreement to sell has been proved through the testimony of one marginal witness and scribe, much less, passing of the earnest money. The suit was filed five months after the expiry of the target date. It is not the case that the agent was not aware of the cancellation of the power of attorney, for, the aforementioned factum of cancellation was informed vide registered notice dated 28.11.1997. Readiness and willingness as per the provisions of Section 16(c) of the Specific Relief Act has been proved to the hilt.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below whereby discretionary relief under Section 20 of the Specific Relief Act has been granted to the respondents-plaintiffs, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal is dismissed.

As regards the revision petition, once the appellants-

defendants who are the plaintiffs in the other suit cannot seek the execution of the judgment and decree dated 05.01.2015 having lost their title, the revision petition is also dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No