

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2455-2016 (O&M)
Date of Decision: 15.10.2018

Ram Kumar & another

--Appellants

Versus

Ramphal Singh & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anurag Jain, Advocate for the appellants.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiffs are in second appeal before this Court having remained unsuccessful in both the courts below.

Brief facts of the case are that plaintiffs Ram Kumar and Smt. Bhagwani filed a suit for possession of suit property by way of partition on the pleadings that land measuring 2 kanals 0 marla comprised in Khasra No.643, Khewat No.244, Khatoni No.317 situated within the revenue estate of Village Barda, Tehsil & District Mahendergarh is joint property of the parties. Plaintiff Ram Kumar was stated to have constructed his house towards Eastern side in 1/3rd share, whereas Chiman Lal defendant no.2 had constructed his house on the Western side near Dharamshala. In between the houses of plaintiffs and defendant no.2 Chiman Lal, land to the extent of 1/3rd share is vacant and whereas defendant no.1 is claiming himself to be the owner of such 1/3rd share on the strength of sale deed no.2004 dated 12.9.2005 and of which mutation no.1745 dated 30.9.2005 stands sanctioned. Plaintiffs asserted that defendant no.1 is neither owner nor in possession of such 1/3rd share. The sale deed dated 12.9.2005 was executed by Ramesh son of Tota Ram on behalf of himself as also on behalf of plaintiff no.2 Smt. Bhagwani, Shanti and Rewati daughters of Tota Ram as

their attorney vide General Power of Attorney No.26 dated 12.5.1997. Plaintiffs claimed that vide Power of Attorney No.26 dated 12.5.1997 Smt. Bhagwani plaintiff no.2 had appointed her brother Ramesh as her attorney but said Power of Attorney was canceled by Smt. Bhagwani vide cancellation deed dated 11.6.1998 and the fact regarding cancellation of Power of Attorney was brought to the notice of Ramesh. Accordingly, it was asserted that Ramesh had no right to execute the sale deed on behalf of plaintiff no.2 and as such, sale deed no.2004 dated 12.9.2005 and mutation no.1745 dated 30.9.2005 is not binding on the rights of plaintiff no.2. The suit for possession by way of partition was instituted by asserting that on account of the property being joint between the parties there remained tension and defendant no.1 as also other defendants want to raise construction on the better portion of the suit property by taking forcible possession of the same.

Suit was contested by defendant no.1 by filing a written statement taking a stand that he is owner in possession of the suit land by virtue of sale deed dated 12.9.2005. Even mutation dated 30.9.2005 was sanctioned and he has raised a boundary wall of the height of about six feet and had constructed a room thereupon. It was further pleaded that the suit property already stood orally partitioned amongst the three brothers and nine sisters and all the nine sisters have relinquished their respective share in favour of the three brothers. Defendant no.1 is stated to have purchased the share of Ramesh, Bhagwani, Shanti and Rewati vide sale deed dated 12.9.2005 and the plaintiffs were all through aware of the possession of defendant no.1 as also construction raised thereupon and had never raised any objection thereto.

Suit of the plaintiffs was dismissed by the Trial Court on 8.9.2012 and the civil appeal preferred has met the same fate vide judgement dated 26.11.2015 passed by the learned Additional District Judge, Narnaul.

Counsel for the plaintiffs-appellants has primarily argued that the Power of Attorney which had been executed by plaintiff no.2 Smt. Bhagwani in favour of her brother Ramesh on 12.5.1997 by way of a registered document had thereafter been canceled on 11.6.1998 in the office of the same Sub Registrar by way of a registered instrument. It is urged that registration of a document is a notice to the public at large and accordingly cancellation of Power of Attorney would be construed to be in the knowledge of the attorney holder and there would be no requirement to serve a specific notice upon the attorney holder under such circumstances.

Having heard counsel for the appellants at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

It is a case where plaintiff no.2 Bhagwani, who was the best witness with regard to the alleged cancellation of Power of Attorney in favour of Ramesh has chosen not to even step into the witness box. No evidence had been adduced as regards cancellation of the General Power of Attorney which was in favour of Ramesh. Ramesh himself has been examined as DW-1 and who stated in his cross-examination that he was having Power of Attorney executed by his sisters including Smt. Bhagwani in the year 1997 and is not aware as regards cancellation of the Power of Attorney.

The relevant fact that has weighed with this Court against intervention in the matter is that counsel upon a specific query having been put, states that no declaration at any point of time had been sought against sale deed no.2004 dated 12.9.2005 as also the mutation sanctioned thereupon bearing no.1745 dated 30.9.2005 in favour of defendant no.1 inspite of the stand that the Power of Attorney on the strength of which such sale deed had been executed already stood canceled.

Under such circumstances, there would be no occasion for this Court to intervene in second appeal and to disturb the concurrent view taken by the courts below.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

15.10.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No