IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3481 of 2016(O&M)
Date of Decision-27.09.2018

Inderjit Singh ... Appellant

Versus

Bahal Singh and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Tarun Sharma, Advocate for
Mr. R.S. Bajaj, Advocate
for the appellant.

***

RAJ MOHAN SINGH, J.

[1]. Defendant No.1 is in regular second appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff filed a suit for declaration to the effect that the plaintiff was owner in possession of the land as shown in the plaint and the power of attorney dated 02.08.2007 allegedly executed by the plaintiff in favour of defendant No.1 and the sale deed dated 01.11.2007 executed by defendant No.1 in favour of defendant No.2 in respect of suit land were illegal, null and void. Decree for permanent injunction was also sought, restraining the defendants from interfering in the peaceful cultivating possession of the plaintiff over the suit land.

[3]. It was pleaded by the plaintiff that defendants were running the business of finance under the name and style of

Josan Depositors and Advances Private Limited and Josan Finance Corporation (regd.). Defendant No.2 claimed himself to be Managing Director of the aforesaid private limited company. Plaintiff was in the need of money for the treatment of his wife. On 01.08.2007, plaintiff approached the defendants for taking loan of Rs.20,000/-. Defendants took signatures and thumb impressions of the plaintiff on blank papers as well as on blank stamp papers and also obtained four blank cheques drawn on Punjab National Bank, Jalandhar. Thereafter, defendants took the plaintiff to Tehsil complex on 02.08.2007 and got executed the general power of attorney in favour of defendant No.1 by assuring the plaintiff that the power of attorney will remain with the Finance Company as security of the aforesaid loan. On earlier occasion i.e. in the month of January 2004, the plaintiff obtained loan of Rs.4 lacs from the defendants through their aforesaid company and the defendants also obtained the signatures of the plaintiff on several stamp papers. Defendant No.1 had got executed general power of attorney dated 13.01.2004 registered on 16.01.2004. The said general power of attorney was kept by the defendants as security for the aforesaid loan of Rs.4 lacs and defendants also got signatures of the plaintiff on many blank papers. Defendants kept the said papers as security with an assurance that the same would be returned on repayment of loan amount. On repayment of loan amount of Rs.4 lacs with interest, defendants returned the said agreement to sell dated 08.12.2005 and general power of attorney dated 13.01.2004 registered on 16.01.2004 to the plaintiff. Defendants torn the general power of attorney dated 16.01.2004. Plaintiff kept the said agreement dated 08.12.2005 with him.

[4]. Plaintiff further pleaded that the defendants had converted the signatures on blank stamp papers into agreement to sell without any date on the stamp paper of Rs.300/- allegedly purchased on 12.01.2004 with regard to said loan of Rs.4 lacs. Plaintiff also pleaded that he had reposed faith on the defendants while taking loan of Rs.20,000/- on 01.08.2007 and had also executed general power of attorney dated 02.08.2007 in favour of defendant No.1 as was done in the past. Defendants assured the plaintiff that the same will not be misused and the same would be kept as security for the loan. Plaintiff approached the defendants to repay the loan of Rs.20,000/- on 12.11.2017. Defendants refused to receive the amount and told the plaintiff that defendant No.1 had executed the sale deed in favour of defendant No.2 in respect of suit land on 11.11.2007. Defendants did not return the documents which were obtained by them at the time of advancement of loan of Rs.20,000/- to the plaintiff. Sale deed dated 01.11.2017 executed by defendant No.1 in favour of defendant No.2 was claimed to be null and void by the plaintiff. In the aforesaid background, the suit was filed.

[5]. The suit was contested by the defendants.

[6]. It was submitted that the plaintiff himself wanted to sale his property and had entered into agreement to sell in respect of 6 kanals 1 marla of land for a total consideration of Rs.9,60,000/- and after receiving the full and final consideration, executed the general power of attorney dated 02.08.2007 in favour of defendant No1 and delivered possession of the suit property. The said general power of attorney was registered with the Sub Registrar, Jalandhar. Plaintiff had concealed the fact in respect of taking loan from the Jalandhar Primary Co-op. Agri. Dev. Bank Limited and had not cleared the amount. Before execution of the sale deed, defendant No.1 came to know that an amount of Rs.2,47,188/- was outstanding and requested the plaintiff to clear the same. Plaintiff requested defendant No.1 to repay the said amount on his behalf with an assurance that he will get the same reimbursed to defendant No.1. Defendant No.1 cleared the loan amount on 01.11.2007 and the same was also executed as per agreement to sell. Thereafter, the plaintiff failed to pay the said amount to defendant No.1 despite several demands and plaintiff has filed the suit in question in order to pressurize the defendants, not to demand the said amount.

[7]. Both the parties went to trial on specific issues.

[8]. The Courts below have appreciated the evidence led by the parties in respect of past transaction of the year 2004-05 when the plaintiff had taken a loan of Rs.4 lacs from the

defendants and defendants had kept the signed documents as security in their favour and the power of attorney which was executed on 13.01.2004 Ex.P5 was returned after repayment of loan to the defendants. The original of the aforesaid document came from the possession of the plaintiff which was considered to be a genuine document in respect of past transaction between the parties, which clearly proved the fact that after reimbursing the loan amount of Rs.4 lacs by the plaintiff to the defendants in the year 2004, the defendants had returned the said power of attorney to the plaintiff. The second document which came from the possession of the plaintiff was Ex.P6 which was an agreement to sell executed on 08.12.2005 at the time of taking loan of Rs.4 lacs by the plaintiff. The agreement to sell was executed in favour of defendant No.1 and the document was kept by defendants as security at the time of execution of agreement. Ex.P7 was the third original document which came from the possession of the plaintiff which was agreement to sell dated Nil executed by the plaintiff in favour of defendant No.1 in the year 2005.

[9]. Perusal of the aforesaid documents would show that in these documents, the amount of earnest money was mentioned as Rs.4 lacs and these documents would show that there were many transactions between the plaintiff and defendants. Plaintiff was regularly availing the loan from defendant Finance Company and as and when the loan was returned, the original documents

Exs.P5 to Ex.P7 which were taken by the defendants as security in lieu of loan were returned to the plaintiff.

[10]. On the strength of aforesaid documents, it was held that defendants obtained faith of the plaintiff and thereafter, plaintiff again approached the defendants in the year 2007 for taking another loan of Rs.20,000/- for treatment of his wife and again executed power of attorney on 02.08.2007 which was taken by the defendants as security document. Thereafter, when the plaintiff went to the defendants to repay the amount of Rs.20,000/-, then he came to know that defendant No.1 in connivance with defendant No.2 and marginal witnesses had executed the sale deed Ex.P3 by misusing the power of attorney Ex.P4. The sale deed was executed in favour of defendant No.2.

[11]. The Courts below have also concluded in favour of the plaintiff with reference to evidence on record. Initially, defendants had denied the factum of being partners in Josan Finance Company and claimed that the plaintiff had executed the power of attorney in his individual capacity, but the fact was proved to the contrary in the cross examination of the defendant that he had filed other complaints on behalf of Josan Finance Company being its partners. The litigation of Josan Finance Company was pending and the plaintiff had proved the certified copy of partnership deed of Josan Finance Company as Ex.DX, in which defendant No.1 was shown as partner at serial No.7 and

defendant No.2 at serial No.1. It was proved on record that defendants No.1 and 2 were partners of Josan Finance Company. Defendants used to get power of attorneys of the plaintiff executed in favour of defendant No.1 in every money transaction which had taken place in the past and the same were kept as security till repayment of the loan amount. The previous power of attorneys and agreements to sell were came on record from the custody of the plaintiff. In earlier transactions, after repayment of the loan, documents were returned to the plaintiff. In the year 2007, plaintiff again approached the defendants for taking a loan of Rs.20,000/- for the treatment of his wife and the defendants as usual again obtained the power of attorney Ex.P4 in favour of defendant No.1 and the same was kept by defendant No.1 as security till repayment of the loan. Plaintiff had proved that before repayment of the loan amount, defendant No.1 in connivance with defendant No.2 and marginal witnesses firstly misused the power of attorney which was executed by the plaintiff in favour of defendant No.1 on 02.08.2007 as security document and thereafter, on the basis of said power of attorney, defendant No.1 got executed sale deed dated Ex.P3 in favour of defendant No.2 on 01.11.2007.

[12]. The findings of fact have been recorded by the Courts below on the basis of aforesaid evidence on record that the sale deed dated 01.11.2007 on the basis of power of attorney dated

02.08.2007 was illegal and declaration was granted in favour of the plaintiff.

[13]. On the basis of material on record, the suit of the plaintiff for declaration and consequential relief of permanent injunction was decreed by the trial Court vide judgment and decree dated 16.07.2014 and the same was upheld by the Lower Appellate Court vide judgment and decree dated 09.12.2015.

[14]. The findings of facts recorded by the Courts below commensurate from the record were appreciated by the Courts below in a lawful manner. Re-appreciation of those findings on the basis of same evidence cannot be made subject matter of regular second appeal before this Court. The findings recorded by the Courts below with reference to past transactions between the parties and repayment of loan cannot be faulted with and cannot be said to be perverse or the result of misreading of evidence in any manner. No law point worth consideration is involved in the present regular second appeal. The present regular second appeal is found to be totally devoid of merits and the same is accordingly dismissed in *limine*.

(RAJ MOHAN SINGH)
JUDGE

27.09.2018
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No