

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.5067 of 2016 (O&M)

Date of decision:18.05.2018

Krishan Kumar Miglani

... Appellant

Vs.

Balkaran Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Chopra, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit seeking cancellation of the sale deeds bearing Nos.2767 and 2768 dated 10.09.2004 with relief of permanent injunction restraining defendants No.1 and 2 from illegally and forcibly entering upon the suit land, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

In brief the facts as emanate from the judgments of the Courts below are that the appellant-plaintiff alongwith his brothers was the owners in possession of the land measuring 26 kanals 19 marlas fully detailed and described in the head note of plaint situated in village Azimgarh. It was pleaded that house was constructed in the adjoining area where son of the plaintiff and his family is residing. Defendant no.3 was on visiting terms with the plaintiff since long and having family relations. On 05.09.2004, it

was settled to sell the property in dispute for a consideration of rupees one crore. The agreement to sell dated 06.09.2004 was entered into between the plaintiff and defendants No.1 and 2 for a sum of Rs.32,00,000/-, whereby Rs.2,00,000/- as cash and Rs.5,00,000/- in the shape of draft bearing No.00023700 dated 06.09.2004 in total Rs.7 lacs as earnest money was paid. The plaintiff was shocked to know that defendants alongwith Jasbir Singh had visited the disputed land and claimed to have got executed the sale deeds, ibid in respect of the suit land. On reasonable inquiry, it transpired that conspiracy was hatched regarding the sale of the property for a sum of Rs.32,00,000/- only in favour of defendants No.1, 3 and one Jasbir Singh son of Sohan Singh as well as General Power of Attorney allegedly executed by the plaintiff on 08.09.2004 in favour of defendant no.3. In fact, plaintiff neither executed any agreement nor General Power of Attorney or ever went to the office of Sub-Registrar, Abohar for the registration of the power of attorney. On the strength of general power of attorney, defendant no.3 on 10.09.2004 executed a sale deed of the land measuring 18 kanals 11 marlas in favour of defendant no.1 and another sale deed in respect of land measuring 8 kanals 8 marlas in favour of defendant no.2, for a sum of Rs.79,6000/- and Rs.315000/-. The aforementioned sale deeds were result of illegal, fraudulent and sham transactions and liable to be cancelled, for, the plaintiff never appointed defendant no.3 as his attorney nor instructed the deed writer to execute the sale deed. The sale deeds were the outcome of a deep rooted conspiracy hatched by the defendants in league with the persons and were without consideration. The possession of the suit land was

neither capable of being transferred by the plaintiffs to the defendants-purchasers nor it was actually transferred, for, it continued to be jointly owned and possessed by the plaintiff and his brothers. Defendant no.1 was the son of defendant no.3 while defendant no.2 was a close friend and associate of defendant no.1, therefore, the suit aforementioned was filed on 28.10.2004.

Defendant no.1 appeared and contested the suit by raising numerous preliminary objections qua maintainability, locus standi etc. It was averred that plaintiff concealed the true and material facts and it was an act of greed to harass the respondent-defendants, defendant no.1 was a bonafide purchaser and owner in possession of the land by virtue of sale deed which was executed by the plaintiff through general power of attorney/defendant No.3, namely Dhian Singh and the remedy was to seek the cancellation of the attorney. Even the possession was also handed over at the spot.

Defendant No.2 in the written statement had also taken various preliminary objections and stated that he purchased the land measuring 8 kanals 8 marlas vide sale deed no.2768 executed by the plaintiff.

Dhian Singh, who was arrayed as defendant no.3 filed a separate written statement by taking numerous preliminary objection. It was stated that suit was not maintainable nor valued for the purposes of Court fee and jurisdiction and concealed the true facts, much less estoppel. It was averred that plaintiff Krishan Kumar Miglani had appointed answering defendant as his lawful general attorney to sell his property to defendants

no.1 and 2 from whom the plaintiff had already received the valid consideration in his presence and his duty was only to execute the sale deed. The attorney bearing signatures dated 08.09.2004 was registered on 09.09.2004 which was executed by the plaintiff out of his own free and sweet Will, much less sound and disposing mind.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether sale deed no.2767 relating to land measuring 18 kanals 11 marlas situated at Azimgarh executed by defendant no.3 in favour of defendant no.1 is liable to be cancelled? OPP
2. Whether sale deed no.2768 relating to land measuring 8 kanals 8 marlas situated at Azimgarh executed by defendant no.3 in favour of defendant no.2 is liable to be cancelled? OPP
3. Whether plaintiff has no locus standi and cause of action to file this suit? OPD
4. Whether plaintiff concealed any material fact from the Court? OPD
5. Whether the suit is not maintainable? OPD
6. Whether defendant No.1 is a bonafide purchaser of land measuring 18 kanals 11 marlas? OPD-I
7. Whether plaintiff is entitled for declaration as prayed for? OPP
8. Whether plaintiff is entitled for injunction as prayed for? OPP

9. Relief.

The appellant-plaintiff in support of the averments examined following witnesses:-

PW1	Sudarshan Miglani
PW2	Anil Kumar Miglani
PW3	Krishan Kumar Goyal, Deed Writer
PW4	plaintiff himself
PW5	Sharad Wardhan, Branch Manager, HDFC Bank, Abohar
PW6	HC Gursewak Singh
PW7	Udhay Chand, Registration Clerk

On the other hand, defendants examined following witnesses:-

DW1	Jaspal Singh Patwari
DW2	Jagdish Bhatia
DW3	Kuldeep Singh Tinna
DW4	Mohan Lal
DW5	Dhian Singh
DW6	Jagmohan Kumar
DW7	Ram Lubhaya Notary
DW8	Major Singh
DW9	defendant no.1.

The trial Court on the basis of the aforementioned evidence held that plaintiffs did not discharge the onus of fraud and misrepresentation and dismissed the suit and the appeal laid before the Lower Appellate Court

also met with the same fate.

Mr. Gaurav Chopra, learned counsel appearing on behalf of the appellant-plaintiff in support of the memorandum of appeal has raised the following submission:-

i) that it was a reprobated conspiracy amongst defendant No.3 and defendants No.1 and 2 in duping the plaintiff, for, the plaintiff never appeared before the office of Sub-Registrar for execution and registration of the attorney in favour of defendant no.3 as the photographs affixed on the attorney did not have the stamp of the concerned department and this fact had been proved through the testimony of registration clerk summoned from the office of Sub-Registrar, Abohar. The ingredients of Order 6 Rule 4 of CPC have been proved to the hilt.

ii) Recital in the agreement to sell revealed that sale deed in pursuance to execution of agreement to sell was to be executed within a period of one year after completion of all the formalities pertaining to the suit property and rectification in the revenue record in order to hand over to unencumbered and absolute title, therefore, no occasion arose for the plaintiff to execute a power of attorney dated 08.09.2004 in favour of defendant no.3, resulting into impugned sale deeds dated 10.09.2004 merely within a period of four days from the execution of the agreement to sell.

iii) The undue haste was itself clincher for proving the ingredients of fraud. The description of the land mentioned in the agreement to sell and power of attorney did not tally. There was no reference to agreement to sell in the General Power of Attorney. It has already come on

record in the testimony of PW4-Krishan Kumar, DW5-Dhian Singh, DW6-Jagmohan Kumar attesting witnesses of General Power of Attorney that plaintiff was hale and hearty, thus, once the plaintiff was himself capable of approaching the office of Sub-Registrar, no attenuating circumstance had been proved on record giving cause to the plaintiff for execution of the attorney.

(iv) Jagmohan Kumar-DW6, in cross-examination testified that he was working as a Labourer in village Kala Tibba and only connection he had with the plaintiff was that his family had been consulting the plaintiff for taking medicines from time to time. The sale deeds were executed by defendant no.3 in favour of defendants no.1 and 2 without any legal, lawful authority and without any consideration. There had been discrepancy in the testimony of the witnesses with regard to alleged consideration. In fact, defendant no.2 was neither party to the agreement to sell nor signatory in any capacity. As against the intended sale of 24 kanals of agricultural land and a house built on land measuring 10 marlas which had been allegedly agreed to be sold for Rs.32,00,000/-, defendant no.3 without any authority sold land measuring 26 kanals 19 marlas for a total sale consideration of Rs.11,11,000/-, i.e.,Rs.7,96,000/- as sale consideration in respect of sale deed no.2767 and Rs.3,15,000/- as sale consideration in respect of sale deed bearing No.2768, thus, the area of land had been increased from 24 kanals to 26 kanals 19 marlas. It was a glaring defect which had not been noticed by the Courts below, thus, there is gross illegality and perversity in the findings under challenge.

No evidence has come on record as and in what manner a sum of Rs.25,00,000/- as balance sale consideration had been paid by defendant no.3 to the plaintiff. Defendant no.3 who appeared as DW5 stated that he had not made any inquiry regarding the family partition relating to the property in question. In the absence of the partition, suit property could not have been sold. Reference by the Courts below with regard to the document Ex.D13, alleged cancellation deed was totally untenable, for, cancellation deed had been executed by the plaintiff only as a matter of care and caution in order to prevent defendant no.3 from continuing with illegality and thus, urged this Court for setting aside the judgments and decrees of the Courts below.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Chopra, for, the reasons are not one but few:-

(a) Appellant-plaintiff in order to prove the ingredients of fraud and misrepresentation was not only required to make a pleading but lead evidence in support thereof. The relevant evidence which was required has not been examined or omitted for the reasons best known, for, appellant-plaintiff failed to examine the stamp vendor from whom the alleged stamp papers for execution and registration of the General Power of Attorney had been purchased. It would have been a clinching evidence whether the stamp papers were purchased by the appellant-plaintiff or somebody else. Perhaps the appellant-plaintiff feared that truth may not surface.

(b) The suit revealed complete denial of execution of agreement to sell and as well as general power of attorney. During the course of hearing, a specific query was raised to Mr. Chopra, as to whether the GPA bears the signatures of the plaintiff, he answered that signatures were his.

(c) The aforementioned submissions are totally against the per pleaded case of the appellant, for, the aforementioned document was registered, therefore, carried a presumption of truth and cannot brushed asidet until and unless assistance of a document expert, to belie the same, had been taken.

(d) Concededly, criminal case had been lodged against the power of attorney holder and other accused persons which resulted into acquittal. As per the information provided, the appeal is pending adjudication.

(e) The plaintiff would have been honest and fair by bringing a statement of account to show that the alleged receipt of consideration of Rs.25,000,00/- was never deposited, for, a sum of Rs.5 lacs was paid by way of draft at the time of execution of sale deed. It is strange that a person has received a draft of Rs.5 lacs, over and above Rs.2 lacs at the time of execution of agreement to sell feigned ignorance of having entered into agreement to sell. If at all power of attorney had actually not been executed, it was obligatory upon the plaintiff to summon the Registrar, bearing attestation of the power of attorney but only a clerk from the concerned department had been summoned and a huge proportion has been

blown from his testimony to the effect that photographs affixed on the power of attorney did not have the stamp of Sub-Registrar but in fact, the said document was actually registered. Registrar would have testified whether the plaintiff had appeared or not. He would have testified regarding the appearance of plaintiff or otherwise.

(f) Defendants have placed on record Ex.D13 cancellation deed of power of attorney dated 27.09.2004 but the plaintiff denied the same. However, recital of the cancellation deed revealed that plaintiff had actually executed deed of Attorney but in the evidence, stated that it was only for management of the property, thus, for all intents and purposes, the plaintiff had been taking different stand vis-a-vis pleaded case, therefore, rightly so, adverse inference had been drawn.

(g) Sudarshan Kumar Miglani, brother of plaintiff admitted the signatures of the plaintiff on Ex.D1, agreement and Ex.D12, deed of attorney. In such circumstances, I am of the view that it was glaring case of aggrandisement where the plaintiff after executing the document wanted to resile, probably in the change of market price at the relevant point of time, for, from 2002 onwards the prices of the property had gradually been increasing.

(h) On critical appraisal of submissions of Mr.Chopra and as well as finding of facts and law arrived at, much less, on looking at agreement to sell, power of attorney and sale deed handed over to this Court during the course of hearing, this Court is of the considered opinion that plaintiff has miserably failed to discharge the onus as per the provisions of

Section 101 of Indian Evidence Act to prove the ingredients of fraud and misrepresentation.

(i) One line here and there in cross-examination cannot be taken against a person particularly in civil proceedings as the cumulative fact of the entire examination in chief and cross examination has to be looked into. It is not a case that the plaintiff had lodged any FIR against his brother for deposing falsely in the Court who admitted signatures on the agreement to sell and as well as on the power of attorney.

(j) The lower appellate Court being the last Court of fact and law after going through the entire evidence under judicial scrutiny, in my view, has rightly dismissed the appeal, for, it did not involve any point of determination to differ with the findings of trial Court.

As an upshot of my findings, I am of the view that present regular second appeal does not warrant any interference in the concurrent findings of facts and law arrived at, much less within the expression perversity to form the different opinion than the one arrived at. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 18, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No