

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

RSA No. 6261 of 2016 (O&M)

Date of decision : 05.07.2018

Surjit Singh

....Appellant

V/s

Ramesh Kumar & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. S.K. Singla, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal has been preferred by the appellant aggrieved by the judgments and decree of two courts below dismissing the suit. Learned counsel for the appellant has submitted that there is a complete misappreciation of evidence by both the courts below. Plaintiff was entitled to the relief prayed for on the basis of evidence led. Thus, appeal deserves to be allowed.

I have heard learned counsel for the appellant.

A suit was instituted by the plaintiff-appellant seeking declaration to the effect that he was owner in possession of land measuring 4 kanals situated in Moga Mehla Singh-III, Moga as per jamabandi for the years 1992-93 and 1997-98 and of house shown red in the site plan of the plaint situated in Moga Mehla Singh, Moga, alternatively for permanent injunction restraining the defendants from taking forcible possession of the suit property. Appellant-plaintiff claimed that he was owner in possession of the suit land to the extent of 1/5th share out of the total land. On

14.05.1998 he took loan of ₹1.00 lac from defendant no. 3. At the time of advancing the loan, defendant no. 3 had obtained the signatures of plaintiff on three blank stamp papers and various other forms. It was alleged by plaintiff that neither he executed any power of attorney in favour of defendant no. 2 nor authorized her to execute sale-deed in favour of any person of the suit property. However, on the basis of forged power of attorney dated 14.05.1998 which is stated to have been executed by plaintiff in favour of defendant no. 2, she sold the land of the plaintiff to defendant no. 1 for a consideration of ₹1.00 lac. In this way, defendants were threatening to dispossess him from the suit land and claiming their possession over the suit land illegally. Upon notice, defendants-respondents contested the plea of the plaintiff by filing the written statement. They submitted that plaintiff had himself executed the registered power of attorney in favour of defendant no. 2 who thereafter sold the suit land to defendant no. 1 for ₹1.00 lac. After examining the evidence led by both the sides, trial court came to the conclusion that appellant had himself executed the power of attorney in favour of defendant no. 2 who further sold the suit property to respondent-defendant no. 1 vide registered sale deed dated 19.02.1999. In this way, respondent no. 1 was a bona fide purchaser of the suit property. Aggrieved, appeal was preferred before the lower appellate court. It, however, arrived at the same conclusion and dismissed the appeal.

It appears that appellant has miserably failed to discharge the burden of proving that he never executed power of attorney in favour of defendant no. 2. Both the courts held that appellant neither summoned any official from the office of Sub Registrar to prove that he did not appear before the Sub Registrar to execute the alleged power of attorney nor

examined any attesting witness of the power of attorney in order to prove that same was result of fraud. I am, thus, of the considered view that both the courts below have correctly appreciated the evidence on record. No other substantial question of law has been urged requiring adjudication in second appeal. Same is hereby dismissed.

As the main appeal has been dismissed on merits, no order is required to be passed in the accompanying applications seeking condonation of delay.

July 05, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No