

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

1. RSA No.1064 of 2017 (O&M)
Date of decision : 03.08.2018
Harpreet Singh ...Appellant
Versus
Mukhbain Singh (deceased) through his LR's and others
...Respondents
2. RSA No.2364 of 2017 (O&M)
Date of decision : 03.08.2018
Inderjit Singh and another ...Appellants
Versus
Mukhbain Singh (deceased) through his LR's and another
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Rohit Nagpal, Advocate for the appellant
(In RSA No.1064 of 2017)

Mr. Ashish Gupta, Advocate for the appellants
(In RSA No.2364 of 2017)

Mr. S.K. Jain, Advocate for the respondents
(In both the appeals)

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved on 11.07.2018.

The judgment is being released.

This judgment shall dispose of RSA Nos.1064 and 2364 of 2017 filed by the defendants separately against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for declaration and permanent injunction.

Learned counsel for the parties are also agreed that both the

appeals can be conveniently disposed of by a common judgment as issues which need determination are common.

Late Sh. Mukhbain Singh (the plaintiff) had filed a suit for declaration seeking cancellation of alleged sale deed dated 08.08.2006 registered on 09.08.2006 executed by him through General Power of Attorney Holder defendant No.3-Harpreet Singh in favour of defendant No.1 and 2 with respect to the land measuring 82 bighas and 2 biswas with a consequential relief of permanent injunction.

It may be noted here that Harpreet Singh-defendant No.3 is son of cousin brother of Mukhbain Singh. Late Sh. Mukhbain Singh used to reside in Delhi, whereas the property was situated at Village Hadaitpura, Tehsil Rajpura, District Patiala. Defendant No.1 is brother-in-law (sister's husband) of Harpreet Singh, whereas defendant No.2 is son of defendant No.1 i.e. nephew of Harpreet Singh.

It is the case of Late Sh. Mukhbain Singh, the plaintiff that he was 73 years old and was not in a position to look after his property as there was litigation with the tenants. Bhagwant Singh, father of defendant No.3, cousin brother of the plaintiff, who is residing in Rajpura, on being told about the difficulties faced by the plaintiff suggested that he should appoint defendant No.3 as his power of attorney and, therefore, the plaintiff in good faith executed General Power of Attorney in favour of defendant No.3 on 07.12.2004. However, after sometime, the plaintiff came to know that there was something wrong and, therefore he cancelled the power of attorney vide cancellation deed dated 27.07.2006. It is the case of the plaintiff that on the same day, he met defendant No.3 and informed him about the cancellation.

Still, notice was sent to defendant No.3 on 07.08.2006. The plaintiff further pleaded that defendant No.3 while hatching conspiracy with defendant Nos.1 and 2 who are close relatives executed a sale deed in favour of defendant No.1 and 2 on the basis of the General Power of Attorney for a sale consideration of ₹58,15,500/- which was registered on 09.08.2006 i.e. after the cancellation of the General Power of Attorney.

Joint written statement was filed by defendant Nos.1 and 2 and they claimed that they are bona fide purchasers for valuable consideration of ₹58,15,500/-. Defendant No.3 also contested the suit and pleaded that in fact the plaintiff had asked him to sell the property and, therefore, ₹2,00,000/- was paid through bank transfer and defendant No.3 entered into agreement to sell with Sanjeev @ Sandeep Rai, Vikas Arora, Navin Arora and Sumeet Bakshi with respect to land measuring 82 bighas and 2 biswas at the rate of ₹1,40,000/- per acre. ₹10,00,000/- was further received and transmitted to the plaintiff and thereafter aforesaid purchasers also paid full and final payment of ₹11,94,583/- on 02.03.2006 which was also transferred to the plaintiff. He further pleaded that Sanjeev @ Sandeep Rai and others named above, further entered into an agreement to sell with defendant Nos.1 and 2 on 17.06.2005 for a total sale consideration of ₹58,15,500/- and on the asking of Sanjeev @ Sandeep Rai and others, Harpreet Singh-defendant No.3 had executed a sale deed in favour of defendant Nos.1 and 2.

Both the Courts after examining the evidence available on the file have concurrently recorded a finding that the sale deed executed by defendant No.3 in favour of defendant Nos.1 and 2 is a bogus transaction having been executed after the cancellation of the General Power of

Attorney. Still further, keeping in view the relationship between the parties, particularly defendant No.3 and defendant Nos.1 & 2, the Courts have held that defendant No.3 has misused the General Power of Attorney executed in his favour by the plaintiff.

Learned counsel for the appellant has submitted that the plaintiff did not file the suit with clean hands as he had received ₹23,94,583/- as per agreement to sell dated 17.06.2005 and, therefore, he is not entitled to any relief. He has further submitted that defendant No.3-appellant was not aware of the cancellation dated 27.07.2006 as notice was sent to him only on 07.08.2006 which was also returned as house was found locked. He further submitted that visit of Mukhbain Singh alongwith Virsa Singh on the date of cancellation is also not proved. Hence, he submitted that the sale deed executed is valid.

On the other hand, learned counsel for the respondents has pointed out that both the agreement to sell i.e. 17.06.2005 in favour of Sanjeev @ Sandeep Rai etc. and agreement to sell executed by Sanjeev @ Sandeep Rai etc. in favour of defendant Nos.1 and 2 have not been produced. He further submitted that in the replication, the plaintiff had admitted receipt of ₹23,94,583/-. However, it has been explained that there was an agreement to sell executed by Mukhbain Singh through Harpreet Singh in favour of Surjit Singh and Rattan Singh on 16.03.2005 for a sale of the land at the rate of ₹3,70,000/- per acre. He submitted that the plaintiff received the payment under the aforesaid agreement to sell. He further submitted that since Mukhbain Singh has died, Rupinder Singh, his son has been examined who has specifically stated that he alongwith his father

accompanied by Virsa Singh had gone to the residence of defendant No.3 on the date of cancellation and informed him about the cancellation but PW6-Rupinder Singh has not been cross-examined on this aspect. Hence, the statement of Rupinder Singh has gone un rebutted. Still further, it has been argued that father of defendant No.3 may have been admitted in the Fortis Hospital, however, distance between Rajpura and Mohali where Fortis Hospital is situated is not much and, therefore, defendant No.3 has not proved that he was having no knowledge of the cancellation.

This Court has carefully analyzed the evidence brought on record with the help of the learned counsel for the parties apart from judgments passed by the Courts below.

As per Section 215 of the Indian Contract Act, 1872, if an agent deals on his own account without first obtaining consent of the principal acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the facts show that either any material fact has been dishonestly concealed from him by the agent, or the dealings of the agent have been disadvantageous to him.

In the present case, the agreement to sell in favour of Surjit Singh and Rattan Singh dated 16.03.2005 is admitted by defendant No.3, the land was agreed to be sold at the rate of ₹3,70,000/- per acre. Once, this agreement to sell is admitted, there is no reason why defendant No.3 would execute a fresh agreement in favour of Sanjeev @ Sandeep Rai and others on 17.06.2005 agreeing to sell the land @ ₹1,40,000/- per acre. Defendant No.3 has tried to explain that as per the agreement to sell dated 16.03.2005,

the possession was to be delivered but Mukhbain Singh was not in position to deliver the possession. However, it may be noticed that Sanjeev @ Sandeep Rai is admittedly known to Harpreet Singh-defendant No.3 for the last 10-12 years. Hence, it is apparent that Sanjeev Kumar @ Sandeep Rai and others who have stated to have agreed to purchase without possession were known to Harpreet Singh. Still further, facts as unfolded clearly prove that Harpreet Singh-defendant No.3 ultimately got the sale deed executed in favour of his brother-in-law and son of brother-in-law i.e. defendant Nos.1 and 2. In such circumstances, the Court has to examine whether the action of the agent was after apprising the principal with all the facts. In the present case, defendant No.3 has failed to prove the aforesaid facts. Still further, both the alleged agreement to sell dated 17.06.2005 have not been produced before the Court. No doubt, there is some discrepancy in the pleadings and the statement of the witnesses with regard to the information given to defendant No.3 with regard to the cancellation, however, one should not overlook that these witnesses were examined in the Court after a considerable period. In any case, late Sh. Mukhbain Singh was closely related with defendant No.3, it cannot be believed that Mukhbain Singh on the cancellation of the General Power of Attorney would not inform his nephew-defendant No.3 particularly when he had doubts about wrong intention of defendant No.3.

With regard to the argument of the learned counsel for the appellant that the plaintiff had not filed the suit with clean hands, it may be noticed that in the replication, the plaintiff had explained as to how he received the amount and the factum of the agreement to sell with Surjit

Singh and Rattan Singh dated 16.03.2005 is not disputed fact. Harpreet Singh himself admits while appearing as DW8 that the agreement to sell was entered into. Although, Harpreet Singh claims amount of ₹2,00,000/- was received as earnest money, however, receipt of ₹10,00,000/- as earnest money is proved from the entry in the register of the scribe which has been produced.

Even as per Section 111 of the Indian Evidence Act, when one party is in relation of active confidence with other party (fiduciary relationship), then burden of proving the good faith with respect to the transaction is on the party who is in position of active confidence. In the present case, defendant No.3 was in fiduciary relationship with old man i.e. Late Sh. Mukhbain Singh (plaintiff). It was for defendant No.3 to explain how and in what manner, he sold the property. Defendant No.3 has failed to lead satisfactory evidence in support thereof.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No