

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

RSA No.1563 of 2017 (O&M)

Date of Decision:10.08.2018

Dharambir and others

...Appellants

Versus

M/s Jaikishan Promoters Builder (Pvt.) Ltd and others

...Respondents

RSA No.2457 of 2017 (O&M)

M/s Brahma City Private Limited through its authorised representative

...Appellant

Versus

Dharambir and others

...Respondents

RSA No.2516 of 2017 (O&M)

M/s Brahma City Private Limited through its authorised representative

...Appellant

Versus

Dharambir and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vikas Bahl, Sr. Advocate with
Mr.Rahul Sharma-I, Advocate for the appellant(s) in
RSA Nos.2457 and 2516 of 2017.
Mr.Lalit Yadav, Advocate for the appellants in
RSA No.1563 of 2017.

ANIL KSHETARPAL, J.

These three appeals shall stand disposed of by a common judgment, as all these three appeals are arising out of same set of facts. All these appeals have been filed against the concurrent findings of fact arrived

at by both the courts below. However, for the facility of reference, facts are being taken from RSA No.1563 of 2017.

The plaintiffs-appellants in RSA No.1563 of 2017 had filed a suit for declaration, claiming that the plaintiffs are owners in possession of the suit property detailed in para 1 of the plaint and the sale-deeds dated 10.3.1995, 20.9.2004 and 5.3.2009 executed in favour of defendants No.9 and 10 or such other similar sale-deeds are illegal, null and void. The plaintiffs also prayed that revenue record be got corrected in their favour and a decree for permanent injunction be also passed, restraining the defendants from interfering in their peaceful possession and also to restrain them from alienating the suit property.

The plaintiffs also claimed that they are co-sharers/co-owners in possession of land measuring 32 kanals 12 marlas out of land measuring 88 kanals situated within the revenue estate of Village Maidawas, District Gurgaon. They claimed that they were declared owners of the property by the civil court vide decree dated 31.3.2004, which was registered on 2.6.2004 and actions taken by defendant No.2, posing himself as attorney of defendants No.3 to 5 are illegal, as he sold the property to defendants No.6 and 9 vide sale-deed dated 10.3.1995 and defendants No.6 to 8 sold the property to defendant No.1, vide sale-deed dated 20.9.2014.

It will be noted that defendant No.2-Sh.Booche is father of all the three plaintiffs, whereas defendants No.3 to 5 are sisters of Shri Booche. The three sisters appointed their bother as general power of attorney holder on 4.1.1989. On the basis of aforesaid general power of attorney, Shri Booche-defendant No.2 sold the land to defendants No.6 to 8, which was further sold to defendant No.1. The plaintiffs claimed that such sale-deeds

are illegal, null and void.

Both the courts, after examining the evidence available on record, have found that the sale deeds have been executed and registered as per general power of attorney executed by defendants No.3 to 5, wherein sisters have authorized their brother to sell the property and receive the amount and hence the sale-deeds executed are valid.

Learned senior counsel for the appellants in RSA No.2457 and 2516 of 2017 has submitted that the aforesaid power of attorney is relating to the property situated in the village Kadarapur, whereas the property sold is situated in the Village Maidawas. Hence, he has submitted that defendant No.2 was not entitled to sell the property. He has produced a photocopy of the general power of attorney in vernacular (Hindi).

On careful examination of the aforesaid general power of attorney, it is proved that initially general power of attorney makes a reference to the land situated in the village Kadarapur, however, thereafter in two different sentences, these sisters had authorized their brother to sell their any land. If translated into English, two sentences would read as under:-

- (i) He may sell any land belonging to us or enter into an agreement to sell.
- (ii) He may also receive compensation of our any land or execute the sale-deed, mortgage deed, lease-deed and get it registered and received the amount.

Thus, it is apparent that these three sisters had authorized their brother not only to deal with the property at village Kadarapur but also at any place. Sale-deed dated 10.3.1995 executed by Shri Booche, brother, is

attested by Satpal, brother of Booche.

Learned senior counsel further submitted that defendants No.6 to 8 had filed a suit for declaration with consequential relief of permanent injunction and in the alternative for recovery of amount found due, which was dismissed for non-prosecution. He submitted that on careful examination of the plaint, which is Ex.PW3/1, it is apparent that even defendants No.6 to 8 were convinced that the sale-deeds executed by Shri Booche on the basis of power of attorney, was not proper.

This Court examined the copy of the plaint produced. That suit has been filed for declaration to the effect that the defendants are owners of the land. No doubt, an alternative plea has been taken by defendant No.6 to 8, claiming that if under any circumstances the court arrives at a conclusion that the sale by defendant No.2 on behalf of his sisters was not correct, they be refunded the amount to that extent.

In the considered view of this Court, such pleadings cannot be used against defendants No.6 to 8 to return a finding that defendants No. 6 to 8 were convinced that Shri Booche had no power to sell the land situated at Village Maidawas.

Learned counsel for the appellants in RSA No.1563 of 2017 has submitted that the findings of both the courts below are contradictory as in one hand, it has been held that Shri Booche was given right to sell the mortgage or lease out the property and on the other hand, both the courts have declared that the decree suffered by Shri Booche dated 31.3.2004 on behalf of defendants No.3 to 5 does not confer any title on the plaintiffs.

This Court has considered the submission.

A power of attorney holder can only act in accordance with the

powers given to him in the attorney. Learned counsel for the appellants could not draw attention of the court to any part of the power of attorney which permitted Shri Booche to suffer a consent decree on the basis of alleged family settlement. Therefore, the appellate court has rightly held that the civil court decree passed in favour of the plaintiffs has no legal sanctity. It may further be noted that defendants No.3 to 5 had challenged this very sale-deed by filing a suit, which was dismissed for non-prosecution on 10.3.1995. Even application for restoration was dismissed.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

10.08.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No