

RSA No.1886 of 2017 (O&M)

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

RSA No.1886 of 2017 (O&M)

Date of decision:23.05.2018

Kala Singh alias Kalu (since deceased) through LRs ... Appellant

Vs.

Balbir Singn and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ram Kumar Chauhan, Advocate
for the appellant.

AMIT RAWAL J.

C.M.No.4560-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 190 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.1886 of 2017(O&M)

The appellant-plaintiff is in Regular Second Appeal aggrieved of the dismissal of the suit claiming declaration to the effect that he was the owner in possession of the suit property by laying challenge to the sale deed dated 08.12.2005 which had been affirmed by the Lower Appellate Court.

Appellant-plaintiff instituted the suit on the premise that he was owner of the property in dispute and had not executed any registered General Power of Attorney dated 30.11.2005 in favour of defendant No.1.

By misusing the aforementioned General Power of Attorney, defendant No.1 executed a sale deed dated 08.12.2005 in favour of defendant No.2 in respect of land measuring 12 kanals for a total sale consideration of ₹6,98,000/-. A complaint in this regard was submitted to the police but the police did not take any action and in this lieu of the matter, the suit aforementioned was filed.

Defendant No.1 contested the suit and submitted that General Power of Attorney was a registered document which was voluntary act of the plaintiff giving all the powers to execute the sale deed. The sale consideration was also handed over to the plaintiff but the suit had been filed only on account of greed, much less to browbeat. Defendant no.2 filed a separate written statement stating therein that he was a bonafide purchaser of the suit land for a valuable consideration and therefore, the suit was nothing but a malafide act.

Mr. Ram Kumar Chauhan, learned counsel appearing on behalf of the appellant-plaintiff submitted that judgments and decrees of the Courts below in non-suiting the appellant-plaintiff are not sustainable in the eyes of law, for, the aforementioned Power of Attorney was cancelled on 15.12.2005. Both the Courts below discarded the evidence led by the appellant regarding the revenue record and the orders passed by the Assistant Collector Ist Grade and Commissioner, wherein, respondent No.2- Jaswinder Singh admitted that present appellant had been in continuous possession of the entire suit land but yet relief of injunction sought had been

denied. Non-appearance of the appellant in the suit would not be fatal to the case, for, his attorney (son) had been given power to depose he was aware of the aforementioned fact, therefore, the findings are liable to be set aside.

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. Chauhan, for, appellant-plaintiff has miserably failed to discharge the onus in proving the ingredients of fraud as envisaged under Order 6 Rule 4 CPC. Non-examination of the principal is fatal to the case where plaintiff alleged fraud on him, perhaps the plaintiff was afraid of appearing in the Court, for, truth may not surface. The son, who is agent would not know under what circumstances, the Power of Attorney had been executed. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Man Kaur (Dead) by LRs Versus Hartar Singh Sangha 2010(10) SCC 512**, wherein it has been held that agent-attorney holder cannot depose what principal knew being signatory of document. For the sake of brevity, para 12 of the aforementioned judgment reads as under:-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can

only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a

son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

The Lower Appellate Court categorically found that plaintiff did not dispute the execution of the sale deed or not examined any witnesses qua non-receipt of consideration. It was obligatory to produce on record the Bank statement whether the sale consideration was deposited in the Bank or not.

All these factors have emphatically been noticed by the Courts below, therefore, I am of the view that there no illegality and perversity in in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No