

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

RSA No.1814 of 2018(O&M)

Date of decision: 8.5.2018

Sham Lal

.....Appellant

VERSUS

Rajwant Kaur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Jhanjhi, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against the judgments and decrees passed by the Courts whereby suit filed by the respondent/plaintiff was decreed by the trial Court to the following effect:-

"plaintiff is bona fide purchaser for consideration of the house falling in khasra No.1457/2 on the basis of sale deed dated 29.05.2006 and defendant No.1 is directed to hand over the vacant possession of the property. Defendant no.1 is also restrained to part with the possession of the portion shown red in the site plan."

The appeal preferred by the appellant/defendant No.1 did not find favour with the Additional District Judge, Jalandhar vide judgment dated 19.02.2018.

The facts relevant for disposal of present appeal are that as per case set up by the respondent/plaintiff, she purchased property shown red in site plan on the basis of sale deed dated 29.05.2006 through respondent No.2/defendant No.2, General Attorney of the appellant/defendant No.1, thus, the respondent is a bona fide purchaser for consideration. Respondent No.2 had given symbolic possession and appellant sought time for shifting purpose but failed to hand over vacant possession despite numerous requests. The respondent/plaintiff served legal notice dated 24.04.2012 which was replied by counsel of the appellant wherein he had alleged that General Power of Attorney was cancelled but the respondent/plaintiff had no knowledge about the same.

Respondent No.2 failed to cause appearance and was proceeded against ex parte. Appellant filed the written statement raising preliminary objections inter alia non-maintainability of the suit in present form; suit being bad for multifarious causes of action; barred by limitation; respondent had no cause of action and locus standi to file the suit. He has denied material averments made in the plaint with the plea that respondent No.2 was not the General Attorney of the appellant on the day of execution of sale deed. The power of attorney was granted on 29.08.2003 which was later cancelled on 08.08.2005 to the knowledge of respondent No.2. No consideration was ever passed as mentioned in the sale deed which is nothing but the result of collusion and fraud.

The trial Court framed the following issues for determination:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether plaintiff is entitled for refund of sale consideration as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts? OPD
6. Whether the suit is bad for multifarious cause of action? OPD
7. Whether the suit is barred by time? OPD
8. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
9. Whether site plan is not correct? OPD
10. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
11. Whether the suit is knowingly false and purposely vexatious? OPD
12. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1 and 2 in favour of the respondent/plaintiff and eventually suit filed by the respondent/plaintiff was decreed, as noticed hereinbefore.

Counsel for the appellant has assailed concurrent findings recorded by the Courts primarily on two counts. The first submission

made by counsel is that as the General Power of Attorney dated 29.08.2003 executed by the appellant in favour of respondent No.2, registered with Sub Registrar, Jalandhar – II was cancelled by way of registered cancellation deed on 08.08.2005, respondent No.2 was not competent to act on the basis of Power of Attorney dated 29.08.2003 to alienate the suit property. It is argued with vehemence that the cancellation deed duly got registered with the Sub Registrar Jalandhar is deemed to be a notice to the public at large including the respondents who are closely related to each other, therefore, respondent/plaintiff neither can raise the plea of bona fide purchaser nor the said plea can be accepted in the given scenario. In support of his contention, he has relied upon judgment of this Court **Rajiv Mahajan and others Vs. Ajit Kaur and others, 2014(4) RCR (Civil) 645.** Further reference has been made to judgment of Allahabad High Court **Chandrama Singh and others Vs Mirza Anis Ahmad, 2011 (13) RCR (Civil) 45,** judgment of Bombay High Court **Surekha Sakharam Washiwale Vs. Nanobha Dhondiba Bharekar and others, 2013(46) RCR (Civil) 268.** Reference has also been made to judgment of Hon'ble the Supreme Court **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another, 2011 (4) RCR (Civil) 669.**

The second submission made by counsel is that the respondent/plaintiff has failed to adduce satisfactory much less cogent and convincing evidence to prove that sale deed in her favour was executed by her brother in law (respondent No.2) for a valuable consideration, therefore, findings recorded by the Courts cannot be allowed to sustain. In support of his contention, he has referred to judgment of Hon'ble the

Supreme Court **Janak Dulari Devi and another Vs. Kapildeo Rai and another, 2011 (6) SCC 555.**

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

The Courts have consistently held that the appellant has failed to prove that he had sent notice to his attorney - respondent No.2 with regard to cancellation of General Power of Attorney vide cancellation deed dated 08.08.2005. In reply to legal notice dated 24.04.2012, admittedly issued by the respondent/plaintiff, the appellant raised a plea that respondent No.2 was given notice regarding cancellation of General Power of Attorney but no such notice was placed on record by the appellant. Counsel for the appellant has failed to point out any evidence on record to establish his plea that his Attorney – respondent No.2 had notice/knowledge of cancellation of General Power of Attorney vide cancellation deed dated 08.08.2005 much less the respondent/plaintiff had the necessary knowledge/notice. The trial Court has also relied upon the provision of Section 208 of the Indian Contract Act, 1872 that deals with when termination of agent's authority takes effect as to agent and as to third persons. In this view of the matter, concurrent findings recorded by the Courts that the appellant did not issue any notice or otherwise informed his agent qua cancellation of General Power of Attorney are liable to be affirmed.

This brings the Court to the issue whether cancellation of General Power of Attorney by registered document (registered cancellation deed) operates as constructive public notice including notice to the Attorney holder as well as third party. Counsel has sought to rely upon

observations made by this Court in **Rajiv Mahajan and others case** (supra) wherein in para 7 of the judgment the Court has held, quoted thus:-

"7.....Here is a case where the registered general power of attorney has been cancelled on 16.10.2007 by a registered cancellation deed. It is settled principle of law that once a registered document is cancelled by registered cancellation deed, then cancellation operates as constructive public notice...."

On April 25, 2018, order passed by this Court, reads as follows:-

"Counsel for the appellant inter alia contends that cancellation of a registered General Power of Attorney by way of a registered Will amounts to constructive public notice. Therefore, the respondents/defendants are deemed to have notice of cancellation of power of attorney prior to the sale deed in question was executed by Suresh Kumar in favour of Rajwant Kaur. In support of his contention, he has referred to judgment of this Court **Rajiv Mahajan and others Vs. Ajit Kaur and others, 2014(4) RCR (Civil) 645.**

Counsel for the appellant prays for time to examine the judgments wherein any such preposition of law has been settled.

Adjourned to 07.05.2018."

Counsel for the appellant despite being provided with an opportunity to cite any judgment failed to cite any precedent to support

observations recorded by the Single Bench of this Court in **Rajiv Mahajan and others case** (supra) extracted hereinbefore.

To be fair to the appellant, counsel has referred to judgment in **Chandrama Singh and others case** (supra) passed by the Allahabad High Court and judgment in **Surekha Sakharam Washiwale's case** (supra) by the Bombay High Court. In **Chandrama Singh and others case** (supra), it has been held by the Allahabad High Court that a registered document dealing with rights to immovable property cannot be annulled except through proper procedure. The registered Power of Attorney could be validly revoked/cancelled by another registered document, therefore, notice dated 20.02.1973 sent by registered post was only a communication and since it was not registered under the Registration Act, 1908 it did not revoke the registered Power of Attorney dated 17.03.1967. However, in the referred authority, no such preposition of law has been laid down by the Allahabad High Court that cancellation of registered Power of Attorney by a registered document can be construed as constructive public notice. Similarly, no such preposition of law has been laid down in **Surekha Sakharam Washiwale's case** (supra). In **Suraj Lamp and Industries Pvt. Ltd.'s case** (supra), the controversy before Hon'ble the Apex Court was entirely on a different aspect though the said case also deals with transfer of property through General Power of Attorney/Will/agreement of sale etc. which was not treated as complete transfers or conveyances. Counsel for the appellant has failed to advance any argument as to how the judgment in **Suraj Lamp and Industries Pvt. Ltd. case** (supra) has any relevance much less bearing on the controversy raised in the present appeal. In this view of the matter, the appellant cannot derive any

advantage to his contention from the observations made in **Rajiv Mahajan and others case** (supra).

So far as contention with regard to failure of the respondent/plaintiff to prove her plea of payment of sale consideration to respondent No.2, the registered sale deed executed by respondent No.2 in favour of respondent No.1/plaintiff makes reference that the entire sale consideration already stands paid to the attorney holder before the sale deed was registered on 29.05.2006. The respondent/plaintiff appeared in the witness box and reiterated her version with regard to her being a bona fide purchaser for valuable consideration and without notice of cancellation of General Power of Attorney. In her cross examination, she has deposed that payment was made to the Attorney in two installments in the Month of April and May. The first installment was for Rs.1,00,000/- and the second installment for Rs.1,50,000/-. However, she could not tell the date when the two installments were paid. The sale deed was executed in the year 2006 and the plaintiff appeared in the witness box for her cross examination in July 2016. Keeping in view the time lag, it is difficult to expect from a litigant to tell the dates of payment of sale consideration. This apart, respondent No.2 has not denied receipt of sale consideration. As the sale deed has not been executed by the appellant himself and the same was executed by his Attorney, appellant otherwise cannot raise an issue against the terms of a registered document that records payment of sale money.

As per sale deed, suit property was sold for a sale consideration of Rs.2,20,000/-. Stamp papers worth Rs.17,600/- were purchased for preparing the sale deed. There is exemption of 1% stamp

duty for ladies. Taking into consideration the sale value mentioned in the sale deed plus price of stamp papers and other miscellaneous expenses to be incurred by the purchaser, statement of the respondent/plaintiff in respect of payment of Rs.2,50,000/- shows that she discharged her liability created under the sale deed. In this view of the matter, contention raised by counsel that the sale deed is without consideration or the respondent/plaintiff has failed to establish her plea qua execution of sale deed for valuable consideration is highly misconceived and untenable. Under the circumstances, the appellant cannot derive any advantage to his contention from the judgment in **Janak Dulari Devi and another case** (supra) which was passed in view of the peculiar facts and circumstances obtaining in the case.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

MAY 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no