

In the High Court of Punjab and Haryana at Chandigarh

RSA No.2701 of 2018 (O&M)

Date of Decision:- 25.05.2018

Hardeep Singh Sidhu

.....Appellant

Versus

Prem Singh Sidhu

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Malkeet Singh, Advocate, for the appellant.

GURVINDER SINGH GILL, J. (ORAL)

The appellant-defendant assails judgment and decree dated 10.8.2017 passed by learned Additional District Judge, Jalandhar whereby the appeal filed by respondent-plaintiff challenging dismissal of his suit for possession as well as for recovery of mesne profits filed by respondent-plaintiff has been accepted and the suit has been decreed.

The case setup by the plaintiff is that he is owner of the suit property and that since he is residing in Canada, he had executed Power of Attorney on 28.9.2005 in favour of the defendant who is his uncle, for managing and looking after the land, in his absence. However, shortly thereafter when some differences arose between the plaintiff and the defendant, he executed a cancellation deed on 22.10.2005 and appointed his brother-in-law namely Jarnail Singh (brother of his wife) as his attorney authorizing him to take all the necessary steps and to do all the necessary action for implementation of cancellation deed dated 22.10.2005. It is further case of the plaintiff that a legal notice dated 7.11.2005 was also served upon

the defendant intimating him about the cancellation of the Power of Attorney. Subsequently, the plaintiff appointed Jarnail Singh as his attorney vide Power of Attorney dated 17.8.2007 authorizing him to get back the possession as well as compensation in respect of the crops, on account of illegal possession of the defendant for the last three years.

The defendant resisted the suit of the plaintiff. While admitting the factum of execution of Power of Attorney dated 28.9.2005, a stand was taken that in fact, he on behalf of the plaintiff had entered into an agreement for sale of the property to Kulbir Singh vide agreement dated 8.10.2005. A stand was further taken that out of the total consideration of ₹32,04,375/-, an earnest amount of ₹20,00,000/- had been received which he passed on to the plaintiff. It was categorically stated therein that the possession of the property in question had also been handed over to the aforesaid Kulbir Singh who is in possession ever since then.

The parties were put to proof on the following issues:

1. Whether the plaintiff is owner to the extent of $\frac{1}{2}$ share in the suit properties? OPP
2. Whether the plaintiff is entitled to decree of possession as prayed for? OPP
3. Whether the plaintiff is entitled to recovery of Rs.2,16,000/- as compensation from the defendant? OPP
4. Whether the plaintiff has sold the suit property to one Kulbir Singh vide agreement to sell dated 08.10.2005? OPD
5. Whether the suit is not maintainable? OPD

6. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD.

7. Relief.

In order to prove his case, plaintiff deposed through his attorney Jarnail Singh who stepped into the witness box as PW-1 and also led documentary evidence. On the other hand defendant himself stepped into the witness box as DW-1.

The learned lower Court had dismissed the suit. Upon appeal filed by the plaintiff, the said judgment was set aside and the suit filed by the plaintiff was decreed by learned lower Appellate Court vide judgment and decree dated 10.8.2017 which has been challenged by way of filing the present appeal.

Learned counsel for the appellant while assailing the impugned judgment has submitted that he was duly authorized to sell the suit property vide Power of Attorney dated 28.9.2005 and in pursuance of the same, he had entered into an agreement with Kulbir Singh. It has also been submitted that in fact a perusal of the revenue record shows that possession of Prem Singh-plaintiff is recorded therein and in these circumstances no case for award of any mesne profits or for delivery of possession is made out. It has further been submitted that in any case at best it was Kulbir Singh who could have been held liable to either pay the mesne profits or hand over the possession.

I have considered the aforesaid submissions. As far as the execution of Power of Attorney is concerned, the same is not in dispute. It is the case of plaintiff that the Power of Attorney dated 28.9.2005 was cancelled shortly thereafter on 22.10.2005. The agreement to sell is stated to have

executed by defendant as attorney just a few days before cancellation i.e. on 8.10.2005. As regards the said agreement to sell suit property in favour of Kulbir Singh, it transpires that the aforesaid Kulbir Singh had filed a suit against respondent-plaintiff-Prem Singh seeking possession of the suit property by way of specific performance of the alleged agreement in his favour. Filing of the aforesaid suit seeking possession necessarily indicates that Kulbir Singh was not in possession of the suit property. Though, it will not strictly be within the scope of the present suit but I find that the aforesaid agreement is rather unusual inasmuch as despite a substantial amount of sale consideration having been paid as earnest money, a period of almost 3 years had been fixed for execution of the sale deed. In any case, the suit filed by Kulbir Singh for specific performance of the aforesaid agreement had been dismissed. Consequently, the stand of the defendant that he had handed over the possession to Kulbir Singh on the basis of a valid agreement to sell does not stand substantiated. In other words, the defendant not having handed over the possession of the suit property even after cancellation of Power of Attorney in his favour is liable to compensate the plaintiff for his unauthorised possession. The finding of learned lower Appellate Court to this effect do not warrant any interference.

The mesne profits which have been assessed @ ₹16,000/- per acre in respect of the suit property measuring 4½ acres for three years work out to ₹2,16,000/-. Though, learned counsel for the appellant has also submitted that the aforesaid amount of ₹16,000/- is on the higher side but the land in question is not stated to be infertile land. The amount of ₹16,000/- per acre as in the year 2005 is a reasonable assessment of the mesne profits.

No other argument has been raised or urged before this Court. I

do not find any infirmity in the findings recorded by the learned lower Appellate Court, Jalandhar and the same are hereby affirmed.

Finding no merit in the appeal, the same is hereby dismissed.

May 25, 2018
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No