

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

**RSA No. 5819 of 2018 (O&M)
Date of decision:31.10.2018**

Bharti Parcha

..... Appellant.

Versus

Kuldeep Kaur and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sandeep Arora, Advocate
for the applicant-appellant.

LISA GILL,J.

Appellant-defendant no.1 is aggrieved of judgment and decree dated 21.12.2016, passed by the learned Additional Civil Judge (Sr. Division), Jalandhar, as well as judgment and decree dated 06.04.2018, passed by the learned Additional District Judge, Jalandhar.

Brief facts necessary for the adjudication of the case are that plaintiff-Kuldeep Kaur (respondent no.1 in this appeal) filed a suit for mandatory injunction directing the defendants i.e., the present appellant and Rakesh Kumar-respondent no.2 to handover the vacant, physical possession of the house constructed over 2.5 Marlas as described in the plaint and for restraining the defendants from alienating or creating any kind of charge over the property in question. It was pleaded that the plaintiff, a house wife had appointed her husband-Bakhtawar Singh as

her lawful attorney to file and conduct the suit. The property in dispute was sold by appellant-defendant no.1 through her general power of attorney holder-Sandeep Kumar. Power of attorney in favour of Sandeep Kumar was executed on 11.03.2010. The property was purchased by the plaintiff vide registered sale deed dated 15.07.2011 for a total sale consideration of ₹3,65,000/-. Symbolic possession of the property was delivered to the plaintiff through the defendant's general power of attorney. Both the defendants requested the plaintiff that they be permitted to retain possession of the house for a period of six (06) months. The plaintiff permitted the defendants to reside in the property on an assurance given by them to give vacant, physical possession thereof on or before 31.01.2012. It is further pleaded that the defendants agreed to pay a sum of ₹4000/- per month as license fee for the use and occupation of the property. Husband of the plaintiff visited the defendants on 31.01.2012 and demanded the license fee as well as the vacant possession of the property. Defendants sought more time. They were again requested in the first week of March 2012 to honour their commitment. A cheque of ₹32,000/- was issued in favour of the plaintiff, but the same was dishonoured and the defendants further refused to vacate the suit property. Hence the suit.

Defendant no.1 contested the suit. Various preliminary objections were raised in the written statement and averments on merits were denied. It was stated that the plaintiff had not approached the Court with clean hands. Defendant no.1-appellant claimed to be a professional dancer and a makeup artist hailing from Delhi. She however came to

Jalandhar in connection with professional work and settled in Jalandhar too. It was denied that defendant no.2 was her husband. She stated that she was not concerned with him in any manner though it was stated that defendant no.2 introduced her to the husband of the plaintiff namely Bakhtawar Singh, as a good promoter of musical programs outside India. Bakhtawar Singh stated that he was to organise a concert abroad and he would engage the services of the defendant-appellant and she was asked to sign a contract and handover certain blank cheques as security. Appellant was called by Bakhtawar Singh, husband of the plaintiff to the Tehsil Complex for executing the alleged contract. Appellant along with defendant no.2 went to the Tehsil Complex. She was not conversant with the Punjabi Script and Bakhtawar Singh got signed some writing scribed in Punjabi and took the appellant to Suvidha Centre on the pretext of attestation of affidavit, where her photograph was also taken. Original passport of the appellant and two signed blank cheques besides her signatures on blank papers were taken. In a fraudulent manner, plaintiff proclaimed herself to be the owner of the property belonging to the appellant. Then appellant rushed to the Court and made inquiries. She thereafter came to know that her signatures were obtained on the pretext of execution of the contract. Power of attorney in favour of Sandeep Kumar was fraudulently executed as was the sale deed in favour of the plaintiff. Appellant denied that she ever sold the property to the plaintiff or that she received any consideration for the same. Dismissal of the suit was prayed.

Defendant no.2 was proceeded against *ex parte* on

28.02.2017 as he did not appear despite service.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for mandatory injunction as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has not come to the Court with clean hands?OPD
5. Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD
6. Whether no cause of action has arisen to the plaintiff to file the present suit?OPD
7. Whether the suit has been properly valued for the purpose of jurisdiction and court fee?OPD
8. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that the plaintiff had proved her case. Execution of sale deed dated 15.07.2011 was duly proved. No merit was found in the stand taken by the appellant. Suit was accordingly decreed and the defendants including the present appellant were directed to hand over the vacant, physical possession of the constructed house within three months.

Appeal filed by the present appellant was also dismissed by the learned Additional District Judge, Jalandhar, vide judgement and decree dated 06.04.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the fraudulent nature of the sale deed dated 15.07.2011 (Ex.P-4) as well as power of attorney dated 11.03.2010 (Ex.P-3) are apparent on the face of it. The said documents were never executed by the present appellant, who is a professional dancer and make-up artist. Defendant no.2-Rakesh Kumar was professional photographer and a colleague of defendant no.1. Power of attorney dated 11.03.2010 was got signed from the appellant on a misrepresentation that she had to sign certain contracts for performance and certain musical concerts. Sale deed dated 15.07.2011 was executed in a fraudulent manner as well. Learned counsel further contends that once the recital in the sale deed regarding handing over of the possession is proved to be incorrect, the same in itself is sufficient to prove fraud committed upon the appellant. Furthermore, in case, the sale deed in question was intended to be executed, it could easily have been executed by the appellant herself and there was no necessity to execute a power of attorney in favour of any other person for this purpose. No consideration was handed over to the appellant at the time of the alleged execution of the sale deed. The plaintiff was unable to prove the due execution of the sale deed. Therefore, the suit in question has been wrongly decreed. It is thus prayed that this appeal be allowed and both the judgements and decrees passed by the learned Courts below be set aside consequently dismissing the suit filed by the plaintiff-respondent no.1.

I have heard learned counsel for the appellant and have gone through the copies of the record which is produced in Court today by him.

Plaintiff-respondent no.1 specifically pleaded the execution of the sale deed dated 15.07.2011 through the power of attorney holder of the appellant. At this stage, it is relevant to note that the appellant has not disputed her signatures/photograph on the sale deed dated 15.07.2011 or the power of attorney dated 11.03.2010. Case set up by the appellant is that the said documents are a result of fraud committed by the plaintiff, her husband and defendant no.2. Misrepresentation leading to execution of the said documents is also pleaded. Needless to say, it is for the person alleging fraud to prove the same on the basis of clear and cogent evidence. Power of attorney dated 11.03.2010 as well as sale deed dated 15.07.2011 are registered documents and indeed a presumption of truth is attached to the same. It has been rightly observed by both the learned Courts below that there is no evidence on record to substantiate the case set up by the appellant. There is nothing on record to show that the plaintiff's husband-Bakhtawar Singh was in any manner involved in organising musical programs or concerts as alleged. Bakhtawar Singh, is proved to be a retired official of Punjab Government. Appellant-defendant no.1 while appearing as DW-1 admitted that she had been residing at Jalandhar for the last 15 to 16 years, her mother was Punjabi and well versed in Punjabi language. DW-2-Ritu, sister of the appellant has also deposed on the said lines. Appellant admitted her signatures as well as photographs on the original power of attorney (Ex.P-3) at the first and second page as well as at two different places of the second stamp paper. As per the endorsement made by the Sub-Registrar, Jalandhar-I on the said power of attorney, the same was read-over and explained to the

appellant in the presence of witnesses Harjinder Singh and Rakesh Kumar. Appellant could not prove any enmity with the witnesses Rakesh Kumar and Harjinder Singh.

Another extremely important fact is that the appellant in her cross-examination admitted that the property in dispute was purchased by her from one Ashwani Kumar son of Ram Lal vide sale deed Ex.DW1/X1. She further admitted that the original sale deed Ex.DW1/X1 was handed over by her to Bakhtawar Singh, husband of the plaintiff. Indeed, in case the property in question had not been sold by her, there was no question of handing over the original sale deed to Bakhtawar Singh by her. There is no explanation forthcoming on this aspect. Power of attorney dated 11.03.2010 was never cancelled by the appellant. Therefore, the case set up by the appellant is not substantiated by the evidence on record. Another argument raised on behalf of the appellant that recital in the sale deed regarding possession is found to be incorrect, therefore, the sale deed was not in-fact executed, is devoid of any merit. This aspect has been succinctly dealt with by the learned Additional District Judge, Jalandhar. The appellant has accepted the issuance of cheque dated 09.04.2012 (Mark A) for a sum of ₹32,000/- in the first week of March 2012. The said cheque was dishonoured and a complaint in this regard was filed by the husband of the plaintiff under Section 138 of the Negotiable Instruments Act.

It is relevant to note that the appellant alleged the blank cheque to be obtained by Bakhtawar Singh as security, but the same has not been pleaded in the written statement nor has she given any details

regarding the date, month or year on which Bakhtawar Singh obtained the said blank cheque signed from her as security. Moreover, it is opposed to logic and reasonableness that any kind of security would be required to be given by her to Bakhtawar Singh in the event of her services being engaged by Bakhtawar Singh for performance in the concerts as alleged. No such norm or practice has even been averred much less proved. The plaintiff on the other hand has duly proved the execution of sale deed dated 15.07.2011 and power of attorney dated 11.03.2010 which are registered documents. PW-2-Ashok Kumar, deed writer and PW-3-Paramjit Singh, Jr. Assistant, Tehsil Office, have duly testified in favour of the plaintiff. There is further no merit in the argument that plaintiff herself did not step in the witness box. Plaintiff's power of attorney holder i.e. her husband Bakhtawar Singh has duly testified in regard to the material facts. Perusal of the appellant's stand herself reflects that Bakhtawar Singh was aware of each and every detail of the controversy and had been acting on behalf of his wife, the plaintiff.

Learned counsel for the appellant-defendant no.1 is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 21.12.2016 and 06.04.2018 passed by the learned Addl. Civil Judge (Sr. Division)

Jalandhar and learned Additional District Judge, Jalandhar, respectively, are upheld.

There is a delay of fifty eight days (58) days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

31.10.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No