

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 5949 of 2018(O&M)
Date of Decision: 29.11.2018**

Dharam Pal

---Appellant

versus

Sheela Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Anshul Jain, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 16001-C of 2018

Prayer in this application is for impleading legal representatives of Mangat Ram respondent No. 2(since deceased).

In view of averments made in the application supported by an affidavit of Dharam Pal, appellant and arguments advanced by counsel for the applicant, the application is allowed and persons mentioned in para No. 2 of the application are ordered to be brought on record as legal representatives of Mangat Ram respondent No. 2 (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

The present appeal directs challenge against judgment and decree dated 5.5.2018 passed by the District Judge, Shaheed Bhagat Singh

Nagar whereby appeal preferred by Sheela Devi-defendant No. 2/respondent No. 1 against the judgment and decree dated 31.8.2016 passed by the Civil Judge (Junior Division), Shaheed Bhagat Singh Nagar (hereinafter to be referred as the trial court”) was accepted, judgment and decree impugned were set aside and suit filed by appellant-plaintiff Dharam Pal seeking declaration that he is owner in possession of building constructed over an area measuring 4 ½ marlas, shown red in the site plan, with consequential relief of permanent injunction, was dismissed.

The case of the appellant-plaintiff is that in the year 1996-97, he was involved in criminal cases due to which he was unable to manage and look after his property. He appointed Mangat Ram, defendant No. 1, his maternal uncle, as his attorney to look after and manage the suit property for collecting rents from tenants inducted in the suit property. The power of attorney was executed by him on insistence of defendant No. 1 as he represented to the plaintiff that he was feeling handicap to manage the property. The power of attorney was executed with a clear understanding between the parties that defendant No. 1 is authorized to manage and look after the suit property. It is further averred that defendant No. 1 fabricated sale deed of suit property in favour of defendant No. 2 and the same is the result of fraud as no consideration was ever passed from defendant No. 2 to the appellant-plaintiff.

The trial court decreed the suit vide judgment and decree dated 31.8.2016 but in appeal, the same were set aside by the District Judge, Shaheed Bhagat Singh Nagar.

The sole submission made by counsel for the appellant is that since Sh. Mangat Ram was only authorized to look after and manage the

suit property, he had no authority to transfer the suit property in favour of his wife on the basis of sale deed purported to be executed by him. In addition, it is argued that defendants have raised the plea that a sum of Rs. 4,35,000/- was paid to the plaintiff when he was available in India in the year 1991 but defendants have failed to adduce satisfactory much less cogent evidence to prove payment of Rs. 4,35,000/- to the plaintiff.

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

Be that as it may, it is undisputed position of the case that the appellant-plaintiff executed power of attorney dated 10.3.1997 in favour of Mangat Ram, his maternal uncle. Perusal of power of attorney, a copy whereof was supplied by counsel during the course of hearing, falsifies and belies plea of the appellant that Sh. Mangat Ram was not authorized to alienate the suit property on the basis of power given to him under the power of attorney Ex. D1. As has rightly been noticed by the Court in Appeal, there is specific reference in the power of attorney that the appellant wanted to sell the suit property in question with its details given in the power of attorney and the attorney holder was authorized to sell/lease/exchange/gift the property in question and to execute/register document in this regard. No such plea has been raised by the appellant that either he is illiterate or he was not aware of contents of the document when he appended his signatures thereon and got it registered. Once the appellant has authorized his attorney holder to sell the property in question with a specific recital that he wanted to sell the suit property, contention of the appellant that either he did not authorize Sh. Mangat Ram to alienate the suit property or he only authorized him to manage and look after the

property becomes patently false and misconceived. In this view of the matter, there is no reason to differ with findings of the Appellate court that Sh. Mangat Ram was duly authorized by the appellant to alienate the property in question by way of registered deed. If the agent/attorney holder of the appellant has not paid him the sale consideration purported to be received from purchaser of suit property, the same cannot be a ground to set aside the sale deed for, at best, the appellant can take recourse to appropriate proceedings in law for recovery of the said amount.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. All miscellaneous applications filed by the appellant shall be deemed to be disposed of.

(Rekha Mittal)
Judge

29.11.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No