

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1676 of 1990 (O&M)

Date of Decision: January 8th, 2019

Ajit Kaur

...Appellant

Versus

Puran Singh (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. M.L.Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate,
for the appellant.

Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate,
for the respondents.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree dated 17.07.1990 rendered by the Lower Appellate Court, whereby the suit of the plaintiff decreed by the trial Court vide judgment and decree dated 19.03.1987, has been dismissed.

Appellant-plaintiff instituted the suit seeking declaration to be owner in possession of the land measuring 79 kanals 3 marlas on the premise that her husband Mohinder Singh son of Kartar Singh, while serving in the Indian Army, during the Indo-Pak War of 1971 died and she become the war widow. The Central Government and the Punjab State came out with a scheme to allot land on reserved price to the war widows. Plaintiff applied for allotment of suitable land to the Tehsildar Sales-cum-Managing Officer, Gurdaspur, who accepted the claim on 20.02.1984 and

its price was to be paid in instalments. Defendant No.1 Kulwant Singh, Sarpanch of the Village, being clever person, without any relation with the plaintiff came forward and offered to do all the acts on her behalf. By believing his representation, for issuance of allotment letter got the registered power of attorney dated 20.02.1984 (Ex.D6) in his favour and on the basis of the aforementioned attorney, sold parcel of land measuring 29 kanals and executed sale deed dated 16.04.1984 (Ex.D2). On realising the aforementioned misdeed by aforementioned defendant, the power of attorney was cancelled on 19.04.1984 and a notice in this regard was sent by way of registered post on 23.04.1984 and the alleged notice was received on 30.04.1984. Even after cancellation of the power of attorney, vide two sale deeds dated 26.04.1984 (Ex.D3 and Ex.D4) sold remaining land measuring 171 kanals 15 marlas and 32 kanals 12 marlas for alleged consideration of ₹76,000/- which was never received and accordingly the suit was filed on 11.05.1984.

Defendants opposed the suit and alleged that the power of attorney was not without consideration. In fact, Ajit Kaur had executed an agreement to sell dated 20.02.1984, whereby she had received entire sale consideration of ₹ 1,00,000/- in the presence of the witnesses, namely, Desa Singh and Jasbir Singh. Ajit Kaur had an intention to sell the land and she had already executed another agreement dated 31.12.1983 in favour of Sukhwinder Singh and Shiv Charan for a consideration of ₹ 1,30,000/-. Execution of the general power of attorney was voluntary act and without any fraud and misrepresentation. Entire consideration had already been received by her. In fact, she wanted to sell the property at higher price.

Since the parties were at variance, the trial Court framed the

following issues:-

- “1) Whether the plaintiff was not competent to sell the land in suit as alleged? OPP*
- 2) Whether the power of attorney was got by defendant No.1 by fraud and mis-representation as alleged in Paras 3 and 4 of the plaint? OPP*
- 3) Whether the said power of attorney was revoked on 19.4.1984 as alleged? If so, its effect? OPP*
- 4) Whether the plaintiff agreed to sell the suit land in favour of defendant No.3 on 20.2.1984 as alleged? If so, on what terms and conditions? OPD*
- 5) Whether defendant No.1 sold the suit land in favour of defendants Nos. 2 and 3 vide sale deeds dated 16.4.1984 and 26.4.84 in pursuance of the agreement dated 20.2.1984? If so, to what effect? OPD*
- 6) If issues Nos.4 and 5 are proved, whether the said sale deeds are without authority and without consideration as alleged? OPD (onus objected).*
- 7. Whether the defendants are entitled to compensation of Rs.10,000/- as alleged in the additional plea? OPD*
- 8. Relief.”*

Plaintiff, in support of the pleadings, herself appeared as PW-2 and also examined PW-1 Ram Lubhaya Clerk office of Sub Registrar, Gurdaspur with regard to the cancellation of the power of attorney and by tendering Ex.P3 and Ex.P4 closed the evidence.

On the other hand, the defendants examined DW-1 Vijay Kumar Advocate, the scribe of the power of attorney, DW-2 Tarsem Deed Writer regarding the sale deed, DW-3 Harjit Singh, DW-4 P.P.Singh, Clerk-cum-Cashier, Punjab National Bank, Bakshiwal, DW-5 Chander Kumar Deed Writer of agreement Ex.D5, DW-6 Gurbachan Dass, Clerk, Executive Record Room, Gurdaspur, DW-7 Mukhtar Singh Senior Sales Clerk, DW-8

Jasbir Singh, attesting witness of the agreement dated 20.02.1984 Ex.D5, DW-9 Ajaib Singh, DW-10 Puran Singh, DW-11 Deva Singh Lambardar, attesting witness of agreement Ex.D5, DW-12 Mangal Singh, DW-13 Devinder Singh, concern person from the office of Postmaster, DW-14 Kulbir Singh and DW-15 Kulwant Singh defendant and by tendering Ex.D7 to Ex.D9 closed the evidence.

The trial Court, on the basis of the evidence brought on record, decreed the suit by noticing that the power of attorney dated 20.02.1984 was duly cancelled vide cancellation deed dated 19.04.1984 Ex.P1. In appeal, the Lower Appellate Court reversed the findings on the basis of the evidence that Ajit Kaur despite having denied receipt of ₹ 1,00,000/- could not rebut the evidence brought on record with regard to deposit of ₹30,000/- in cash and purchase of land for ₹ 10,000/- and fixed deposit of ₹ 10,000/- each in favour of Ajit Kaur, her husband Bachan Singh and her son Amarjit Singh. Purchase of land for ₹ 10,000/- has been proved vide Ex.D9 dated 15.05.1984.

Mr. M.L.Sarin, learned Senior Counsel assisted by Mr.Nitin Sarin Advocate, representing the appellant-plaintiff, in support of the grounds of appeal, has raised the following submissions:-

- 1) Kulwant Singh defendant No.1, who, concededly was Sarpanch of the Village and had an influence upon Ajit Kaur widow of Mohinder Singh, had verified the claim with regard to allotment of land being the war widow;
- 2) The details of the land agreed to be sold as per the agreement to sell Ex.D5 are conspicuously wanting. In other words, there is no reference of khasra numbers;

- 3) Sale deeds of 26.04.1984 Ex.D3 and Ex.D4 were void and illegal having been executed after the cancellation of the power of attorney. In other words, defendant No.1 did not have a power to execute the sale deeds;
- 4) Since the defendants claimed that the allotment letter had already been issued in favour of Kulwant Singh, no explanation has come forth as to why khasra numbers have not been mentioned in the agreement to sell;
- 5) Non-disclosure of the money in the account of the plaintiff cannot a ground for dismissal of the suit;
- 6) Plaintiff discharged the onus with regard to fraud and misrepresentation as the sequence of events, noticed above, revealed that defendant No.1 in order to get undue benefit executed three sale deeds, one on 16.04.1984 and the remaining two on 26.04.1984, whereas the general power of attorney dated 20.02.1984 was cancelled vide registered notice dated 19.04.1984 (Ex.P1);
- 7) Other agreement to sell dated 31.12.1983 by Ajit Kaur in favour of Sukhwinder Singh for ₹ 1,30,000/- was immaterial. There was no concealment by the appellant as allegedly noticed by the Lower Appellate Court;
- 8) Defendants miserably failed to discharge the onus with regard to intention of plaintiff to part with the land against valid consideration. In other words, all the sale deeds were without consideration and, therefore, being void and, thus, prayed for setting-aside the judgment and decree of the Lower

Appellate Court.

Per contra, Mr. Rajesh Garg, learned Senior Counsel assisted by Ms.Nimrata Shergill, Advocate, representing the defendant-respondents supported the judgment and decree of the Lower Appellate Court being the last court of fact and law, for, alleged agreement cannot be said to be void in view of the provisions of Section 29 of the Contract Act. In the absence of relief of challenge to the cancellation of the sale deed and possession, simpliciter suit for declaration was not maintainable. The alleged prayer of amendment was also rejected. The agreement was only in respect of land which Ajit Kaur was to be allotted and cannot be said to be vague. Power of attorney was not cancelled as per the provisions of Registration Act, for, intimation for registration of the cancellation deed in the absence of the specific notice to the agent is mandatory. The aforementioned sale deeds were executed as defendant No.1 had no intimation with regard to the cancellation of the power of attorney. The entire suit was based upon dishonest foundation as Ajit Kaur was having knowledge of the sale deed dated 16.04.1984 and could not deny the execution of the agreement to sell which has been proved through the testimony of the attesting witnesses. The applicable rules imposing an embargo with regard to the allottee had already been deleted, therefore, there was no bar for Kulwant Singh to sell the land. If at all, there was truthfulness in the assertion, nothing prevented the plaintiff to bring on record the bank statement regarding the alleged consideration reflected in the agreement to sell and, thus, prayed for dismissal of the appeal.

Mr. Sarin, in rebuttal, in support of the aforementioned submissions, relied upon the following case law:-

- a) **Bhagwan Singh Versus Nawab Mohammad Iftikhar Ali Khan**, 1983(1) All India Land Laws Reporter 95 to contend that once agreement had been found to be vague, it is not capable of performance;
- b) **Gaiv Dinshaw Irani & Ors. Versus Tehmtan Irani & Ors.**, 2014(2) RLR 667 to contend that the High Court can always mould the relief as per Order 7 Rule 7 CPC even if the preliminary relief was not sought;
- c) **Smt.Bhatori Versus Smt.Ram Piari**, AIR 1996 Supreme Court 2754, where by noticing the misdeeds by the power of attorney holder, it was held that subsequent vendees were denuding right, title and interest as they could not claim the transaction to be bonafide.

I have heard the learned counsel for the parties, appraised the paper book, judgments cited, records of the courts below and of the view that there is no force and merit in the submissions of Mr. Sarin and the reason is not the one but many.

Plaintiff Ajit Kaur in her examination-in-chief, as PW-2, did not utter a single word or explained denial with regard to the execution of the agreement to sell. On the contrary, the defendants through documentary evidence on record coupled with the testimony of the attesting witnesses, namely, Jasbir Singh and Desa Singh proved the same. Sale deed Ex.D9 dated 15.05.1984 proved on record that land worth ₹ 10,000/- was purchased by Bachan Singh, the husband of Ajit Kaur. She failed to explain the receipt of the amount invested by the family if the source was different.

Flat refusal cannot be a ground for setting-aside the sale deed as the

ingredients of fraud and misrepresentation have to be conclusively proved not only through the pleadings but evidence as well.

Ex.P6 bank statement of Bachan Singh bearing Account No.7127 (NRE) has only been tendered without any proof, therefore, cannot be looked into. On the contrary, DW-4 P.P.Singh Clerk-cum-Cashier brought on record the summoned record of Account Nos.159 to 161 pertaining to fixed deposits. Account No.159 was in the name of Ajit Kaur. The amount in this account was ₹ 10,000/-, which was fixed deposit of dated 22.02.1984. Original deposit form is Ex.DW4/A. Account No.160 pertained to fixed deposit of ₹ 10,000/- dated 22.02.1984 in the name of Bachan Singh and Account No.161 in the name of Amarjit Singh son of Bachan Singh of ₹ 10,000/- of even date. It cannot be forgotten that the agreement to sell was of 20.02.1984 coupled with the execution of the registered power of attorney.

It is the requirement of law for the plaintiff to not only plead but state in the evidence that the alleged agreement to sell Ex.D5 was written on the blank papers. Desa Singh DW-11 candidly stated that the agreement was with regard to the sale of land allotted to Ajit Kaur which was signed by another witness, namely, Jasbir Singh. In cross-examination, he stated that at the time of execution of the agreement, no land was allotted. Similarly, DW-8 Jasbir Singh, another attesting witness acknowledged that Ajit Kaur had received a sum of ₹ 1,00,000/- and identified her present in the court.

DW-7 Mukhtar Singh, Senior Sales Clerk stated that a sum of ₹4248/- was deposited by Kulwant Singh, attorney of Ajit Kaur and even the treasury challan was also signed by him. Conveyance deed was also

issued in favour of Ajit Kaur through attorney on 29.03.1984.

On cumulative reading of the aforementioned evidence, it reveals that all the acts were done on the authorization and power given by Ajit Kaur. If at all, Kulwant Singh had actually committed fraud, nothing prevented her to launch criminal proceedings.

Kulwant Singh, when subjected to cross-examination, stated that Postman never told him that the registered notice was in his name or in the name of the family. He was emphatic that all the charges of the conveyance deed were paid by him. Plaintiff failed to place on record any material to establish that the conveyance charges were paid by her or handed over to the attorney.

DW-13 Devinder Singh Postmaster in examination-in-chief admitted that postal receipt dated 19.04.1984 was received in his office on 23.04.1984 and it was delivered on 30.04.1984. Despite extensive cross-examination, nothing contrary surfaced that Kulwant Singh intentionally did not receive the notice, thus, the sale deeds of 26.04.1984 also cannot be said to be without any authority or the agent had the knowledge of the cancellation of the power of attorney. The Lower Appellate Court, being the last court of fact and law, has actually examined the entire evidence on record to form an opinion that Ajit Kaur had actually tried to conceal the truth. It was a case of aggrandizement nothing beyond.

There is no dispute to the ratio decidendi culled out in the judgments cited supra, but the facts and circumstances noticed revealed that the judgments aforementioned would not apply, thus, in such circumstances, the question of moulding the relief by post or cancellation of the sale deed does not arise.

For the reasons mentioned above, I do not find any illegality or perversity in the judgment and decree passed by the Lower Appellate Court, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

January 8th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No