

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3191 of 1997 (O&M)

Date of Order:28.02.2019

Maharaj Param Deva

..Appellant

Versus

Gurdev Raj and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Giri, Advocate,
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J(Oral)

Previously respondents were represented by Sh. G.S.Bawa, Advocate. On 28.01.2019 he made a statement that the clients have taken the brief. Hence, office was directed to issue notice.

As per office report, respondent no.1 has once again been served. Respondent no.2 did not file any appeal before the first appellate court.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment of the trial court.

In the considered view of this court, the question which needs determination is:-

“Whether a registered Power of Attorney, execution whereof is proved by examining both the attesting/marginal witnesses, correctness and validity thereof can be disbelieved on conjectures and surmises?”

Defendant no.1 Gurdev Raj was owner of the plot in question. He authorized through a Special Power of Attorney(registered) dated 01.06.1993 to defendant no.2 to sell the property. Pursuant thereto, defendant no.2 executed the sale deed in question i.e. 15.06.1993. At the time of execution of the sale deed amount of Rs.25,000/- was paid as sale consideration through draft which was duly encashed by defendant no.1. Plaintiff filed this suit for possession on the basis of registered sale deed dated 15.06.1993. Suit was contested. Defendant no.2 almost admitted the material assertions made in the plaint whereas defendant no.1 who was the owner pleaded that the alleged registered sale deed and the power of attorney are result of fraud.

Learned trial court on appreciation of evidence decreed the suit by passing a preliminary decree for possession. However, learned first appellate court while recording a finding that the power of attorney is surrounded by suspicious circumstances, following circumstances were noticed by the learned first appellate court to reverse the judgment:-

- (1) It is proved on file that there was some construction on the plot in question, however sale deed is only with respect to plot.
- (2) Defendant no.1 was residing in the house along with his family and therefore, sale of the property for Rs.25,000/- is beyond comprehension and hence unbelievable.
- (3) The power of attorney is not attested by Nambardar or Panch of the village.
- (4) Name of the scribe who typed the special power of attorney has not been disclosed.

- (5) Balwinder Singh, defendant no.2 has not appeared in evidence.
- (6) The power of attorney dated 01.06.1993 has been executed on a stamp paper which was purchased on 17.05.1993 i.e. 15 days before the execution and registration of the power of attorney.
- (7) Gurbux Kaur resides in the temple and therefore she is attesting witness.

This court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below and the record.

In the considered view of this Court, there is presumption of corrections and validity of registered sale deed and the registered general power of attorney. Section 85 of the Indian Evidence Act, 1872 clearly proscribes that there is statutory presumption that a power of attorney was so executed and authenticated.

Now let's deal with the reasons given by the learned first appellate court as noticed above.

First reason does not make the registered sale deed illegal or void because both the parties had executed the sale deed with open eyes. Sale of the plot underneath the house is not in dispute. Even if it is assumed that the plot had certain construction which was not disclosed in the sale deed, it can at the most be ground to charge more stamp duty but cannot be a ground to set aside the sale deed.

Second reason given by the learned first appellate court is equally wrong. A owner who wants to sell the house in which he is residing

through attorney cannot be said to be wrong and beyond comprehension and unbelievable only because it has been sold for Rs.25,000/-. No evidence has been led that the amount of sale consideration is ridiculously low which shocks the conscious of the Court. It is not understandable how the court has concluded that the sale deed is beyond comprehension.

As regards next reason, it may be noted that the learned first appellate court itself has noticed that the power of attorney is not required to be attested by a Nambardar or Sarpanch of the village where parties reside, but the first appellate court assumes that this is a suspicious circumstance. The power of attorney which is a registered document is attested by two marginal witnesses Gurbux Kaur and Goraya Ram, Nambardar of Jalandhar Town. The power of attorney is not required to be attested by attesting witnesses. There is no requirement that it must be attested by the Nambardar of the village where parties reside or the property is situated.

Next reason assigned also does not appeal to the reasons particularly when the document is a registered document. Power of attorney is a typed document, however name of typist is not known. The power of attorney is not required to be got scribed from any professional scribe. Hence, the registered power of attorney cannot be ignored by the court on the ground that the name of the scribe has not been mentioned.

Next reason assigned by the court is strange. Balwinder Singh was defendant no.2, who had acted as an attorney of defendant no.1. Plaintiff have no control over Balwinder Singh. Therefore, non-appearance of Balwinder Singh in evidence cannot result in drawing adverse inference against the plaintiff. As noticed above, Balwinder Singh had appeared pursuant to the summons and filed written statement by and large

supporting the plaintiff. In such circumstances, non-appearance of Balwinder Singh cannot adversely effect the interest of the plaintiff.

Next reason assigned by the court that the stamp paper for execution of the special power of attorney was purchased on 17.05.1993 whereas the special power of attorney is dated 01.06.1993 i.e. after 15 days of the purchase. It is not understandable how the court has assumed that such circumstance is a suspicious circumstance particularly when defendant no.1 has signed on the non-judicial stamp paper on which the special power of attorney was written. Still further, defendant no.1 has also signed at the time when the special power of attorney was presented before the Sub-Registrar and registered. There is no evidence that defendant no.1 has not signed the aforesaid special power of attorney.

Last reason given by the learned first appellate court is that Smt. Gurbux Kaur one of the attesting witness is interested witness because she is residing in the temple. The sale is in favour of the plaintiff. The attesting witness or marginal witnesses have to be known to the parties. Therefore, the evidence of Gurbux Kaur cannot be said to be suspicious.

Accordingly, the question of law framed earlier is answered in favour of the appellant.

In view thereof, the judgment and decree passed by the learned first appellate court is set aside and that of the trial court is restored.

The regular second appeal is allowed.

February 28, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No