IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3850 of 2001(O&M)
Date of Order: 06.02.2019

Krishan Lal

..Appellant

Versus

Prem Lata and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kuldeep Sanwal, Advocate,
for the appellant.

Mr. Sudeep Mahajan, Advocate, and
Ms. Manjit Saini, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

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, questions which need determination are:-

(1) Whether a power of attorney duly registered as per the provisions of the Registration Act can only be proved by examining marginal witnesses?

(2) Whether the opinion of Handwriting and Finger Print Expert engaged by a party is binding on the Court?

(3) Whether the court would be advised to itself become expert while comparing the signatures of the parties on the registered document?

In the present case, after hearing arguments, this court has left with an impression that the learned first appellate court overlooked the material facts which had come on record and thus resulted into patent error.

Defendants no.1 to 4 are brothers and sisters. They were owners of a house (residential property). Defendants No.2 to 4 i.e. 2 sisters and 1 brother authorized their brother, namely, Dawarka Dass, defendant no.1 by executing a General Power of Attorney registered with the Sub Registrar to dealt with the property in any manner he likes. Power to sell was specifically given under the General Power of Attorney executed and registered on 16.05.1989, Ex.P1 on the file. On the strength of this General Power of Attorney, defendant no.1 entered into an agreement to sell dated 06.06.1989 with the plaintiff for the sale of the residential property for a sum of Rs.75,000/-, out of which Rs.40,000/- was received as earnest money. As per the agreement to sell, the target date for execution and registration of the sale deed was fixed as 06.06.1990.

It is the case of the plaintiff that he wrote a letter dated 04.06.1990 to defendant no.1 requiring him to come present on 06.06.1990 for execution and registration of the sale deed but he did not come present. Thereafter, the plaintiff got issued a notice calling upon the defendant to come and execute the sale deed on 31.08.1990 but the defendant did not come present and the plaintiff got marked his presence in evidence of his presence.

Plaintiff filed this suit on 29.01.1991. Defendant no.1, the signatory to the agreement to sell did not choose to contest the suit whereas defendants no.2 to 4 claim that the agreement to sell is result of forgery and in fact defendant no.1 was working under the influence of the plaintiff who was dealing in 'Chit fund'. It was also pleaded that no General Power of Attorney was executed by defendants no.2 to 4 in favour of defendant no.1.

Learned trial court on appreciation of the evidence found that the plaintiff has proved the agreement to sell, General Power of Attorney in favour of defendant no.1 by defendants No.2 to 4 and the plaintiff has also proved his readiness and willingness to perform his part of the contract. Resultantly, decree for specific performance of the agreement to sell was granted.

However, learned first appellate court has reversed the judgment of the learned trial court on 3 grounds:-

(1) Execution of the General Power of Attorney by defendants no.2 to 4 has not been proved in accordance with law.

(2) In the General Power of Attorney, there was no power to enter into an agreement to sell, although, there was power to execute the sale deed.

(3) Plaintiff is proved to be not ready and willing to perform his part of the contract as he was not having sufficient money to pay the amount.

In the present case, most important fact which, although, noticed, but dealt with in a wrong manner by the learned first appellate court is to the effect that on the basis of the same General Power of Attorney dated 16.05.1989, defendant no.1 for himself and on behalf of defendants no.2 to 4 executed a registered sale deed in favour of Yash Pal on 13.08.1992. Out of the total sale consideration of Rs.80,000/-, Rs.30,000/- was paid through draft, whereas remaining Rs.50,000/- was paid in cash.

After 25 days of the execution and registration of the sale deed, the property was sold on 07.09.1992 by the aforesaid Yash Pal in favour of Smt. Usha Rani wife of Naresh Kumar i.e. defendant no.4. So property came back in the family of vendors.

Now the stage is set for examining as to whether the reasons recorded by the learned first appellate court are correct or not?

Learned first appellate court has held that the registered Power of Attorney has not been proved on the ground that the marginal witnesses have not been examined. The execution of the Power of Attorney has been proved by examining scribe as well as official from the office of Sub Registrar (Registering Authority). It is a registered document and Section 85 of the Indian Evidence Act draws a presumption in favour of Power of Attorney which has been got registered with the authorities. Attention of this court was not drawn to any provisions of law which makes a Power of Attorney required to be attested by 2 marginal witnesses before such Power of Attorney can be said to have been properly executed. Therefore, the Power of Attorney is not required to be attested by two marginal witnesses. A document which has been registered is required to be proved in accordance with Section 72 of the Indian Evidence Act, 1872 because that document is not required to be attested by attesting witnesses. In such circumstances, the learned first appellate court erred in recording a finding that failure to examine the attesting witnesses is fatal to the case of the plaintiff. The learned first appellate court has overlooked the fact that on the strength of the aforesaid Power of Attorney, defendant no.1 for himself and on behalf of defendants no.2 to 4 had executed the sale deed on 13.08.1992 in favour of Yash Pal. The sale in favour of Yash Pal has never been challenged. Rather it is proved on file that after the sale in favour of Yash Pal by defendant no.1, the property came back to the fold of the family by getting the sale deed executed from Yash Pal in favour of Smt. Usha Rani wife of Naresh Kumar, defendant no.4. Learned first appellate court had erred in recording a finding that such sale of the property by Naresh Kumar in favour of wife would not improve the case of the plaintiff because the wife is an independent person. There is no evidence on the file that Smt. Usha Rani is residing separately from Naresh Kumar and they are not having cordial relations.

With regard to second reason, it may be noted that once through a Power of Attorney, power to sell had been given, the power to enter into an agreement to sell which is a step towards execution of the sale deed has necessarily to be inferred failing which it would lead to absurd results. If a sale is permissible, power to enter into an agreement to sell has to be assumed failing which a Power of Attorney executes a sale deed after entering into an agreement to sell would be valid but the agreement to sell would not be valid. Hence, learned first appellate court is clearly erred.

Learned first appellate court has recorded a finding that the plaintiff was not ready and willing as in the cross-examination he has admitted that he was carrying balance sale consideration of Rs.35,000/- only. In this regard, the statement of the plaintiff, who has appeared as PW5 is required to be read carefully. Plaintiff while appearing in examination-in-chief has stated that he was carrying the balance sale consideration i.e. Rs.35,000/- along with expenses of stamp duty and registration. In cross-examination, this witness was given suggestion that he was not carrying sufficient money. He explained that he is a businessman and was having

Rs.15,000/- on his own which he was carrying and apart therefrom he had borrowed a sum of Rs.10,000/- from his wife and Rs.10,000/- from his brother who was accompanying him. No question was asked in the cross-examination as to whether that was the entire money he was carrying. In absence thereof, the learned first appellate court clearly erred in recording a finding that the plaintiff was not carrying sufficient money for execution and registration of the sale. Each case has to be examined on facts and the evidence has to be appreciated in that context only. It is well settled that one line in cross-examination cannot be read in isolation from the entire statement.

Learned counsel for the respondents has submitted that no attesting witness of the power of attorney has been examined and onus to prove this fact was on the plaintiff. This court has already dealt with the aforesaid issue. Onus on the plaintiff was discharged by the plaintiff by examining the scribe as well as the official from the office of Sub-Registrar. Hence, the onus shifted on the defendants. The power of attorney was executed by defendants no.2 to 4 in favour of defendant no.1, their brother, so the document was executed in between the family members. Plaintiff being stranger to the family cannot be expected to find out that why defendant no.1 had not appeared in evidence or where were the marginal witnesses.

No doubt, learned first appellate has relied upon opinion of the private Handwriting and Finger Print expert and his own conclusion to hold that the signatures are different. Learned first appellate court has over looked two aspects:-

(i) That on the strength of same power of attorney defendant no.1 executed a sale deed dated 13.08.1992, correctness whereof is not being disputed by defendants no.2 to 4.

(ii) The opinion of a private Handwriting and Finger Print Expert is to be analyzed by the court while taking into consideration the fact that normally private Handwriting and Finger Print Expert give opinion in favour of a party which engages them. They go by their master's voice.

Similarly, the learned first appellate court became an expert and opined that the signatures are different. Once the party is disputing the correctness of his or her signatures, the best course for the courts is to compare the signatures with the documents which were executed by the executant at contemporaneous time with the documents correctness whereof is disputed. Once the comparison is sought to be made with the signatures in Court, the Court should be conscious of the fact that this party has already disputed correctness of his signatures on a document. In such circumstances, the Court has to be cautious because a party which is educate can change his or her signatures/ or style of writing.

Learned counsel for the respondents further submitted that the plaintiff has not pleaded in his plaint that he was present and visited the office of Sub-Registrar on 06.06.1990.

In this regard, the pleadings of the plaintiff in paragraph 5 of the plaint are relevant, which are extracted as under:-

"*5. That the plaintiff had always been ready and willing to get the sale deed executed in his favour on the terms and conditions as stipulated in the agreement dated 6-6-89 and is even now ready and willing to get the sale*

> *deed executed in his on the payment of balance sale consideration. The plaintiff would always be ready and willing to get the sale executed in his favour even during the pendency of this suit. The plaintiff also served a letter dated 4-6.90 calling upon defendant No.1 to execute the sale deed and to receive the balance sale consideration and again served a legal notice calling upon the defendants to come present on 31.8.90 for the due execution of the sale deed and to receive the balance sale consideration as per the terms and condition but the defendants did not comply. The defendants did not turn up on 6.6.90, the last date for the execution of the sale deed as per the agreement nor on 31.8.90 when the plaintiff again called upon them to receive the balance sale consideration and to execute the sale deed and they have thus backed out from the agreement dated 6.6.89 and hence the plaintiff is entitled to a decree of specific performance of the agreement."*

Section 16(c) of the Specific Relief Act does not require any particular form of pleading. The requirement is that the plaintiff has to prove that he was always ready and willing to perform his part of the contract. Therefore, the pleadings have to be read in the manner which subserve the interest of justice and not to scuttle it. Plaintiff has pleaded that he sent a letter to defendant no.1 to come and execute the sale deed and again issued a notice to the defendant to come on 31.08.1990. It is pleaded that neither on 06.06.1990 defendants had come present nor they came present on 31.08.1990. This fact is not disputed by the defendants. In such circumstances, it would not be appropriate to conclude that the pleadings of the plaintiff are lacking.

Next argument of learned counsel for the respondents is to the effect that letter dated 04.06.1990 has not been produced, only a receipt of posting a letter or communication has been produced, which is Ex.PW3/2.

Even in the absence of letter, the plaintiff and defendant no.1 knew that they were to come present before the Sub-Registrar on 06.06.1990. Still further defendant no.1 has not chosen to contest the suit, although, he is brother of defendants no.2 to 4. Only he can deny whether he had received the letter or not.

Next argument of learned counsel is to the effect that the plaintiff in his cross-examination has admitted that he borrowed the amount to the extent of Rs.10,000/- each from his wife and brother but they had not been examined. The plaintiff is required to prove his readiness and willingness. Plaintiff had borrowed the amount of Rs.20,000/- i.e. Rs.10,000/- each from his wife and brother. There is no requirement that the brother and wife must be examined to prove the lending of the amount.

In view of what has been stated hereinabove, all the three questions framed above are answered in favour of the plaintiff-appellant. The judgment passed by the learned first appellate is set aside and of the trial court is restored.

The regular second appeal is allowed.

The plaintiff is permitted to deposit the balance sale consideration, if not already deposited within 3 months from the date of receipt of a certified copy of this judgment. However, since the amount has remained with the plaintiff, therefore, the plaintiff shall be liable to deposit the amount along with interest @ 9% per annum from the date of filing of the suit till deposit.

February 06, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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