

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4081 of 2019(O&M)
Date of Decision: 15.10.2019

Harchand Singh

.....Appellant

Versus

Geeta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Abhimanyu Kalsy, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.11233-C of 2019

For the reasons recorded in the application, the same is allowed. Delay of 5 days in re-filing the present appeal is condoned.

CM No.11234-C of 2019

For the reasons mentioned in the application, plaintiff/appellant is allowed to make good the deficiency in Court fee. Application stands allowed.

Main case

[1]. Plaintiff/appellant is in regular second appeal against

the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction and acceptance of counter claim of defendant No.1 for recovery of an amount of Rs.1 lac as damages along with interest @ 9 % per annum from the date of filing of the suit till the date of decree and future interest @ 6% per annum from the date of decree till final realisation of the amount.

[2]. Plaintiff filed a suit for permanent injunction seeking to restrain the defendants. Defendant No.1 set up a counter claim for seeking damages against the plaintiff. Plaintiff asserted that grand-father of defendant No.1 was allotted the suit land. It was averred that from her grand-father namely Gurdiata Mal, the land was inherited by father of defendant No.1 namely Bishamber Lal and from Bishamber Lal, defendant No.1 inherited the suit property. Plaintiff further alleged that defendant No.4 got executed sale deed of the land in his favour by impersonating some other person as Ram Sharni. Defendant No.1 appointed the plaintiff as her special power of attorney to pursue the litigation vide special power of attorney dated 29.08.2006. Defendant No.1 gave possession of the suit property to the plaintiff as special power of attorney. Since 29.08.2006, the plaintiff has been managing the suit property and is in possession of the suit property. Plaintiff has been

pursuing the civil and criminal litigation on behalf of defendant No.1 and has spent huge amount in pursuing the litigation as attorney of defendant No.1 as well as in looking after the land. Defendant No.1 started refusing the plaintiff to be her attorney. Earlier defendants No.1 and 4 were interfering in the possession of the plaintiff and he filed a suit against them. During pendency of the suit, defendant No.1 along with defendants No.2 and 3 started interfering in the possession of the plaintiff. The plaintiff withdrew the suit as defendants No.2 and 3 were not parties to that suit.

[3]. Defendants have contested the suit on merits. It has been averred that defendant No.1 is the owner in possession of the suit property after the demise of her father Bishamber Lal. Defendant No.2 is the husband of defendant No.1. Defendant No.3 Som Nath has no concern with the suit property. It has been further averred that Sakkattar Singh and others impersonated some person in place of Ram Sharni and forged a power of attorney alleging the same to be executed by Bishamber Lal who had died long back. A criminal case was registered and the accused were convicted by the competent Court on 01.12.2014 in case titled State Vs. Sakkattar Singh and others. Defendant No.1 engaged a counsel in the said case and she had executed a special power of attorney in favour of

the plaintiff. After few months, defendant No.1 had come to know about evil design of the plaintiff as he was hobnobbing with the accused party and was not attending the cases. Defendant No.1 revoked the special power of attorney and asserted that the plaintiff thereafter has no concern with the property in question. The possession of the plaintiff was also denied. Plaintiff never managed the property in dispute nor remained in possession of the same and has not cultivated the suit property in any manner. Plaintiff has not pursued any civil or criminal litigation on behalf of defendant No.1. Defendant No.1 herself engaged a counsel to conduct the suit proceedings. For the harassment meted to defendant No.1, she has set up a counter claim for recovery of damages against the plaintiff.

[4]. Defendant No.4 contested the suit separately by filing separate written statement. On merits, defendant No.4 contested the suit on the ground that defendant had purchased the suit property on 18.07.2006 from the attorney of original owner namely Ram Sharni son of Gurditta Mal by paying the sale consideration of Rs.5,20,000/- and before purchase of the suit property, he had been the power of attorney of said person in respect of suit land. On the basis of power of attorney dated 09.09.2004, he purchased the land in question on the assurance of Ram Sharni. The claim of the plaintiff was denied.

Power of attorney dated 29.08.2006 was claimed to be forged and fabricated. Criminal case bearing FIR No.184 dated 20.10.2007 was claimed to be false and fabricated.

[5]. In the counter claim set up by defendant No.1 against the plaintiff, the counter claimant averred that Harchand Singh had earlier filed a suit for permanent injunction restraining her from interfering in his peaceful possession or taking forcible possession or dispossessing him from the suit property. The suit was filed on 25.08.2011. The counter claimant in the instant suit filed written statement in the said suit in which she stated that the plaintiff was appointed as special power of attorney by her vide special power of attorney dated 29.08.2006. Harchand was not acting in the interest of defendant No.1 and the special power of attorney was revoked by giving intimation to Harchand vide notice dated 19.04.2011 through registered cover. Harchand filed the said suit in order to pressurize defendant No.1 to alienate the suit property in his favour. Plaintiff continued to proceed with the suit for more than four years and ultimately, got the same dismissed on 09.07.2015. The filing of the aforesaid suit was claimed to be an act of evil design of the plaintiff to harass and humiliate defendant No.1 and to cause financial loss to her. Harchand Singh was aware of the fact that he has no concern with the land in question. Special power of

attorney had already been revoked. He had no capacity to claim the land in question in any manner.

[6]. Both the parties went to trial on definite issues.

[7]. Both the Courts below have found that the plaintiff has no locus to remain as special power of attorney on behalf of defendant No.1. The dispute is between the plaintiff and defendant No.1. Plaintiff claimed himself to be in possession on the basis of special power of attorney dated 29.08.2006. He sought restraint against the defendants from interfering in his possession. Special power of attorney Ex.PX was not in dispute. The relationship between the plaintiff and defendant No.1 was that of agent and principal. The essential feature of such an agency is to make the principal answerable to third person. The test of agency is whether the person is purporting to enter into transactions on behalf of the principal i.e. to create some contractual obligations on behalf of the plaintiff viz-a-viz third person. No formal agreement is required to constitute such an agency. The agent has to act within limitation of his authority. The authority of the plaintiff stood terminated. The possession of the plaintiff cannot be recognized in law as the same was on behalf of defendant No.1. The possession of the agent would be deemed to be the possession of the principal in view of fiduciary relationship between them. Plaintiff cannot claim possession of

his own as he was supposed to act on behalf of his principal for managing the affairs of the land in question.

[8]. At the most, the plaintiff could have been treated to be trustee under power of attorney. He had no independent connectivity with the land in question except to act on behalf of the principal. He could have sued the principal for compensation/damages. Plaintiff cannot set up a title qua the suit property adverse to the interest of the principal.

[9]. Both the Courts below have rightly concluded that the plaintiff has no independent right viz-a-viz the property in question except to act as per wishes of the principal/defendant No.1. Plaintiff remained in possession of the suit property in arrogance of the interest of principal and has earned benefit out of it. He was under legal obligation to watch the interest of defendant No.1/counter claimant, but he betrayed the trust which was reposed in him by defendant No.1.

[10]. Both the Courts below have rightly held that the plaintiff is liable to compensate the counter claimant for dragging her to undue litigation, thereby causing loss and harassment to her. The award of Rs.1 lac along with interest cannot be held to be illegal. Both the Courts below have appreciated the evidence on record. Re-appreciation of evidence in regular second appeal is not possible, particularly when no substantial question of law

worth consideration is involved in the present appeal.

[11]. The findings recorded by the Courts below cannot be held to be perverse or result of non-application of mind. The present appeal is accordingly dismissed.

15.10.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No