

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4266 of 2012 (O&M)

Date of decision : 15.5.2019

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Palwinder Singh and Another

.....Appellants

vs.

Sanjeev Kumar

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vijay Lath, Advocate for the appellants

Mr. Aman Bahri, Advocate for the respondent

...

H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff Sanjeev Kumar had brought a suit against defendants Jaswant Singh, Palwinder Singh and Parminder Singh, seeking a declaration that plaintiff continues to be the General Attorney and Agent of the defendant No. 1 appointed through General Power of Attorney dated 8.9.2003 and the cancellation deed dated 18.9.2003 executed by the defendant No. 1 has got no effect on the rights of the plaintiff and that the plaintiff continues to be Agent of the defendant No.1 and further directing the defendants to execute sale deed in favour of the plaintiff

in respect of the land measuring 1 kanal 9 marla i.e. 29/89 share in land measuring 4 kanal 9 marla situated at village Barmajra, Tehsil Mohali, previously owned by the Oriental Auto Engineering Works, Barmajra and in addition to that praying for grant of permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit land and from alienating or transferring the suit land to anybody else except the plaintiff.

As per version of the plaintiff, defendant No.1 being owner and in possession of the suit land entered into an agreement to sell the same with him on 8.9.2003 for a sum of Rs. 9 lacs, receiving the entire consideration amount and executed necessary documents i.e. Agreement to sell, GPA, registered Will and Affidavit etc.; that the plaintiff has always been ready and willing to get the sale deed executed from defendant No.1; that defendant No.1 had created an interest in the suit land of the plaintiff, by executing agreement to sell, registered Power of Attorney etc. The plaintiff had obtained water connection and telephone connection in his name in the suit land however, the sale deed could not be executed since on 8.9.2003, mutation in respect of the suit land was not entered in the name of the defendant No.1 in the revenue record and defendant No.1 had promised to execute the sale deed after getting the mutation entered and sanctioned in his name in the revenue papers. The defendant No.1 avoided execution of the sale deed on one pretext or the other and thereafter refused to do so, rather threatened to execute the sale deed in favour of some other person. Feeling aggrieved, the plaintiff knocked at the door of the Court by filing the suit.

On notice, defendant No.1 appeared and filed written statement contesting the suit, taking various legal objections that the suit was not maintainable and that the plaintiff had no locus standi to file the suit. On merits, the answering defendant denied having entered into any agreement to sell the suit land with the plaintiff or receipt of consideration amount from him. According to such defendant various cases are pending in the Courts so Ramesh Kumar DSP father of the plaintiff, who was earlier posted as SHO Kharar and Mohali, had developed relations with the defendant and the defendant had asked Ramesh Kumar to help him and on an assurance being given by him, GPA was obtained by Ramesh Kumar in favour of his son, taking the advantage of old age of defendant. However, as and when the defendant came to know about the fraud played upon by the plaintiff and his father the GPA was got cancelled on 18.9.2003. The Will, if any would be operative after the death of executants, so on the basis of Will no title could pass during the life time of the executant. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

Subsequently, vide order dated 31.1.2008, defendants No. 2 and 3 were made party to the suit and they also filed written statement, in which they took up the stand that Jaswant Singh (plaintiff) son of Tarlok Singh, who was khewatdar of village Barmajra sold his share i.e. 29/89 share out of land comprised in Khasra No. 17//13/1 (4-9) i.e. 1 kanal 9 marla alongwith boundary wall, construction, electric meter, water connection and on the same date one Tarlochan Singh s/o Labh Singh, resident of village Balongi,

khewatdar of village Barmajra also sold both his 12/74 share out of Khasra No. 23//19/2 (3-14), for Rs.50,000/-. Sarvshri Jaswant Singh and Tarlochan Singh executed and registered one sale deed on 17.11.2004 and on the day of sale deed the sellers handed over the possession of the sold property to defendants No. 2 and 3 and they are in possession thereof since then, as absolute owner and nobody can interfere in their peaceful possession. Denying remaining assertions, these defendants also prayed for dismissal of the suit.

Replication to the written statement of defendants was filed.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.

In order to prove his case, the plaintiff himself appeared as PW-1 and examined Rakesh Kumar Sharma as PW-2, and thereafter closed his evidence in affirmative.

On the other hand, the defendant, examined Palwinder Singh-defendant No.2 as DW-1, Tarlochan Singh as DW-2 and thereafter closed their evidence after tendering certain documents.

After hearing the counsel for the parties, the trial Court, decided issues No. 1 and 2 in favour of the plaintiff and against the defendants. Issues No. 3 and 4 were decided against the defendants and in favour of the plaintiff. As a result of findings on the issues, the suit of the plaintiff was decreed with costs to the effect that the plaintiff continues to be the General Attorney and Agent of the defendant No.1 appointed through General Power of Attorney dated 8.9.2003 and the cancellation deed dated 18.9.2003 executed by defendant No.1 has got no effect on the rights of the plaintiff and the plaintiff continues to be agent of the defendant No.1. It was further directed to the defendants to execute sale deed in favour of the plaintiff in respect of the land measuring 1 kanal 9 marla i.e. 29/89 share in land measuring 4 kanal 9 marla comprised in Kh./Kh. No. 145/154 Khasra No. 17/13/1 situated in the area of village Badmajra, Tehsil Mohali, previously owned by the Oriental Auto Engineering Works, Badmajra. Further the defendants were restrained from interfering in the peaceful possession of the plaintiff over the land in suit and further they were restrained from alienating or transferring the suit land to anybody else except the plaintiff.

Feeling aggrieved by such judgment and decree, the defendants had preferred an appeal to the Court of District Judge, which was assigned to Additional District Judge, SAS Nagar, Mohali, who vide judgment and decree dated 17.5.2012, partly allowed the appeal modifying the judgment and decree passed by the trial Court in as much as, the relief for declaration to the effect that plaintiff continues to be attorney of defendant on the basis of power of

attorney dated 8.9.2003 was declined. However, remaining portion of the impugned judgment and decree was upheld.

The defendants appellants were still dissatisfied and they have knocked at the door of this Court, by way of filing the present regular second appeal, notice of which was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is no merit in the appeal.

The trial Court on analysis of the evidence produced by the parties in light of the legal and factual position, has observed that defendant No.1 had entered into an agreement to sell the suit property with the plaintiff and the defendant No.1 has also got the sale price from the plaintiff and also issued a receipt to the plaintiff, delivering possession of the suit property to him and since defendant No.1 had executed sale deed in favour of defendants No. 2 and 3 during pendency of the suit, therefore, the same was hit by the principle of lis pendence. Therefore, the suit filed by the plaintiff was decreed. The Ist Appellate Court agreed with the conclusion arrived at by the trial Court except with regard to the declaration to the effect that the plaintiff continues to be Attorney of defendant No.1 on the basis of power of attorney dated 8.9.2003, for the reason that since Jaswant Singh executant had expired therefore the Power of Attorney had come to an end. However, the execution of agreement to sell Exhibit P3, receipt Exhibit P3/A, power of attorney Exhibit P1, Will Exhibit P4 and Affidavit Exhibit P-5, were taken to be proved, with regard to which being no mention in the power of attorney, that possession of

land had been delivered and sale consideration received, the Ist Appellate Court has rightly observed that this fact does not make much difference, since in fact the possession of the land was exchanged and consideration amount passed under the agreement of sale Exhibit P-3.

With regard to contention raised by defendant No. 1 that Power of Attorney was got executed from him fraudulently by Ramesh Kumar father of the plaintiff, who had been DSP. The Ist Appellate Court has observed that it has come on record during the cross examination of the plaintiff that his father had retired prior to 8.9.2003 and for that reason he could not have any influence over Jaswant Singh. Furthermore, the plea of fraud taken was vague, lacking material particulars and defendants could not produce any evidence which could create any doubt regarding the due execution of the documents i.e. agreement of sale, receipt, Power of Attorney and Will by defendant Jaswant Singh.

Furthermore, Jaswant Singh defendant since dead, had not initiated any proceedings regarding alleged forgery or fraud. Therefore bald allegations of defendants that those documents had been got executed from him fraudulently could not be accepted.

The Ist Appellate Court further referred to copy of plaint Exhibit D-3, showing that even one Som Nath had filed a suit for possession regarding the land in question against Jaswant Singh on the basis of agreement of sale executed by Jaswant Singh in his favour, which was prior to the agreement in question. It has further been observed that since Jaswant Singh had received the entire sale

consideration and no other action was required to be taken by the plaintiff, therefore readiness and willingness on part of the plaintiff cannot be doubted and the trial Court had rightly held that defendants are liable to execute the sale deed regarding the property in question in favour of the plaintiff and even defendants No. 2 and 3 -appellants had stepped into shoes of defendant Jaswant Singh, therefore they were bound by the agreement and liable to execute the sale deed regarding the property in question in favour of the plaintiff.

Learned counsel for the appellants had referred to authority *Avinash Kumar Chauhan vs. Vijay Krishna Mishra 2009 (1) RCR (Civil) 615*, by the Apex Court, wherein it was observed that when an agreement to sell property had been executed between the parties and possession of property had been given to the purchaser under the said agreement, then it is necessary to levy stamp duty on an instrument whereby possession has been transferred.

The second judgment referred by learned counsel for the appellants was *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and another 2011 (4) RCR (Civil) 669*, by the Apex Court, wherein it was observed that no immovable property can be legally transferred or conveyed through a General Power of Attorney, Agreement to sell or Will. But these judgments are not applicable due to different facts and circumstances and the context in which such observations have been made.

On the other hand, learned counsel for the respondent has referred to authority *Ram Kishan and another vs. Bijender Mann @*

Vijender Mann and other 2013 (2) RCR (Civil) 419, by a Division Bench of this Court, wherein it was observed that a suit for specific performance, upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement based.

The second judgment relied upon by counsel for the respondent *Jeet Kumari vs. Girdhari Lal 2003 (2) RCR (Rent) 124*, by a Coordinate Bench of this Court, wherein it was observed that when there was sale of property on the basis of power of attorney, the title will not pass without execution and registration of the sale deed. However, vendor cannot revoke irrevocable power of attorney and the possession of the plaintiff is protected under Section 53 A of Transfer of Property act.

Another judgment, has been relied upon by learned counsel for the respondent *Vijay Kumar vs. Ashok Kumar Laroia and others (2017) 185 PLR 615*, by a Coordinate Bench of this Court.

Therefore, the judgment by the Additional District Judge, Mohali, disposing the Ist appeal against the impugned judgment and decree passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court while hearing regular second appeal.

Furthermore, no substantial question of law arises in this case.

Thus the appeal is found to be without any merit and the same stands dismissed.

15.5.2019
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(H.S. Madaan)
Judge

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