THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1385-2015 (O&M)
Date of decision: 18.12.2019

Balbir Singh

...Appellant

Versus

Mahesh Inder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Shekhar Verma, Advocate for the appellant.

Mr. Munish Puri, Advocate
for respondents No.2 to 4.

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H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Balbir Singh had brought a suit against defendants Mahesh Inder Singh and others, seeking a declaration that he is owner in possession of the suit land to the extent of 1/6 share in land measuring 30K-12M and to the extent of 67/142 share in land measuring 7K-12M situated at Village Lahri, Tehsil Pathankot, then District Gurdaspur (now Pathankot) fully detailed in the headnote of the plaint and that the general power of attorney dated 01.03.1999 allegedly registered in the office of Sub Registrar, Pathankot as well as general power of attorney dated 14.01.2000 registered in the office of Sub Registrar, Pathankot are forged and fabricated documents, result of fraud, forgery and impersonation by defendants in connivance with each other, neither executed by plaintiff nor got registered by him and that the sale deed dated 27.03.2000 registered in the office of Sub Registrar Pathankot, vide document No.6883 dated 27.03.2000 executed allegedly on behalf of the plaintiff on the basis of illegal and fabricated general powers of attorney is illegal, null and void and ineffective qua the rights of the plaintiff to hold and possess the suit land and furthermore, mutation sanctioned on the basis of sale deed is also null and void. As a consequential relief, a decree for permanent injunction restraining the defendants from interfering in peaceful possession of plaintiff over the suit land be passed.

As per version of the plaintiff, he is co-sharer in possession of the suit land as detailed in headnote of the plaint and had taken Rs.40,000/- from defendant No.1 on 01.03.1999 in presence of Sampuran Singh and Bakshish Singh sons of Ranjit Singh, R/o Village Akhrota. He was made to sign blank stamp papers at the bottom on one place and certain other registers and blank papers. Thereafter in a first week of April,1999 the plaintiff borrowed another sum of Rs. 50,000/- in presence of same persons from defendant No.1 and he was again made to sign a stamp paper and certain other papers and registers. It was so done at Tehsil Complex, Pathankot. The signatures of alleged witnesses Vijay

Singh, Ramesh Singh and Sampuran Singh were also obtained on blank stamp papers. Defendant no.1 had assured the plaintiff that signatures had been obtained just by way of security and the blank stamp papers would be returned as soon as the amount was repaid. The plaintiff repaid the amount in instalments, however, no receipt was given by defendant No.1. When the plaintiff demanded the papers back, defendant No.1 stated that the plaintiff was to pay another sum of Rs. 50,000/- by way of interest. In the first week of April, 2000 the plaintiff came to know that the defendant had got a sale deed executed dated 27.03.2000 in favour of defendant No. 2 for alleged consideration of Rs.1 lakh regarding the entire 1/6 share out of the suit land of the plaintiff to the extent of 8 kanals 9 marlas by representing himself as the alleged general power of attorney of the plaintiff vide general power of attorney deed document No. 646 dated 24.01.2000 and 693 dated 01.03.1999 allegedly registered before Sub Registrar, Pathankot, whereas defendant No.1 converted those blank stamp papers into general power of attorney qua land measuring 30K-12M to the extent of 1/6 share of the plaintiff measuring 5K-2M. According to the plaintiff, he had not appeared before Sub Registrar, Pathankot for registration of said general power of attorney dated 01.03.1999 and it seems that defendant No.1 procured the same by way of impersonation in connivance with Ramesh Kumar @ Ramesh Singh and the deed writer Joginder

Thakur. The plaintiff further came to know that defendant No.1 had charged Rs.2,50,000/- from defendant No.2 as sale consideration and got sanctioned mutation No.491 on the basis of aforesaid illegal sale deed. Defendants No.1 & 2 in connivance with other defendants threatened to take forcible possession of such land from the plaintiff. The plaintiff is still in joint possession of the suit land along with other co-sharers. When defendants refused to concede the claim of the plaintiff, he filed the civil suit in question in the Court of Civil Judge (Jr. Divn.) at Pathankot.

On being put to notice, defendants No.1 & 3 appeared and filed written statement, contesting the suit, raising various preliminary objections that plaintiff himself had appointed defendant No.2 as his attorney on 01.03.1999 and 14.01.2000 and such powers of attorney were duly registered. The plaintiff was not in a position to look after, maintain and sell the suit land; the plaintiff was also in need of money due to financial constraints and he had received the entire sale consideration of Rs. 1 lakh from defendant No.2 and defendant No.1 accordingly executed the sale deed in favour of defendant No.2 being attorney of the plaintiff; after execution of the sale deed, defendant No.2 complained that there was some charge of the Pathankot Primary Co-operative Agricultural Development Bank Ltd, Pathankot over the suit land and on enquiry, defendants No.1 & 2 learnt that a sum of Rs. 40,700/- was due payable by the plaintiff to the said bank and then they went to the plaintiff demanding an explanation but there was no proper response. Defendant No.2 deposited the amount with the said bank and then paid stamp duty for the said amount treating the sale consideration of Rs. 1,40,700/- and then mutation of transfer was sanctioned in his favour. On merits such defendants controverted the assertions in the plaint and defended the impugned sale deed as a legal and valid document, lawfully executed by the plaintiff through his lawful attorney defendant No.1 whom he had appointed and authorized to execute the sale deed. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

In the written statement filed by defendant No.2, he had also raised various legal objections, contending that the sale deed in question was duly executed and registered and after the execution it came out that the plaintiff had obtained loan from the Pathankot Primary Co-operative Agricultural Development Bank Ltd, Pathankot and a sum of Rs. 40,700/- was due from the plaintiff against the said land. In that way, defendant No.2 was left with no option to pay the said amount to the bank and he deposited that money with the bank, in order to regularize the sale for the said amount by paying additional stamp duty and registration fee in the sum of Rs.3500/-. Defendant No.2 got endorsement of loan of the bank deleted by producing No Dues Certificate issued by the bank before the Patwari Halqa, therefore, the answering defendant is owner of the land and is in joint possession to the extent of the suit land. On merits, such defendant denied the assertions in the plaint and craved for dismissal of the suit.

In the separate written statement filed by defendant No.4, he came up with a plea that the documents in question were duly scribed and signed by both the parties and thereafter, the same were presented for registration before Sub Registrar, Pathankot. The material assertions in the plaint were controverted, while praying for dismissal of the suit.

On pleadings of the parties, the 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 injunction as prayed for? OPP.
3. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Relief.

In support of his case, plaintiff himself appeared as PW1 besides examining Sampuran Singh as PW2 and thereafter closed his evidence.

In rebuttal, defendants examined Raj Kumar as DW1, Mahesh Inder Singh as DW2, Ramesh Singh as DW3 and thereafter, closed their evidence.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.), Pathankot, decided issues No.1 & 2 against the plaintiff in favour of defendants, issues No.3 & 4 were decided against the defendants and in favour of the plaintiff. As a result of findings on the issues, suit of the plaintiff was dismissed with no order as to costs, vide judgment and decree dated 05.03.2011.

Feeling aggrieved, the plaintiff had brought an appeal before Addl. District Judge, Pathankot, who vide judgment and decree dated 05.12.2014, dismissed the appeal.

Still feeling dissatisfied, the plaintiff has knocked at the door of this Court, by way of filing the present Regular Second Appeal, notice of which was given to the defendants/respondents and defendants/respondents No.2 to 4 have put in appearance through counsel to offer a contest.

I have heard learned counsel for the parties besides going through the record.

At the very outset, it may be mentioned here that the whole case of the plaintiff appears to be highly improbable and unconvincing. As per his own version, he had borrowed a sum of Rs.40,000/- from defendant No.1 on 01.03.1999 and another sum of Rs.50,000/- in first week of April, 1999. As his case goes, he had received the money from defendant No.1 at Tehsil Complex

Pathankot in the presence of Sampuran Singh and Bakshish Singh. Though, according to him, his signatures were obtained on blank stamp papers and other papers as well as in the registers. On both the occasions, signatures of the alleged witnesses Vijay Singh, Ramesh Singh and Sampuran Singh were also obtained on blank stamp papers but the entire thing appears to be highly improbable. First of all, why the attesting witnesses Vijay Singh, Ramesh Singh and Sampuran Singh should sign the blank stamp papers when those could be misused against them even. Furthermore the documents are scribed by regular deed writer with entries being there in the register of scribe. It is very difficult to believe that the scribe would be a party to such fraud getting signatures of the plaintiff in the register without making a relevant entry in that regard. The general power of attorney is a registered document. Sub Registrar, a public servant acting in discharge of his duty would not register a document without the executant appearing before him and admitting execution of the document. Thus, blaming everybody, the scribe of the documents, the attesting witnesses, the attorney and Sub Registrar while challenging the legality and validity of a document does not make any sense. The plaintiff does not come out to be so naive and novice so as to sign the blank stamp papers, ordinary papers in the registers of the deed writer because even a man of average prudence knows that such blank stamp papers and papers can be misused. If the plaintiff had raised loan from defendant No.1 then he should have been aware that he could be asked to execute a pronote and receipt and not to sign the blank stamp papers and other papers as well as in the register of the deed writer against blank space. According to him, he had returned the amount of Rs.90,000/- to defendant No.1 but without obtaining any receipt. This contention is not believable, rather, it comes out that plaintiff has been propagating falsehood just to wriggle out of the fact that he had executed general powers of attorney in favour of defendant No.1 who had then executed the sale deed in favour of defendant No.2 on behalf of the plaintiff. Allegations of fraud, misrepresentation and cheating are of very serious nature and they are to be proved like a criminal offence. Merely by leveling such type of allegations without bringing enough cogent and convincing evidence to establish those does not take the plaintiff anywhere. The impugned powers of attorney and sale deeds executed on the basis thereof come out to be legal and valid documents and no fault can be found with the same.

Counsel for the appellant had referred to judgment **Vidhyadhar Vs. Mankikrao & Anr. 1999 AIR (SC) 1441**, wherein it was observed that if a party to suit does not enter into the witness box, an adverse inference has to be drawn against him. According to learned counsel for the appellant, since Mahesh Inder Singh defendant No.1 had not appeared in the witness box and had not got his statement recorded, therefore, an adverse inference should be drawn against him. However, I do not find any merit in this contention. The plaintiff had challenged the legality and validity of registered documents on the ground of fraud, misrepresentation etc. It was for him to prove those allegations, which he has miserably failed to do. His claim cannot be accepted, merely for the reason that defendant No.1 had not appeared in the Court to face cross examination. Initially, the onus was upon the plaintiff to show that the documents were illegal, null and void. He has failed to discharge that onus, therefore, the judgment is not of much help to the case of the appellant.

On the other hand, learned counsel for the respondent had referred to judgment **Hari Chand Vs. Raj Kumari, 1997 (3) RCR (Civil) 582** by a single judge of this Court wherein it was observed that once the terms of an agreement between the parties are reduced into a registered document, the Court cannot look into oral evidence for that purpose. He had further referred to authority **Sohan Lal Vs. Ghanshyam 2016 (3) ILR (HP) 312** by Himachal Pradesh High Court, wherein it was observed that as per settled law, heavy burden of proof lies upon a person impugning transaction to show that it was a sham or fraudulent one and there is a presumption that a registered document is validly executed. The onus to prove would be on a person who leads evidence to rebut the presumption.

Since the plaintiff himself has been in joint possession of the suit property, as a result of the sale deed, the vendee stepped into his shoes becoming co-sharer along with other joint owners. He can seek separate possession by way of partition. The Courts below on proper analysis of the factual as well as legal position have returned concurrent findings that plaintiff is not entitled to decree for declaration and permanent injunction prayed for. Incidentally, the trial Court has decided issues No.3 & 4 against the defendants. The verdict on these issues appear to be incorrect. The plaintiff having executed General powers of attorney in favour of defendant No.1 which were got registered and such defendant having executed the sale deed on the basis of those powers of attorney in favour of defendant No.2, the plaintiff was not left with any right or interest in the suit land and lacked locus standi to bring the present suit and was clearly barred by his own act and conduct from bringing the suit. The judgments passed by the Courts below rejecting the claim of the plaintiff are detailed, well reasoned, do not suffer from any illegality or infirmity. No substantial question of law arises. The appeal is found to be without merit and is dismissed accordingly.

18.12.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No