

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1341 of 2015 (O&M)
Date of Decision: May 14, 2019

Des Raj

...Appellant

Versus

Renu Kochhar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate,
for the appellant.

Mr. Divanshu Jain, Advocate,
for the caveators.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of respondent No.1-plaintiff for specific performance of the agreement to sell dated 16.01.2004, has been decreed.

As per the averments in the plaint, Plot of Shop-cum-Office (SCO) No.15, Sector 20-C and D, Chandigarh measuring 153.333 sq.yards, vide allotment letter dated 22.05.1985, was allotted to M/s Darshan Lal Des Raj through its proprietor Des Raj Vide agreement to sell, ibid, defendant No.1 Des Raj, through general attorney, i.e. defendant Nos.2 to 4, namely, Yashwant Krishan, Inderjit Bajaj and Anil Verma, agreed to sell the leasehold rights of the aforementioned property to the plaintiff for a total sale consideration of ₹ 24,00,000/- and received entire sale consideration

through demand drafts dated 14.01.2004 of various denominations and the physical possession was handed over. The demand drafts were made in the names of Gurdial Dass, Vijay and R.K.Gupta and all these persons along with defendant No.1 agreed to sell the SCO in question to the plaintiff vide agreement to sell dated 11.12.2003. Only the sale deed was required to be executed and for that purpose, permission was required from the Estate Office, Chandigarh. Through notice dated 19.01.2004, it was specifically mentioned that no relief was claimed against defendant Nos.2 to 4 as defendant No.1 was informed that each of defendant Nos.2 to 4 had revoked the general power of attorney. In other words, they were not competent to execute the sale deed in favour of the plaintiff. Defendant Nos.2 to 4 informed the plaintiff about the revocation of the authority given to them by defendant No.1. Defendant No.1 was repeatedly requested to perform his part of the agreement but he refused to do so. Plaintiff on 20.01.2004 received intimation from defendant Nos.2 to 4 regarding the cancellation of the share of defendant No.1 as he was not ready to execute the sale and transfer and in such circumstances, cause of action accrued to file the suit.

Appellant-defendant No.1 contested the suit by raising numerous preliminary objections. Power of Attorney was executed in favour of defendant No.2 but the same was not registered. Defendant No.2 did not pass any consideration to defendant No.1 against the alleged agreement to sell by defendant No.2 in favour of the plaintiff. The plot was allotted to the partnership firm and, thus, in such circumstances, defendant No.1 alone was not competent to execute any power of attorney or agreement. Price of the property was much higher. Defendant No.1 was never permitted to receive

the consideration on behalf of defendant Nos.2 to 4. The agreement to sell was stated to be anti-dated. Readiness and willingness was also emphatically denied. On merits, it was asserted that construction of the SCO was also done by the partnership firm. Though the general power of attorney was signed in favour of defendant Nos.2 and 3, but the same was not registered by defendant No.1 nor he appeared before the Sub Registrar. The defendants played a fraud and obtained his signatures. Defendant Nos.2 and 3 were never authorised to hand over the possession to the plaintiff.

Defendant Nos.2 to 4 filed separate written statement and stated that they had sold the SCO in the month of June, 1991 by executing general power of attorney by Des Raj. He represented himself to be sole owner. Execution of the agreement to sell dated 16.01.2004 and as well as possession and payment of entire consideration was admitted.

The trial Court, on the basis of the pleadings of the parties, framed the following issues:-

- “1. Whether plaintiff is entitled to decree for specific performance as prayed for? OPP*
- 2. Whether plaintiff is ready and willing to perform his part of contract? OPP*
- 3. Whether suit is not maintainable in the present form? OPD*
- 4. Whether plot was allotted to a partnership firm, if so, to what effect? OPP*
- 5. Whether defendant no.3 was not competent to receive total sale consideration on behalf of other defendants? OPD*
- 6. Relief.”*

Plaintiff herself as PW-1 and also examined PW-2 Rattan Kapila, whereas the defendants examined DW-1 Des Raj and DW-2 Ashok Kumar. Both the parties also brought on record various documents.

The trial Court, on the basis of the evidence, held that the plaintiff was entitled to amount of ₹ 16,00,000/- from defendant Nos.3 and 4 along with interest @ 9% from 16.01.2004 till the filing of the suit. Respondent-plaintiff filed an appeal. The Lower Appellate Court, vide judgment and decree dated 20.01.2015, accepted the appeal by decreeing the suit in toto and dismissed the counter claim as well as cross-objections filed by defendant No.1.

Mr. Sanjiv Gupta, learned counsel representing the appellant-defendant No.1 submitted that there was no power in the power of attorney to sell the property in question, but the courts below have non-suited the same by relying upon the power of attorney of July, 1991. It was a case of fraud as appellant was not sole proprietor. It was a partnership firm in the name of M/s Darshan Lal Des Raj and on 22.05.1985, the firm applied for the allotment of the plot. Des Raj had given general power of attorney to Yashwant Krishan. Attorney executed in favour of Inderjit Bajaj was without any power to sell. Appellant never appeared before the Sub Registrar for execution of the general power of attorney, but the same was registered through impersonation and on acquiring the knowledge, the same was revoked vide Ex.D3 and Ex.D4 and as well as registered cancellation deeds Ex.D6 and Ex.D7 on 20.01.2004. There was no occasion for execution of the agreement by the alleged attorney as no consideration was received by the appellant. Plaintiff failed to place on record any evidence that the power of attorney holder ever received the consideration or parted with the same. Readiness and willingness on behalf of the plaintiff was conspicuously absent. The value of the property was more than ₹ 1.00 crore and sale was only for a paltry amount of ₹ 24,00,000/-. The aspect of the

hardship was not taken care of. The counter claim was not taken into consideration by the courts below by framing issue No.5A. However, the Lower Appellate Court sought the report and decided the same. No opportunity was given to assail the aforementioned findings. Sale under Section 200 of the Contract Act for short, the Act) by executing the attorney in favour of defendant Nos.2 to 4 was not an act of sale. Provisions of Section 228 of the Act do not bind the principal regarding the act done by the agent which he was not authorized to. In other words, it was beyond the authority and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant No.1, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant.

Des Raj DW-1 in cross-examination admitted that Darshan Lal retired from the partnership firm only in 1978 and he only remained the partner after retirement of Darshan Lal and became the sole proprietor of the business, but the name of the business remained as M/s Darshan Lal Des Raj. As per a specific question in the cross-examination, he did not know that the power of attorney as Ex.P7 contained the power to sell, rather stated that he appeared before the Sub Registrar and signed the documents. The aforementioned statement was totally against the stand taken in the written statement and memorandum of appeal. For the sake of brevity, relevant portion of his cross-examination read thus:-

“It is correct that Sh.Darshan Lal retired as a partner from the said firm in 1978. I remained the only partner in the said firm after retirement of Sh.Darshan Lal. I became the sole proprietor of the said business. However the name of my

business remained M/s Darshan Lal Des Raj.

I had duly appeared and duly executed Ex.P-6 and P-7 by appearing before the sub-registrar and signing the documents there.”

Defendant Nos.2 to 4 admitted that they had purchased the property from defendant No.1 through general power of attorney. Since there was a bar for re-sale of the property for a period of fifteen years, parties through the contract parted with the ownership by way of attorney, which is recognized under Section 202 of the Act. It was in that background of the matter, the drafts were prepared in the names of defendant Nos.2 to 4 as he was only a trustee as the property in the records stood in his name.

Execution of the agreement Ex.P2 was admitted by defendant Nos.2 to 4 on behalf of defendant No.1 being his attorney and as well as receipt of ₹ 24,00,000/-. Appellant-defendant No.1 could not lead any evidence to prove that the agreement was anti-dated as the power of attorney in favour of defendant Nos.2 and 3 was revoked by defendant No.1. The argument of Mr. Gupta on this ground must fail.

Power of Attorney Ex.P6 executed in favour of defendant No.2 Yashwant Krishan, envisages the power to transfer/sell and to do all other necessary acts, thus, defendant No.2 was authorised to deal with the property. It was an abundant precaution while executing the sale of the property in question in order to prevent any dispute in future.

Opposition of the suit at the behest of appellant-defendant No.1 deemed to be an act of greed to extract more money in view of increasing of prices of the properties.

Applicability of Section 228 of the Act in view of the categorical admission of the appellant-defendant No.1 pales into in significance.

For the reasons mentioned above, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

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