

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**RSA No.3480 of 2017 (O&M)**

**Date of decision:13.03.2019**

T.P.S.Bedi and another

... Appellants

Vs.

Pawan Kumar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. B.S.Bedi, Advocate  
for the appellants.

**AMIT RAWAL J.**

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiffs for declaration challenging the sale deed dated 10.01.2006 executed by defendant no.1 in favour of defendant no.2 to be illegal, null and void and for possession of the suit property has been dismissed by the trial Court and affirmed in appeal.

Plaintiffs, two in number, sought the aforementioned relief on the premise that the suit property was owned by plaintiff no.2-Walaiti Ram and was mortgaged with the Bank. Plaintiff no.1 agreed to purchase it for a sum of Rs.1.35 crores vide agreement dated 11.2.2004. Plaintiff no.2 executed a Power of Attorney dated 18.6.2004 in favour of plaintiff no.1. During that period, it revealed that a charge of Rs. 67 lakhs as tax was created on the suit property and liability towards the Bank was to the extent

of Rs.1.54 crores. In lieu of the aforementioned agreement to sell, plaintiff no.1 paid a sum of Rs.74 lakhs to the Bank. Since the prices of the property reduced, plaintiff no.1 wanted to discharge the liability of the firm and he being attorney of plaintiff no.2 executed an agreement to sell dated 1.2.2005 for selling the suit property for a sum of Rs.92 lakhs in favour of defendants no.1 to 4 by receiving a sum of Rs.30 lakhs as earnest money. The stipulated date for execution and registration of the sale deed was 10.05.2005.

On 16.02.2005, 1.3.2005, a sum of Rs.10 lakhs each was received by the plaintiff. However, another agreement dated 18.3.2005 was also executed by plaintiff no.1 in favour of defendants no.1 to 4 after receipt of Rs.12 lakhs and Rs.7.11 lakhs vide writing dated 4.5.2005 and the target date from 10.05.2005 was extended to 25.5.2005 and then again 25.8.2005, thus, in all plaintiff had received a sum of Rs.79.11 lakhs and deposited a sum of Rs.80 lakhs with the Bank besides an amount of Rs.74 lakhs which he already deposited.

In the meantime, one Suresh Kumar sought the recovery by filing a suit against plaintiff no.2 and plaintiff no.1, as an attorney of plaintiff no.2 appeared and suffered a statement qua non-alienation of the property and statement so recorded was kept on extending but in the meantime, plaintiff no.1 executed a power of attorney in favour of defendant no.1 to manage the property in question as he had already agreed to sell the property in question for a sum of Rs.92 lakhs but never intended to execute the sale deed without receiving the balance sale consideration. Plaintiff no.1 was surprised to receive the summons in contempt petition bearing No.262

of 2006 preferred by defendant no.5 realizing that defendant no.1 being special attorney had sold the property in question to defendant no.2 without his knowledge alleging to be violation of the terms of the undertaking and stay order.

It is in those contempt proceedings, plaintiff no.1 acquired the knowledge that defendant no.1 on 10.01.2006 had, executed the impugned sale deed for a paltry amount of Rs.30 lakhs, which was without the consent of plaintiff no.1.

Defendants no.1 and 3 filed the joint written statement and raised numerous preliminary objections qua maintainability. On merit, it was admitted that plaintiff no.1 purchased the property in question from plaintiff no.2 and execution of the power of attorney by plaintiff no.2 in favour of plaintiff no.1 and further agreement to sell in question in favour of defendants no.1 to 4, much less receipt of Rs.30 lakhs in lieu of the sale deed impugned. It was further averred that Excise & Taxation Department after execution of the agreement to sell executed by plaintiff no.2 in favour of plaintiff no.1 and subsequent agreement wrote a letter to defendant no.2 directing him to deposit a sum of Rs.8,90,219/- under the Haryana Government Sales Tax Act and a sum of Rs.1,95,416/- under the Central Sales Tax Act which was due against plaintiff no.2. Defendants no.1 to 4 deposited the amount and also another sum of Rs.1,65,000/- with the UHBVN. In view of the entire price was paid, defendants no.1 to 4 on the basis of attorney were competent to execute the sale deed. The story coined in the suit was emphatically denied.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to a decree for declaration alongwith possession as prayed for?OPP*
- 2. Whether suit of the plaintiff is not maintainable in its present form?OPD*
- 3. Whether the suit of the plaintiff is barred by limitation?OPD*
- 4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*
- 5. Relief.”*

The plaintiffs in support of the evidence brought on record the documents i.e. Ex.P1 to Ex.P21, Ex.PW1/2 and Ex.PW1/3, agreements, writings, special power of attorney, photocopy of order dated 21.08.2007 passed in COCP No.262 of 2006, details of arrears, letters, assessment orders, application dated 31.8.2004, Form S.T.28 etc.

On the other hand, defendants examined four witnesses and brought on record Ex.D1, Ex.DW2/A to Ex.DW2/E, Ex.DW3/A to D-electricity bills, Ex.DW3/E to H, receipts of bills, Ex.DW4/A, affidavit.

Mr. B.S.Bedi, learned counsel appearing on behalf of the appellants in support of the memorandum of appeal raised the following submissions:-

- (i) Defendant no.1 violated the terms and conditions of the Special Power of Attorney, for, sale deed was without consideration, in

other words, balance sale consideration was never received by the plaintiff.

(ii) The defendants failed to place on record any material with regard to the payment towards the outstanding dues of electricity, General and Central Sales Tax. In fact, the impugned sale deed was not executed in pursuance to the agreement to sell executed by plaintiff no.1 in favour of defendant nos.1 to 4.

(iii) The sale deed was also in violation of the terms and conditions of the agreement, therefore, nonest in the eyes of law. Defendants no.1 to 4 had admittedly paid a sum of Rs.79.11 lakhs to plaintiff no.1. The remaining amount of Rs.12.89 lakhs was to be paid before the execution of the sale deed. The target date after extension was 25.08.2005. Defendant no.1 was one of the purchasers, therefore, he could not become the vendor and sell the property in favour of other defendants, proving apparent collusion. A perusal of Special Power of Attorney dated 23.11.2005, Ex.P4 shows that it had never trappings of General Power of Attorney delegating all possible powers to defendant no.1.

I am afraid the aforementioned arguments are not sustainable in the eyes of law for the simple reason that before filing of the suit and till now, Special Power of Attorney resulting into act of sale deed impugned was never cancelled.

It is a matter of record that plaintiff is none else but practicing senior advocate in Karnal and cannot feign ignorance to the intricacy of law. There is a specific recital in Special Power of Attorney authorizing the Special Power of Attorney holder to sell the property in question. The

plaintiff when appeared in the witness box admitted due execution and registration of Special Power of Attorney. All these factors lead to irresistible conclusion that there was nothing due as the defendants in whose favour agreement to sell was entered into, had discharged the liability for payment of the balance sale consideration towards the outstanding dues as indicated above which had not been controverted or rebutted through any documentary evidence. All these facts show that it was an act of greed.

Having considered the aforementioned facts, I am of the view that there is no illegality and perversity in the concurrent findings of fact and law.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)  
JUDGE

March 13, 2019  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |