

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

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**CM No. 2771-C of 2018 in/and
RSA No. 1122 of 2018
Date of decision : 9.1.2020**

Prem Singh and another

.....Applicant/Appellants

Vs.

Sucha Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Jaideep Verma, Advocate, for the applicant/appellants

Rajbir Sehrawat, J. (Oral)

CM No. 2771-C of 2018 :

This is an application for condonation of 29 days delay in filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed.

Delay of 29 days in filing the present appeal is condoned.

Main Case (O & M) :

This second appeal filed on behalf of the plaintiff to the suit, through his legal representatives, challenging the concurrent findings recorded by both the Courts below, whereby the suit filed by the plaintiff was dismissed.

The facts in brief, giving rise to the present appeal are that the plaintiff-Raunaq Singh had executed a power of attorney in favour of his son Sucha Singh-respondent No.1/defendant No.1 on 22.7.1991. On the basis of that power of attorney, respondent No.1 had entered into a agreement to sell dated 16.8.1991 in favour of Manmohan Singh, the father of respondents No.2 to 5. Ultimately, the suit for specific performance was filed by Manmohan

Singh qua the said agreement. The suit was decreed vide judgment and decree dated 6.3.1995. Based upon that, the sale deed was got executed through the executing Court on 20.9.1996. Challenging the sale deed, the suit in the present case was filed by the plaintiff/granter of the GPA, on the ground that a GPA had already been cancelled by him vide cancellation deed dated 14.11.1991. Hence, the alleged sale deed is an outcome of fraud and misrepresentation and coercion. In the plaint, the plaintiff had asserted that after cancellation of the power of attorney he had informed respondent no.1 qua the same. Hence, respondent No.1 had no more got any authority to act on the GPA. Further case of the plaintiff had been that the plaintiff had even filed a suit for injunction against his son, the respondent No.1. That suit was decreed by the trial Court. It was further asserted that the suit for specific performance was collusive in nature. The plaintiff was not even impleaded as a party to the suit despite the GPA having been cancelled by him. On the basis of these pleadings, the plaintiff had approached the civil Court.

The said pleadings were denied by all the defendants, including the GPA holder. It was pleaded in the written statement that no notice qua the cancellation of the GPA was ever given to respondent No.1. Otherwise also, the agreement to sell had already been executed before the alleged date of cancellation of the GPA. All the other pleadings were also denied by the defendants.

After framing the issues, the parties led their respective evidence. After appreciating the evidence, the trial Court dismissed the suit filed by the plaintiff. Aggrieved against the same, the appeal was preferred before the lower Appellate Court. The said appeal was also dismissed by the lower

Appellate Court. Hence, the present appeal has been preferred.

In the arguments learned counsel for the appellants has reiterated the submissions on the same line as are taken in the plaint, as mentioned above. Hence, it is prayed that the Courts below have not appreciated the evidence in the right earnest. In addition, learned counsel for the appellants has further submitted that respondent No.1- Sucha Singh has deposed in cross examination that he does not know whether he was having knowledge of cancellation of the power of attorney or not. Hence, it has to be construed that respondent No.1 had the knowledge of the cancellation of the general power of attorney in his favour.

I have heard learned counsel for the appellants and perused the case file.

This Court does not find any substance in the arguments of learned counsel for the appellants that since the power of attorney had been cancelled, therefore, respondent No.1 did not have the necessary authority to execute the agreement to sell and to suffer a decree qua the property in favour of the defendant in the suit. Both the Courts below have recorded the concurrent finding of fact that the cancellation of power of attorney has not even been proved on record. Although the document is claimed to be a registered document, however, even the registration of the same is not proved by calling any witness from the registration office. No witness to the alleged deed of cancellation of GPA has been examined by the plaintiff. Therefore, both the Courts below have not committed any illegality or irregularity in recording a finding that the cancellation of power of attorney itself has not been proved on record in the case. Still further, even if the cancellation is taken into

consideration, the agreement to sell dated 16.8.1991 in favour of the defendants had been executed before the date of the alleged cancellation of the GPA, which is 14.11.1991. There is nothing on record to prove the fact that the agreement was actually created after the date of cancellation of GPA and that it was ante- dated. In view of this situation, the plaintiff cannot be heard to say that the agreement to sell was fraudulent or it was executed after the cancellation of the power of attorney.

Another aspect of the matter is that the sale deed in question was executed through execution proceedings of a decree; passed in a suit for specific performance. The decree has not even been challenged by the plaintiff. Therefore, the sale deed, which has been executed pursuant to the execution of a decree of the Court, cannot be set aside.

In view of the above, this Court does not find any illegality or perversity in the judgments and decree passed by the Courts below. Otherwise also, the learned counsel for the appellants has not pointed out any substantial question of law; as involved in the present case.

In view of the above, finding no ground to interfere in the judgments and decree passed by the Courts below, the present appeal is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

9.1.2020
Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No