

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

**RSA No.4712 of 2018 (O&M)
Date of Order:26.02.2020**

Mohan Singh and another

..Appellants

Versus

Vashisht Bhaskar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Puneet Kaur Shekhon, Advocate,
for the appellants.

Mr. Kawaljyot Singh, Advocate
for respondents no.1 and 2.

ANIL KSHETARPAL, J(Oral)

The defendants-appellants have filed the present regular second appeal against the judgment passed by the learned first appellate court resulting in passing a decree of possession in favour of the plaintiffs.

The plaintiffs are undisputed co-owners of the entire property. They filed the present suit on the basis of title alleging that before shifting to Delhi, they had requested the defendants to look after their land. After revocation of the licence granted in favour of the defendants, possession of the suit property was sought.

It may be noted here that the suit was filed through Power of Attorney-Anil Kahol.

The defendants contested the suit by pleading that their possession over the property is as prospective vendees. They also claim that lot of litigations are pending in the High Court by way of Civil Writ

Petitions.

On appreciation of evidence, learned trial Court dismissed the suit. However, in appeal, learned first appellate court has reversed the judgment and decree passed by the learned trial Court.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below and the record.

Learned counsel for the appellants has submitted that the Power of Attorney in favour of Anil Kahol is dated 15.04.2010, whereas the suit was filed on 13.06.2007. She, hence, submitted that the suit filed by the Power of Attorney on behalf of the plaintiffs was not competent. She elaborated by contending that revocation of licence by sending a notice prior to the institution of the suit is also without any authority as it was sent allegedly by the plaintiffs through Anil Kahol, a Power of Attorney holder. She further referred to provisions of Sections 196 and 200 of the Contract Act, 1872 to lay emphasis on the point that subsequent ratification of unauthorized act cannot injure third person. She further submitted that the Power of Attorney dated 15.04.2010 is by Vidur Bhaskar and Indu Bhaskar, whereas the plaintiffs are Vashisht Bhaskar and Indu Bhaskar. Hence, she submitted that there is no Power of Attorney by Vashisht Bhaskar in favour of Anil Kahol. She further submitted that Power of Attorney dated 15.04.2010 has not been proved. She further submitted that neither the date nor the year on which the licence was granted has been proved nor the plaintiffs have established that they remained in possession of the suit property upto the year 1985. She further submitted that as per the entry in the jamabandi, possession of the defendants is as prospective vendees and therefore, the story of licence stood belied.

On the other hand, learned counsel appearing for defendants no.1 and 2 has submitted that four persons, namely, Vidur Bhaskar, Smt. Indu Bhaskar, Vashisht Bhaskar and Prakash Nath Sharma had executed separate Power of Attorneys in favour of Atul Prakash Kahol, elder brother of Anil Kahol on various dates. Sh. Atul Prakash Kahol on the strength of different Power of Attorneys by the aforesaid 4 person had appointed Anil Prakash Kahol as power of attorney holder vide deed dated 19.07.1996. He further submitted that since the original attorney was lost, therefore, fresh General Power of Attorney was executed by Vidur Bhaskar and Smt. Indu Bhaskar in favour of Anil Kahol in which it was specifically recorded as under:-

“And whereas we the executants had earlier executed in General Power of Attorney in favour of Shri Atul Prakash Kahol son of Late Shri Inder Prakash Kahol, resident of VPO-Haryana, Tehsil & District-Hoshiarpur, Punjab with an empower to appoint, nominate, constitute and authorised to any one his attorney and in exercise of this power Atul Prakash Kahol further gave a Power of Attorney to Anil Prakash Kahol @ Anil Prakash Kahol vide GPA executed on dated 19.07.1996 issued at Lucknow, U.P.”

He, hence submitted that subsequent Power of Attorney is only to ratify the action which has been taken and to regularise the steps which have been taken by the Power of Attorney holder. He further submitted that even if suit is treated to have been filed by Indu Bhaskar, who is one of the co-owner, would be maintainable on behalf of the other owners particularly when the other owners does not have any objection. He further submitted that primary evidence i.e. Power of Attorney dated 15.04.2010, duly notarized has been produced and Anil Kohal has appeared in evidence and

stated that the aforesaid Power of Attorney was executed by the executants in his favour. He, hence, submitted that the Power of Attorney dated 15.04.2010 has been proved.

He further submitted that the plaintiffs have filed the present suit on the basis of title and therefore, in absence of defendants having any right, title or interest in the property, or right to continue in possession, first appellate court has correctly decreed the suit. He further submitted that the defendants have failed to prove that they are in possession of the property in part performance of the agreement to sell so as to give them right to continue in possession in part performance of the contract.

This Court has critically analyze the arguments of learned counsels.

As regards first argument of learned counsel for the appellants, which is based upon Section 200 of the Contract Act, it may be noticed that in first blush the argument appears to be attractive, however, on close scrutiny found without substance. In the present case, it has come on record that four persons named above had executed Power of Attorneys in favour of Atul Parkash Kahol, who in turn had executed a Power of Attorney in favour of Anil Kahol on 19.07.1996. Anil Kahol, on the basis of the aforesaid attorney issued notice on behalf of the owner, revoking the licence in favour of the defendants and thereafter filed the suit on 13.06.2007. During the pendency of the suit, co-owner Indu Bhaskar executed a fresh Power of Attorney in favour of Anil Kahol wherein the steps already taken by Anil Kahol were ratified. In such circumstances, Section 200 of the Contract Act would have no application, particularly when existence of Power of Attorney dated 19.07.1996 is not disputed. In

the written statement filed by the defendants, they did not dispute the existence of Power of Attorney dated 19.07.1996 executed by Atul Kahol in favour of Anil Kahol. They had only taken a stand that the aforesaid Power of Attorney does not authorize Anil Kahol to file the suit. In such circumstances, existence of Power of Attorney dated 19.07.1997 is not in dispute. Subsequent Power of Attorney dated 15.04.2010 is only to ensure that the suit is not dismissed on any technical ground. Hence, the argument of learned counsel based on Section 200 of the Contract Act cannot be accepted.

Next argument of learned counsel with regard to absence of attorney by Vashisht Bhaskar is to be noted and rejected, particularly when Indu Bhaskar has executed a Power of Attorney in favour of Anil Kahol. Vashisht Bhaskar had executed attorney in favour of Atul Kahol, who in turn had authorised Anil Kahol to file the suit.

Next argument of learned counsel that the Power of Attorney dated 15.04.2010 has not been proved is also to be noted and rejected, particularly when primary evidence i.e. Power of Attorney which is duly notarized has been produced. Anil Kahol has appeared in evidence and has stated that the aforesaid attorney was executed by the owners in his favour.

Argument of learned counsel that Anil Kahol has not deposed that Smt. Indu Bhaskar had signed the attorney in his presence is also without substance, particularly when Anil Kahol has stated that the owners had executed Power of Attorney dated 15.04.2010 in his favour.

As regards next argument of learned counsel with regard to failure of the plaintiffs to prove that they were in possession upto 1985 and the land was given on licence is also found without substance, particularly

when the plaintiffs are proved to be the co-owners of the property and the defendants have failed to prove any right, title or interest in the property. The suit filed by the plaintiffs was on the basis of title and the onus is on the defendants to prove that they are entitled to continue in possession of the property.

Last argument of learned counsel for the appellants is based upon Section 53-A of the Transfer of Property Act. Defendants have failed to establish that their defence falls within the scope of Section 53-A of the Transfer of Property Act. Section 53-A of the Transfer of Property Act which is commonly known as right to protect the possession in part performance of the contract requires the defendants to plead and prove that they were always ready and willing to perform their part of the contract and they have taken some steps in furtherance of the agreement to sell. In the present case, the defendants have miserably failed to prove the aforesaid facts.

In view thereof, this court does not find any ground to interfere.

Dismissed.

February 26, 2020
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No