

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

CR-5950-2017 (O&M)

Date of decision: 07.07.2022

Subash Chander (Now deceased) through LRs

....Petitioners

Versus

Surinder Kumar through his attorney

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B.Raheja, Advocate for the petitioners

Mr. Umesh Kumar Kanwar, Advocate for

Mr. Raj Kumar Kakkar, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

In a pending first appeal, an application filed by the defendants, for the permission to amend their written statement, has been dismissed. The petitioners assail its correctness. The dispute is between the two brothers namely Surinder Kumar and Subash Chandra and their families. They inherited certain properties from their father. Surinder Kumar filed a suit claiming that the sale deed executed by Subash Chandra is illegal, null and void whereas the defendant while filing the detailed written statement, claims that Surinder Kumar on receipt of the entire sale consideration had executed a general power of attorney in his favour which neither could be cancelled nor revoked as it was covered within the scope Section 202 of the Indian Contract Act, 1872. Para 2 and 3 of the written statement is extracted as under:-

“2. That para no.2 of the plaint is correct to the extent that the plaintiff is the real brother of Subash Chander defendant no.1. The execution of the general power of attorney in favour of defendant no.1 on 4.7.1991 is also admitted. The relations between the parties were very much cordial

at that time and remained cordial for quite a long time. The relations between the parties became strained only, when defendant no.1 executed the sale deed in favour of defendant no.2 on the basis of the power of attorney executed by the plaintiff. The plaintiff has become dishonest. He had already received the sale price of his share. One sale deed was executed by the plaintiff in favour of defendant no.1 in the year 1979. Plaintiff had received the sale price of the remaining share and had executed the power of attorney in favour of defendant no.1. On receipt of the sale price, plaintiff was not competent to cancel the power of attorney given in favour of defendant no.1. The execution of the sale deed in favour of defendant no.2 is admitted. However it is not admitted that the plaintiff had cancelled the power of attorney on 5.1.2001. It appears that the said document had been fabricated in order to cause irreparable loss to the defendants. No application was given by the plaintiff in the office of Sub Registrar, Ferozepur for not registering any sale deed which may be presented by defendant no.1 .

3. That para no.3 of the plaint is correct to the extent that the litigation has started between the parties, but it is wrong that the sale deed dated 7.12.2011 in favour of defendant no.2 is the result of fraud and cheating committed by the defendants with the plaintiff. The sale deed is legal and valid. The sale price has already been received by the plaintiff and no fraud has been committed with the plaintiff. The plaintiff was not competent to cancel the power of attorney after receipt of the sale price. It is wrong that the plaintiff had not received anything from defendant no.1. It is wrong that wrong boundaries have been given in the sale deed. The greed has crept in the mind of the plaintiff. He has subsequently executed two sale deeds in favour of Harinder Singh and Deepak Kumar regarding the property already sold in favour of defendant no.1 in the year 1979.”

It is alleged that the trial court declined to go into the plea on the ground that the evidence led by the petitioner is beyond the pleadings forcing the petitioners to file the application seeking amendment of the written statement in order to elaborate on the already pleaded case.

Heard learned counsel representing the parties at length and with their able assistance perused the paperbook. Order 6 rule 2 of the Code of Civil Procedure, 1908 provides that the pleadings shall contain, and contain, only a statement, in a concise form of the material facts on which the party asserting relies upon. It is specifically provided that the party is not required to incorporate the related evidence in its pleadings. Order 6 Rule 2 is extracted as under:-

“2. Pleading to state material facts and not evidence.- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

Thus, the defendant was required to plead only the material facts and that also in a concise form. Elaboration of the facts in the pleadings, as already stated, is not necessary. This Court has no doubt that the First Appellate Court would keep the aforesaid principle in mind while deciding the first appeal.

With these observations, the revision petition is disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

07.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE