

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 408 of 2013 (O&M)

Date of Decision: 19.04.2022

Maninderjit Singh

... Appellant(s)

Versus

Raju Kaur Samra and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vivek Salathia, Advocate
for the appellant(s).

Mr. Gurdial Singh Jaswal, Advocate
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. While assailing the concurrent findings of fact, arrived at by both the Courts below, the plaintiff, through his legal representative, has filed the present regular second appeal.

2. Some facts are required to be noticed. While claiming to be the owner in possession of 181 kanals and 19 marlas of land, the plaintiff, through his attorney, filed the suit claiming that the defendants have no right, title or interest in the property. It is the case of the plaintiff that the defendant No.2 had executed a general power of attorney from the plaintiff, who is settled in Malaysia by playing fraud, on 26.08.2008. The plaintiff has revoked the aforesaid power of attorney vide deed of revocation dated 03.06.2009 and thereafter, served notice on the defendant No.2 to this effect on 11.07.2009. In the meantime, the defendant No.2 had executed an

agreement to sell with respect to 181 kanals and 19 marlas of land in favour

of his wife i.e. the defendant No.1 and also executed a registered sale deed with respect to 78 kanals and 14 marlas of land for a total sale consideration of ₹25,60,000/-. The defendants contested the suit and submitted that the plaintiff had executed the general power of attorney dated 26.08.2008 on receipt of the sale consideration and it is for that reason only the general power of attorney was made irrevocable. The trial Court, on appreciation of evidence, partly decreed the suit while declaring that the plaintiff is owner in possession of 103 kanals and 5 marlas of land. Whereas the suit, with respect to 78 kanals and 14 marlas of land, was dismissed. The trial Court has recorded the following findings:-

- a) The plaintiff has never appeared in evidence and faced cross-examination to prove the alleged fraud.
- b) The general power of attorney was notarized in Malaysia where the plaintiff was residing and it is attested by the High Commission of India at Kuala Lumpur. The general power of attorney is also embossed by the Commissioner, Jalandhar Division, Jalandhar.
- c) No evidence has been produced to prove that Piara Singh was of frail health.

3. The First Appellate Court, after re-appreciation of the evidence, dismissed the appeal. It also noticed that the general power of attorney dated 26.08.2008 has never been cancelled. In fact, previously also, Piara Singh had executed a general power of attorney in favour of the defendant No.2 on 05.11.2007, which has been, in fact, revoked vide revocation deed dated 03.06.2009.

4. Heard the learned counsel representing the parties and with their able assistance, perused the judgments passed by both the Courts below and the record, which was requisitioned.

5. The learned counsel representing the appellant contends that the appellant's application for permission to lead additional evidence under Order XLI Rule 27 CPC has not been decided, therefore, the matter is required to be remitted back. He further submits that Piara Singh is not proved to have come to India on the date the agreement to sell was executed, therefore, the payment of ₹50,00,000/- is not proved.

6. Per contra, the learned counsel representing the respondents has submitted that there is no substance in the application filed by the appellant as the passport, which has been sought to be produced, expired on 21.03.1997, whereas the documents, in question, were executed after a period of more than ten years from the date of expiry of the passport. He further submits that from the reading of the general power of attorney dated 26.08.2008, it is evident that the general power of attorney was executed for a valuable consideration and it was for this reason only, the same was made revocable. He relies upon Section 202 of the Indian Contract Act, 1872 (hereinafter referred to as "the 1872 Act").

7. Undoubtedly, an application under Order XLI Rule 27 CPC has not been decided by the First Appellate Court. However, this Court has examined its contents. Even if the application for leading additional evidence is allowed, the same does not advance the case of the appellant. The passport, which is sought to be produced in additional evidence, expired on 21.03.1997. The transaction in question is stated to have taken place

after a period of more than ten years. Moreover, the general power of attorney, executed by Piara Singh, proves that it was executed for a valuable consideration. Thus, Piara Singh admits the receipt of valuable consideration. Furthermore, Piara Singh has not stepped into the witness box. Thus, he failed to prove that the general power of attorney was the result of fraud or deception played by the defendant No.2. The plaintiff is required to stand on his own legs. Therefore, both the Courts below have correctly drawn an adverse inference against the plaintiff. The entire case of the plaintiff is based on the plea of fraud and deception. Once the plaintiff fails to substantiate the same, he cannot succeed in the appeal,.

8. As regards the plea of the plaintiff that he never came back to India after 1996, it would be noticed that the plaintiff, in order to prove the same, was required to lead cogent evidence including his own deposition. The plaintiff has failed to lead cogent evidence, thus, in that eventuality, he has no case in the appeal.

9. In view of the aforesaid discussion, no ground is made out to interfere. Hence, the present regular second appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 19, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No