

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

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RSA-532-2019 (O&M)

Reserved on : 01.02.2023

Date of Decision : 08.02.2023

Amrinder Singh

...Appellant

Versus

Jatinder Singh Bhatia and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Parvinder Singh, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings of fact returned by both the Courts below dismissing his suit for possession and permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement to sell dated 24.01.2003 regarding House No.635, Phase-3-B-1, SAS Nagar, Mohali measuring 10 Marlas averring in the plaint that defendant-respondent No.2 was the owner of the property and the defendant-respondent No.1 was the executor of the agreement to sell. It was averred in the plaint that the total consideration was Rs.22,60,000/- and that an amount of Rs.1 lakh was paid as earnest money. The last date for execution of the sale deed was 30.03.2003. The possession of the suit property was claimed to have been handed over to the plaintiff-appellant who had spent Rs.7 lakhs on its renovation. It is further the case that on 30.03.2003 the plaintiff-appellant reached the office of the Sub Registrar, Mohali for getting the sale deed registered. However, the defendant-respondents failed to show up.

On notice the defendant-respondent No.1 appeared and filed his written statement. On merits, it was admitted that defendant-respondent No.2 was owner of the suit property. The agreement to sell was denied. Even the receipt of an amount of Rs.1 lakh as earnest money was denied. It was further averred in the written statement that the agreement was forged and that the signatures of defendant-respondent No.1 were obtained on blank forms. Defendant-respondent No.2 filed his written statement wherein it was stated that there was no privity of contract between defendant-respondent No.2 and the plaintiff-appellant. It was further averred that defendant-respondent No.2 never entered into an agreement to sell qua the suit property with the plaintiff-appellant as alleged.

The following issues were framed by the Trial Court :

- 1 Whether the plaintiff is entitled to possession by way of specific performance of agreement dated 24.01.2003 ?
OPP
- 1(a) Whether defendant No.1 is agreement holder of defendant No.2 with respect to house in question ? OPP
- 1(b) Whether defendant No.1 entered into an agreement to sell dated 24.01.2003 with the plaintiff. if so, its effect ?
OPP
- 1(c) Whether the agreement to sell dated 24.01.2003 is result of fraud and misrepresentation? OPD
- 2 Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP
- 3 Whether the suit of the plaintiff is not maintainable in the present form ? OPD

- 4 Whether the plaintiff has no locus standi to file the present suit ? OPD
- 5 Whether the suit is barred by the principle of Limitation Act ? OPD
- 6 Whether the plaintiff has not come to the Court with clean hands ? OPD
- 7 Relief.

On the basis of the pleadings of the parties and the evidence on the record, the Trial Court dismissed the suit vide judgment and decree dated 28.10.2013. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant which also was dismissed vide the judgment and decree dated 18.07.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant would contend that the agreement to sell was executed by defendant-respondent No.1 on behalf of defendant-respondent No.2 on 24.01.2003. It is further the contention that a power of attorney was executed on 07.03.2003 by defendant-respondent No.2 in favour of defendant-respondent No.1 and that on the basis of the said power of attorney the agreement to sell dated 24.01.2003 stood ratified and hence defendant-respondent No.2 would be bound by the said agreement to sell.

Heard.

In the present case, admittedly, the owner of the suit property is defendant-respondent No.2. On the date of execution of the alleged agreement to sell dated 24.01.2003, there was no power of attorney executed by defendant-respondent No.2 in favour of defendant-respondent No.1. It is trite that no person can convey a better title than what he himself has. Defendant-respondent No.1 having no right, title or interest in the suit property on 24.01.2023 was a persona

non-grata and could not have entered into an agreement to sell qua the said property on behalf of defendant-respondent No.2. Though much emphasis has been laid on the power of attorney dated 07.03.2003 alleged to have been executed by defendant-respondent No.2 in favour of defendant-respondent No.1, however, the same was only a marked document and the same was not exhibited inasmuch the document was not proved in accordance with law. An argument was raised by the learned counsel for the plaintiff-appellant that since the original power of attorney was with the defendant-respondents, hence an application was filed under Order 41 Rule 27 CPC for production of the original by the defendant-respondents. Learned counsel has not been able to convince this Court that an application under Order 41 Rule 27 CPC would be maintainable for the production of the original document alleged to be in possession of defendant-respondent No.1. No precedents have been cited by the learned counsel. On a pointed query as to whether any efforts were made to prove the power of attorney by leading secondary evidence under Section 65 of the Indian Evidence Act, 1872, which could have been the proper procedure, since it was alleged that the original was in the possession of the defendant-respondents who refused to produce the same, learned counsel for the plaintiff-appellant has candidly admitted that no such application was filed. The power of attorney marked 'A' itself is alleged to have been executed on 07.03.2003. It is attested on 03.07.2003. The said power of attorney was for a limited period from 07.03.2003 to 30.03.2003 after which operation of the said power of attorney was to stand terminated. Learned counsel has not been able to convince the Court as to how on the basis of this power of attorney the action of defendant-respondent No.1 in executing the agreement to sell dated 24.01.2003 stood ratified.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present appeal which may require determination by this Court. Pure findings of facts have been returned by both the Courts below which call for no interference by this Court.

In view of the above the present appeal, which is wholly devoid of merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

08.02.2023
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO