

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6127-2015(O&M)

Reserved on:- 11.08.2023

Pronounced on:- 03.10.2023

Kanta Devi

....Appellant

Versus

Charan Singh and Anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. A.S.Khinda, Advocate for the appellant.

AMARJOT BHATTI, J.

1. The appellant-Kanta Devi has filed regular second appeal against impugned judgment and decree dated 06.05.2015 vide which appeal preferred against judgment and decree dated 04.09.2013 dismissing the suit of the plaintiff passed by Additional Civil Judge (Senior Division), Phagwara was dismissed.

2. As per the facts of the case, Kanta Devi-appellant/plaintiff had filed suit for permanent injunction restraining the defendants from alienating or transferring property No.404 situated in Guru Hargobind Nagar, Phagwara with the boundaries as detailed therein and further restraining the defendants from raising any sort of construction over this property illegally and forcibly along with the relief of mandatory injunction directing the defendants to restore the said property in its original residential house after demolishing the superstructure of shops raised two months ago and to remove the *Malba* therefrom and also suit for possession of the house in dispute.

Initially the suit was filed against Charan Singh-defendant No.1 and Jagjit Singh-defendant No.2 was impleaded subsequently. The case of the plaintiff was that she is a co-sharer along with her daughters namely Bhavishya Rekha Rai and Hemlata Rai and son Pankaj Rai. Originally the property was owned and possessed by her husband Dilbagh Rai who had already expired and the property was inherited by her along with her children in equal shares. It was claimed that the defendants have no right, title or interest in the said property. They were influential persons and wanted to grab the suit property. They were also extending threats to alienate the same and further change the nature of the property. They were also threatening to raise construction illegally and forcibly. In the absence of plaintiff, the defendant illegally and forcibly demolished the residential house No.404 about two months ago and raised construction of shops and changed the nature of property from residential to commercial property. Then they were further threatening to alienate the same. The defendants had taken illegal, forcible possession of this property in February 2007. The defendants were requested to deliver back the vacant possession of the property but they had refused and ultimately the suit was filed.

3. Notice of the suit was given to both the defendants. They had filed separate written statements by taking the same stand that the suit was not maintainable in the present form. The plaintiff had concealed material facts from the Court. She was not co-owner of the property in question. This property was originally owned by Dilbagh Rai who appointed Brij Lal Kalra as his General Power of Attorney holder. The registered General Power of Attorney dated 27.05.1982 is placed on record. Brij Lal Kalra on the basis of aforesaid General Power of Attorney of Dilbagh Rai sold the

suit property bearing No.404 along with other properties bearing No.402 and 403 situated in Hargobind Nagar, Phagwara along with his wife Usha Kalra, in favour of Surjit Singh, Charan Singh and Jagjit Singh. Regarding this sale, an agreement to sell dated 26.11.1985 was executed by receiving a sum of Rs.6 lacs as full and final sale consideration regarding plots No.402, 403 and 404. Accordingly, the plot No.404 at Guru Hargobind Nagar, Phagwara was in the ownership and possession of Jagjit Singh. This fact was well within the knowledge of plaintiff. The site plan produced on record was incorrect. The suit filed by the plaintiff was time barred. She had no *locus standi* to file the present suit. The defendant No.2 was in possession of demised premises in part performance of agreement to sell dated 26.11.1985 and the other defendant has no concern with the property in dispute. It was prayed that the suit filed by the plaintiff was without merits and the same may kindly be dismissed with heavy cost.

4. From the pleadings of the parties, following issues were framed on 21.12.2007 and additional issue No.1A was framed on 04.09.2013:-

1. Whether the plaintiff is entitled to seek injunction as prayed for?
OPP
- 1A. Whether the plaintiff is entitled to the possession of the suit property? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has no *locus standi* to file the suit? OPD
4. Relief.
5. In order to prove the suit, the plaintiff examined herself as PW1 and tendered affidavits Ex.PA and Ex.PW1/A respectively, Kuldeep Singh, Clerk, Office of Improvement Trust, Phagwara as PW2 and thereafter

closed her evidence.

6. In order to rebut the evidence of the plaintiff, the defendant No.2-Jagjit Singh himself stepped into the witness box as DW-1 and tendered documents Ex.D1 to Ex.D7. The defendants also examined Gurmit Singh (L.D.C.), Punjab State Power Corporation, Model Town Phagwara as DW2, Sarabjit Kumar, Registration Clerk, Officer of Sub Registrar, Phagwara as DW3, Ashok Kumar, Deed Writer as DW4, Ramesh Kumar, Nambardar as DW5 and Randhir Rana as DW6. Thereafter, defendants closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the suit filed by the plaintiff Kanta Devi was dismissed vide judgment and decree dated 04.09.2013 passed by the then Additional Civil Judge (Senior Division), Phagwara. Feeling aggrieved of the aforesaid judgment and decree, Kanta Devi had filed Civil Appeal against Charan Singh and Jagjit Singh respondents/defendants, which was also dismissed vide judgment and decree dated 06.05.2015. Feeling aggrieved of this judgment and decree, the appellant/plaintiff has filed regular second appeal.

8. I have heard the arguments advanced by learned counsel for the appellant/plaintiff. Learned counsel for the appellant/plaintiff raised the ground that undisputedly property No.404 was allotted to Late Dilbagh Rai who was owner of the property. This fact has been confirmed by Kuldeep Singh, Clerk, Office of Improvement Trust, Phagwara PW2. He has proved on record the letter of allotment Ex.P2 along with site plan Ex.P3. The respondents/defendants have no document of title in their possession. After the death of Dilbagh Rai husband of the appellant/plaintiff, this property is inherited by her along with her daughters and son in equal shares. Late Dilbagh Rai during his life time

never agreed to sell the property in favour of any person. It is well settled proposition that neither execution of General Power of Attorney nor mere execution of agreement to sell will confer any title in favour of the vendee. There is nothing on record to show that any of the defendant ever approached any court of law seeking specific performance of agreement to sell dated 26.11.1985. Therefore, Jagjit Singh respondent/defendant No.2 cannot claim any right, title or interest in the property in dispute. In fact the alleged agreement to sell is false and forged document created at the back of her husband Late Dilbagh Rai. There is no proof regarding payment of entire sale consideration. Therefore, the defendants cannot derive any benefit under the provisions of Section 53-A of Transfer of Property Act 1882.

The facts of the case and the evidence on record were not rightly appreciated either by the Court of Additional Civil Judge (Senior Division), Phagwara while passing judgment and decree dated 04.09.2013 nor the facts of the case, evidence on record or the legal proposition was rightly considered by Additional District Judge, Kapurthala while passing judgment and decree dated 06.05.2015. Therefore, the findings given in the aforesaid judgments may kindly be set aside by accepting the present appeal and the suit filed by the appellant/plaintiff seeking the relief of permanent injunction, mandatory injunction and possession may kindly be decreed.

9. I have considered the arguments advanced by learned counsel for the appellant/plaintiff. Appellant/plaintiff had filed the suit for permanent injunction restraining the defendants from alienating or transferring property No.404 situated in Guru Hargobind Nagar, Phagwara and also from raising any type of construction or changing its nature

illegally and forcibly and also suit for mandatory injunction directing the defendants to restore the property to its original position by demolishing the construction of shops raised illegally and forcibly by the defendants and to remove the *Malba* therefrom and also suit for possession of the house in question.

The facts of the case indicate that property No.404 was owned by Late Dilbagh Rai husband of the appellant/plaintiff - Kanta Devi. This fact is not disputed by the respondents/defendants. The plaintiff had examined Kuldeep Singh, Clerk from the office of Improvement Trust, Phagwara as PW2 who produced the summoned record regarding plot No.404. The allotment letter Ex.P2 is in the name of Dilbagh Rai and the site plan is Ex.P3. This witness further confirmed that Dilbagh Rai had given one General Power of Attorney to Brij Lal Kalra. It has come in the statement of Kanta Devi PW1 that her husband expired on 05.12.2005. He had left behind his widow Kanta Devi, the appellant/plaintiff along with two daughters and a son. It is also matter of record that after the death of Dilbagh Rai, the property in question has never been transferred in the record of Improvement Trust, Phagwara or Municipal Committee, Phagwara in the name of legal heirs of Late Dilbagh Rai. Therefore, there is no dispute that property No.404 was allotted to Late Dilbagh Rai by Improvement Trust, Phagwara.

It is a case of respondents/defendants before the trial Court that Late Dilbagh Rai had given registered General Power of Attorney dated 27.05.1982 in favour of Brij Lal Kalra. In order to prove the execution of aforesaid General Power of Attorney, the counsel for defendants examined DW5 Ramesh Kumar who was one of the marginal witness of the said General Power of Attorney . He categorically deposed

that the said General Power of Attorney was written at the asking of Late Dilbagh Rai vide which Brij Lal Kalra was appointed as power of attorney holder. He was one of the marginal witness to the aforesaid General Power of Attorney which is Ex.D1. Apart from this Sarabjit Kumar, Registration Clerk, office of Sub Registrar, Phagwara has also stepped into the witness box as DW3 and confirmed the registration of aforesaid General Power of Attorney in the office of Sub Registrar, Phagwara vide which Late Dilbagh Rai had given General Power of Attorney in favour of Brij Lal Kalra. He produced the original record i.e. General Power of Attorney dated 27.05.1982 Ex.D10. It is a case of respondents/defendants that on the basis of this General Power of Attorney, Brij Lal Kalra executed agreement to sell dated 26.11.1985 regarding plots No.402, 403 and 404 in favour of Surjit Singh, Charan Singh and Jagjit Singh. In pursuance to this agreement to sell, they had paid entire sale consideration to the tune of Rs.6 lacs and the possession was also delivered in their favour. The said agreement to sell dated 26.11.1985 is Ex.D2 which is again proved on record by examining Ashok Kumar, Deed Writer as DW4. He confirmed that the agreement to sell was scribed by him at the instance of the parties, after writing it was read over to them and they had affixed their signatures admitting it as correct in the presence of marginal witnesses. The original agreement to sell proved on file is Ex.D2. It was entered in his register at serial No.1065 dated 26.11.1985. The relevant entry of his register is Ex.D11. Randhir Rana DW6 one of the witness of agreement to sell has also confirmed these facts. Therefore, the respondents/defendants led convincing evidence on record to prove the General Power of Attorney dated 27.05.1982 on this basis of which Brij Lal Kalra had executed agreement to sell dated 26.11.1985. As per the

recitals in the aforesaid agreement to sell dated 26.11.1985, after the receipt of entire sale consideration the possession was also delivered to the vendees and they were given the liberty to use the property as per their desire and they could raise construction. It was further mentioned that they could alienate the same by dealing with the Improvement Trust directly. The appellant/plaintiff had denied the aforesaid facts, however the cross examination of Kanta Devi as PW1 is material. During her cross examination she admitted initially that she was aware of the fact that her husband Late Dilbagh Rai had given one General Power of Attorney in favour of Brij Lal Kalra. She claimed that she had never gone through the contents of said General Power of Attorney. During further cross-examination, she started claiming that the power of attorney was given in order to get electricity and water connection. She denied the execution of alleged agreement to sell dated 26.11.1985 regarding plot No.404. However, during her further cross examination she admitted that her residential house is situated at a distance of about 3/4 furlong from the plot in dispute. She had seen when the construction was being raised on the plot in dispute. She further admitted that now there is a triple storey building over the plot in question. During further cross examination she also admitted that said Brij Lal Kalra was special friend of her husband Late Dilbagh Rai. Apart from this Jagjit Singh defendant No.2 has stepped into the witness box as DW1 to prove his stand taken in the written statement. He also examined Gurmit Singh, Clerk from PSPCL as DW2 to prove the electricity connection in the said premises and he had also placed on record some of the bills Ex.D2 to Ex.D7. Even otherwise, the appellant/plaintiff has not disputed the fact that defendant No.2 Jagjit Singh is in possession of the property on which he has raised triple storey

building. The respondents/defendants have been able to prove before the trial Court that on the basis of agreement to sell dated 26.11.1985 Ex.D1, Jagjit Singh agreed to purchase plot No.404 by payment of entire sale consideration and thereafter, he was handed over the possession of the property on which he raised construction. Therefore, it is rightly held by the courts below that the rights of defendant No.2 are protected under the provisions of Section 53-A of Transfer of Property Act, 1882.

In view of these facts and circumstances of the case discussed above the verdict given by the Courts below is based on proper appreciation of the facts and the evidence on record. Therefore, I do not find any reason to disagree with the judgments given by the Courts below and the same are accordingly upheld.

Resultantly, the appeal preferred by the appellant/plaintiff is dismissed.

The records received from the two Courts below be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

03.10.2023

Sunil Devi

(AMARJOT BHATTI)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No