

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

136

RSA-2894-2022(O&M)
Date of Decision:06.11.2023

Amrit Lal

....Appellant

Versus

Brij Mohan and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Chandan Singh, Advocate
for the appellant.

Mr. Surinder Garg, Advocate and
Mr. Abhijeet Garg, Advocate
for respondent No.1.

Mr. Sapan Dhir, Advocate
Mr. Abhimanyu Jairath, Advocate
Mr. Nancy Jindal, Advocate
Mr. Amit Sharma, Advocate
for respondent No.2.

Mr. T.P.S. Makkar, Advocate
for respondents No. 3 and 4.

SANJAY VASHISTH, J.(Oral)

CM-12435-C of 2023

Present application has been filed under Section 151
C.P.C. for seeking preponement of the date of hearing of the main
appeal from 14.11.2023 to any earlier date.

Notice of the application.

Mr. Surinder Garg, Advocate, Mr. Sapan Dhir, Advocate
and Mr. Tejinder Pal Singh, Advocate accept notice on behalf of

respondents No. 1 to 4 respectively and states that they have no objection, in allowing the present application.

For the reasons enumerated in the application, the same is allowed and the main appeal is preponed and taken up today itself for hearing.

Application stands disposed of.

RSA-2894-2022(O&M)

1. Present regular second appeal has been filed by appellant-defendant No.3/Amrit Lal against the concurrent findings of decretal of civil suit in regard to the alternative relief in favour of the plaintiffs.

2. As per the factual aspects of the case, on 05.03.2008 plaintiffs entered into an agreement to sell with defendant No.3 as General Power of Attorney of Mahant Pritam Dass Chela Mahant Bhagwan Dass Chela Mahant Puran Dass of Dera Lang Village Sardulgarh, District Bathinda. It is undisputed that General Power of Attorney (Ex.P4) in favour of Appellant/defendant No.3-Amrit Lal is registered in the office of Sub-Registrar, Gidderbaha bearing its No.98 dated 27.12.2004.

3. Pleaded case of the plaintiffs is that in the agreement to sell dated 05.03.2008, the subject matter i.e. property for sale was a shop measuring '23 x 17' i.e. 1 Marla 4 Sarasahi 13/576 share of 3 Kanals 4 Marlas in Khewat No.1334 Kahatauni No. 2624 bearing Mustil No.175 Killa No.16/2 (3-4) as per Jamabandi for the year

2008-2009, situated within the revenue estate of Village Husner Tehsil Gidderbaha, District Sri Muktsar Sahib. Total amount of sale consideration was fixed as Rs.8,00,000/- and at the time of execution of agreement to sell dated 05.03.2008, defendant No.3-Amrit Lal (appellant herein) as General Power of Attorney of Mahant Pritam Dass received earnest money of Rs.3,00,000/-. The target date for execution of sale deed was fixed as 15.02.2010.

However, before the target date, Mahant Pritam Dass expired on 28.04.2008 and thereafter, suit for possession by way of specific performance and alternative suit for recovery was instituted by the plaintiffs (respondents herein) on 25.09.2010. Appellant/defendant No.3, though, appeared in the suit proceedings but did not choose to file any written statement to controvert the pleadings raised by the plaintiffs. Undoubtedly, there could not be any pleading on behalf of Mahant Pritam Dass, who already expired on 28.04.2008. Defendants No. 1-Mahant Kumbh Dass and defendant No.2-Sant Trimukh Dass pleaded in their written statement that Mahant Pritam Dass had no right to sell out the property in dispute because Mahant Pritam Dass was not equipped with any title to enter into any such agreement.

4. On the basis of the pleadings of the parties, vide order dated 03.10.2013, learned trial Court framed following five issues:

- ' 1. Whether the plaintiff is entitled to possession by way of specific performance agreement to sell dated 05.02.2008 as prayed for? OPP*
- 2. Whether the plaintiff is entitled to alternative relief of recovery of Rs.8 lacs as compensation*

alongwith interest @ Rs.2% per month as prayed for?OPP

3. Whether the plaintiffs always remained and are still ready and willing to perform their part of contract of agreement?OPP

4. Whether the plaintiff has no locus standi or cause of action? OPD

5. Relief.'

5. After leading of evidence all the parties, learned trial Court concluded that agreement to sell dated 05.03.2008 entered by defendant No.3-Amrit Lal being General Power of Attorney of Mahant Pritam Dass is well proved and established on the record.

For the sake of convenience, findings recorded by learned trial Court in paragraph No.28 are as under:

'28. The plaintiffs have proved on record the agreement to sell vide which they agreed to purchase the shop and same is proved as Ex.P5 and the agreement to sell was executed by proposed vendor Amrit Lal who as power of attorney proved as Ex.P4, who had power of Attorney of Mahant Pritam Dass and plaintiff has examined marginal witnesses PW4 and PW5 and also one stamp vendor as PW6 and Jamabandi Ex.P6 showing that Mahant Pritam Dass was owner and has right to sale and plaintiffs also proved on record their attendance on the date fixed for registration as Ex.P1 and P2. From perusal of the record it is clear that there was agreement to sell between defendant No.3 and plaintiffs whereby the suit property was agreed to sell by defendant No.3 in favour of plaintiffs.'

6. It was further held that defendant No.3 was not competent to sell the property because property belongs to the Dera. It is also concluded that as per evidence available on record, plaintiffs have proved due execution of agreement to sell and also paid an earnest money to defendant No.3, and the said fact has not been disproved by defendant No.3.

Findings recorded by learned trial Court in paragraph
No.36 reads as under:

'36. In the light of discussion above sell so defendant No.3 was not competent to sell the property and the property belongs to the Dera but the plaintiffs have proved on record the agreement to sell whereby they gave earnest money to the defendant No.3 and this factum has not been disproved by defendant No.3. As per section 33 of Specific Relief Act plaintiffs are entitled to reinstatement. So these issues goes against the plaintiffs and in favour of the defendants No. 1 and 2.'

7. Lastly, learned trial Court directed defendant No.3 to pay back the earnest amount of Rs.3,00,000/- alongwith interest at the rate of 9% per annum from the date of agreement till the date of decree and also future interest @ 6% per annum from the date of decree till actual realization.

8. When the issue reached before the learned Appellate Court at the instance of defendant No.3 (appellant herein), the learned lower Appellate Court also recorded its findings that the agreement to sell is a genuine document and in pursuance to the said General Power of Attorney of Mahant Pritam Dass, defendant No.3-Amrit Lal received an amount of Rs.3,00,000/- as earnest money. Therefore, learned Lower Appellate Court also upheld the findings recorded by learned trial Court.

9. Mr. Baltej Singh Sidhu, Sr. Advocate with Mr. Chandan Singh, Advocate, learned Senior counsel for the appellant submits that infact, by virtue of Section 201 of the Indian Contract Act, 1872, the

amount is recoverable either from the estate left by Mahant Pritam Dass or from his legal heirs/legal representatives.

For the sake of conveniences Section 201 of the Indian Contract Act, is reproduced as under:

'201. Termination of agency. An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.'

10. By relying upon Section 201 of the Indian Contract Act, Mr. Sidhu, learned Senior counsel submits that appellant/defendant No.3-Amrit Lal cannot be held liable to pay back the earnest money because with the death of the principal all the rights of the agents came to an end/or ceased. In support of his submissions Mr. Sidhu, learned Senior counsel relies upon decision of Hon'ble Gujarat High Court titled as **Mahesh Govindji Trivedi Vs. Legal Heirs of Bhagvanji Govind ji Trivedi and others 2013 (47) R.C.R. (Civil) 864** and has made reference to paragraph No.27. For the sake of convenience, paragraph No.27 reads as under:

'27. Reliance sought to be placed by analogy on Somabhai Patel's case (supra) is also totally misplaced. It is for defendant No.1 to explain why the sale deed was not executed till the death of Ramalaxmiben (i.e. 2004) when the agreement to

sell was executed as early as in 1997. Further, sale deed, in fact, came to be executed as late as in 2007, i.e. after the death of Ramalaxmiben. The submission that the original owner cannot challenged the transaction and therefore, the person deriving interest through original owner cannot challenge the transaction, has even on factual basis. This submission has no substance, nor the case of Somabhai Patel (supra) has nay applicability to the facts of the present case.'

11. Mr. Sidhu, learned Senior Counsel for the appellant further cites judgment of Hon'ble Rajasthan High Court, titled as **Prahlad and others VS. Laddevi and others 2007(5) R.C.R (Civil)**

754 and referred to paragraphs No.9, the same reads as under:

'9. A power of attorney granted by the donor to the donee is operative and effective only during the lifetime of the donor. The donor and donee stand in relationship of master and agent. Since the actions done by the donee are deemed to be actions done on the part of the donor, naturally such a power of attorney cannot be operative or be effective after the demise of the donor. Therefore, the power of attorney granted by Mr. Jain on 28.05.1997 came to an end on 20.10.1997 upon his demise.'

12. This Court has gone into the facts and circumstances of the present appeal as well as the facts enumerated in paragraph No.27 of the **Mahesh Govindji Trivedi case (supra)**. As per the facts of **Mahesh Govindji Trivedi case (supra)**, the right of the agent i.e. General Power of Attorney, is under discussion, that with the death of the principal, the agent loses all rights and therefore, he cannot challenge the transaction after the death of the principal.

On being asked by this Court also, Mr. Sidhu, learned Senior counsel for the appellant apprises this Court that no evidence has ever been brought on record by the respondents to prove that the

earnest amount of Rs.3,00,000/- was ever deposited by them in the account of Mahant Pritam Dass or any other account belonging to him and neither there is any oral assertion; nor any documentary evidence to prove that the earnest amount of Rs.3,00,000/- received by defendant No.3 was handed over to Mahant Pritam Dass or any of his legal heirs to prove that he had infact, discharged his duty by paying the earnest money received to the principal.

Undoubtedly, defendant No.3 could not lead any such evidence because he never putforth his pleaded case before the Courts below. Rather, as per the settled law, the factum of not filing of any written statement, which is the option of any of the defendant(s). In the circumstances, where, a specific plea of making payment to defendant No.3 is taken and same is neither answered, nor denied; would amount the acceptance of pleading raised by the plaintiffs. Mr. Sidhu, learned Senior counsel for the appellant, also could not point out from the records of the Courts below that defendant No.3 succeeded in asking any such relevant question from any of the witness appearing from the side of defendants No. 1 and 2.

Thus, both the cited judgments are not applicable to the facts and circumstances of the present case.

13 In the absence of any oral assertion or documentary evidence, there is no other option with this Court except to assume that the pleadings raised by the plaintiffs of receiving of earnest

amount of Rs.3,00,000/- by defendant No.3-Amrit Lal stands well established.

Therefore, taking note of the totality of the circumstances, I do not find any reason to deviate from the view point taken by both the Courts below. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands dismissed.

November 06, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no