

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-366-1991
Reserved on: 06.02.2024
Date of decision: 14.03.2024

KARTAR SINGH AND ORS. ..Appellants

Versus

CHANDER BHAN ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Rathee, Advocate
for the appellants.

Mr. M.S. Rana, Advocate
for Mr. Ashish Kapoor, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 This is defendant's appeal against the judgment and decree passed by the First Appellate Court while decreeing the plaintiff's suit for possession and recovery of Rs.360/- as rent, which in turn has reversed the judgment and decree passed by the trial Court.

1.2 In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 The parties hereinafter shall be referred to as their status in the suit. The plaintiff filed a suit for possession and recovery of Rs.360/- as arrears of rent claiming that the defendants are in possession of the property as tenant for the last 7 years and they have not paid rent for the last 3 years i.e. from 31.07.1980 to 31.07.1983. By notice dated 09.07.1983, the tenancy

has been terminated with effect from 01.08.1983. However, the plaintiff has refused to handover possession of the property and pay the due rent. The defendants (defendant No.1 is the father of defendants No.2 to 6). The defendants while contesting the case, claimed that the plaintiff is not the owner of the property and it is defendants No.2, 3 and Sh. Kuldeep Singh, Sh. Sanjeev Kumar, and Sh. Karambir Singh who are owners in possession of the house by virtue of a Civil Court decree dated 17.08.1982. The plaintiff gave Special Power of Attorney in favour of Sh. Kartar Singh regarding the house in question, and on the basis of aforesaid Special Power to Attorney he suffered a decree in favour of defendant No.2 and 3 and his three other children. The consideration amount of the house has already been paid to the plaintiff by defendant No.1 at Delhi. The defendants never remained in possession as tenants under the ownership of plaintiff. After filing the replication, the issues were framed, and the parties were permitted to lead evidence.

2. Evidence led by the respective parties:-

2.1 In oral evidence, the plaintiff examined PW-1 Sh. Surajmal, power of attorney holder of plaintiff who is also brother-in-law of the plaintiff. PW2 Sh. Mahendar Singh, PW3 Sh. Amar Singh, PW4 Sh. Kailash Bhushan were examined by the plaintiff.

2.2 Per contra, the defendants in their oral evidence examined Sh. Ram Kumar, a clerk from DC office, Sonapat, who brought file of case No.484, dated 17.08.1982, Dharambir versus etc. versus Chander Bhan. DW-2 Sh. Devinder Singh, Advocate, DW-3 Sh. Kartara (defendant No.1), DW-4 Sh. Chander Bhan, the plaintiff were also examined.

2.3 In the documentary evidence, the defendants also produced the Special Power of Attorney dated 03.08.1982, executed by the plaintiff in

favour of defendant No.1.

2.4 On evaluation of evidence, the trial Court dismissed the suit, however, the First Appellate Court has reversed the judgment and decree passed by the trial Court.

2.5 At this stage, it is appropriate to extract the relevant part of the Special Power of Attorney executed by the plaintiff in favour of defendant No.1, which reads as under:-

- “1. To look after the above said house on my behalf.*
- 2. To apply for mutation in the revenue record and can sign the applications, affidavit etc., on my behalf and can appear before the concerned department in respect or the above said house on my behalf.*
- 3. To present the sale deed for registration before the Sub-Registrar, Sonapat, Haryana or any other concerned department on my behalf and can do the needful as he likes.*
- 4. To engage any Advocate and can sign the vakalatnama and can sign the plaint, W.S., replication and can file the appeal if so required on my behalf by his own signatures and can appear before the concerned court and can give statement as he likes.*
- 5. To sell the above said house and can receive the consideration amount and can handover the vacant possession to any body as he likes by his own signatures and can use the said house as he likes.*

In witness whereof I have put my signatures on this deed of SPA on this 3rd day of August 1982 at Delhi.”

2.6 It has come in evidence that Sh. Chandra Bhan was residing in Delhi for quite some time, whereas, the Sh. Kartar Singh is residing in village Kakroi, where the property is situated. It is also evident that Kartar Singh has been authorized to execute the sale deed, engage an advocate, sign the vakalatnama, sign the plaint, written statement, replication and appeal. He has also been empowered to appear before the concerned Court and to give statement as he likes. He has also been authorized to sell the abovesaid house and to receive consideration and handover the vacant possession to anybody he likes and to use the said house as he likes. Sh.

Chander Bhan and Sh. Kartar Singh are not related to each other. It is the case of plaintiff that he inducted Sh. Kartar Singh as his tenant around 7 years before the filing of the suit. The registered Special Power of Attorney has been executed at New Delhi. Both the witnesses are also from New Delhi. Witness Sh. Ram Nivas is a resident of House No.21/35, Shakti Nagar, Delhi along with the plaintiff.

2.7 Sh. Chander Bhan did not appear in evidence as the plaintiff. On his behalf, Sh. Surajmal appeared as PW-1. Faced with the aforesaid situation, the defendants summoned Sh. Chander Bhan as their witness. The Court had to issue warrants of arrest in order to secure the presence of Sh. Chander Bhan. When Sh. Chandra Bhan appeared in evidence, he stated that he gave the house on rent at New Delhi. He did not execute power of attorney Ex.P-1. He claimed that he is totally illiterate, however, in the next sentence, he stated that he cannot speak, write and understand English language. Subsequently, he stated that he had signed on the power of attorney. During the cross-examination, he admitted that he had signed the plaint and vakalatnama in Hindi language. He admits the execution of power of attorney Ex.D-2, dated 03.08.1982, at New Delhi.

2.8 It shall be noted here that when Sh. Surajmal (power of attorney of plaintiff) appeared in evidence, he stated that Sh. Chandra Bhan cannot appear in Court as he is ill and can't walk. However, when Sh. Chandra Bhan appeared in evidence pursuant to the warrants of arrest, he nowhere mentioned about his ill health. Sh. Chandra Bhan is a shopkeeper running his shop in Delhi.

3. Reasons recorded by the First Appellate Court:-

3.1 On careful study of the judgment passed by the First Appellate Court, it is evident that the following reasons have been recorded to set

aside the judgment and decree passed by the trial Court:-

1. The plaintiff is not a party to the judgment and decree dated 17th August 1982, hence, the same is not binding on him.
2. Ex. D-2 is a power of attorney executed by Sh. Chander Bhan in favour of Sh. Kartara Ram on 3rd August 1982, however, its attesting witness Sh. Ram Nivas, has not been examined and therefore, the Special Power of Attorney is not proved.
3. Sh. Chander Bhan has nowhere stated the purpose of the power of attorney.
4. Sh. Surajmal as the power of attorney holder of the plaintiff has appeared in evidence. Hence, no adverse inference is required to be drawn against the plaintiff.
5. Though enmity between Sh. Amar Singh and Sh. Mohinder Singh on the one hand and Sh. Kartar Singh on other hand is proved, however, it is not sufficient to discard their evidence.
6. Defendant did not send reply to the plaintiff's notice terminating the tenancy, hence, tenancy is admitted.
7. Defendants have taken the risk of examining Sh. Chander Bhan as their witness, hence, they are bound by his statement.
8. No amount of evidence beyond the pleadings can be led by the parties, hence, the possession of the defendants as licensees is not proved.
9. Sh. Kartar Singh has stated that amount of Rs.10,000/-

was paid to Sh. Chandar Bhan, 10-15 days before the execution of the special of power of attorney, however, his statement is beyond the pleadings.

10. Sh. Chandra Bhan has not been given a suggestion that he was paid Rs.10,000./-

11. The property in dispute is located in the area of the Abadi area of the village, hence, there was no need of asserting that the mutation of the property was got sanctioned by Sh. Kartara Ram. Hence, Sh. Chander Bhan had no occasion to execute the Special Power of Attorney. The statement of Sh. Chander Bhan that he does not know English inspires confidence.

12. Special Power of Attorney does not authorize Sh. Kartar Singh to transfer the property in favour of his children by a Court decree

13. According to the defendant's case, Sh. Kartar Singh had paid Rs.10,000/- to Sh. Chander Bhan. In these circumstances, it was not necessary to specifically recite that Sh. Kartar Singh can receive consideration.

14. The Special Power of Attorney is not a General Power of Attorney. Hence, it amount to a waste paper. Special Power of Attorney is required to be strictly construed and Sh. Katar Singh was not authorized to concede to the suit filed by his children.

15. Sh. Chander Bhan was not the exclusive owner, but Sh. Pale Ram, Sh. Gopi Ram etc. were having share in the disputed property.

16. The plaintiff is entitled to receive rent from the defendants.

4. Analysis of the reasons recorded by the First Appellate Court:-

4.1 At this stage, it would be appropriate to analyze the reasons recorded by the First Appellate Court while accepting the appeal.

4.2 The First Appellate Court's reason No.1 is factually incorrect. Sh. Chander Bhan is party to the judgment and decree dated 17.08.1982, through Sh. Kartar Singh. The execution of Special Power of Attorney in favour of Sh. Kartar Singh is admitted by Sh. Chander Bhan, therefore, the first reason recorded by the First Appellate Court is against the record, hence, erroneous.

4.3 The First Appellate Court's reason No.2 is also not correct. As per Section 33 of the Registration Act 1908 (hereinafter referred to as the '1908 Act'), the Special Power of Attorney can be proved by its mere production without any further proof as the document is duly registered as per the provisions of '1908 Act'. Section 85 of the Indian Evidence Act, 1872, provides a mandatory and rebuttable presumption about the execution of the power of attorney and the powers given thereunder. Section 60 of the '1908 Act' provides that once the certificate of registration is issued, then it shall be admissible for the purpose of proving that the document has been duly registered in the manner provided in the '1908 Act' and that the facts mentioned in the endorsement referred to in Section 59 of the '1908 Act' have occurred as therein mentioned. This Court in **Smt. Prakash Devi versus Rajinder Kumar, 2022 (4) RCR (Civil) 145**, has elaborately discussed the admissibility of the power of attorney without examining the attesting witness and its effect. Moreover, the First Appellate Court has

overlooked the fact that Sh. Ram Nivas is stated to be residing in the same

house, in which Sh. Chander Bhan is residing. Hence, it was not possible for the defendants to examine that witness. In any case, the execution of power of attorney by Sh. Chander Bhan in favour of Sh. Kartar Singh is admitted and therefore, it is not required to be proved.

4.4 The First Appellate Court's reason No.3 also lacks substance. The Court has observed that Sh. Chander Bhan nowhere stated for what purpose the power of attorney was given. The purpose for giving power of attorney has been specified in the Special Power of Attorney. Hence, he was not required to orally reiterate the aforesaid facts.

4.5 The First Appellate Court's reason No.4 is also incorrect, particularly when Sh. Chander Bhan was hale and hearty. He intentionally did not appear in his evidence. When the defendants summoned him as their own witness, the plaintiff was forced to appear, after the Court issued his warrants of arrest. Hence, the First Appellate Court has erred in failing to draw adverse inference against the plaintiff.

4.6 The First Appellate Court's reason No.5 is also erroneous. Sh. Amar Singh and Sh. Mohinder Singh have been examined to prove that the property was given on lease by Sh. Chander Bhan in favour of Sh. Kartar Singh, however, Sh. Chander Bhan while appearing in evidence has stated that the property was leased out in New Delhi, and at that time it is also proved on file that Sh. Amar Singh and Sh. Mohinder Singh on the one hand and Sh. Kartar Singh on other hand are inimical to each other. Thus, the evidence of Sh. Kartar Singh and Sh. Mohinder Singh should have been discarded by the Court.

4.7 The First Appellate Court's reason No.6 is unsubstantiated. Even, if the defendants did not send a reply to the plaintiff's notice terminating the tenancy, no inference that the defendants admitted the

termination of tenancy could be drawn.

4.8 The First Appellate Court's reason No.7 is also incorrect. The defendants were faced with a peculiar situation, hence, they had no other choice but to examine Sh. Chander Bhan as their witness. Luckily for them, Sh. Chander Bhan admitted the execution of power of attorney Ex.D-2. In such circumstances, the defendants are not bound by his entire oral statement, particularly when it is against the record. The Court cannot overlook that the defendants have taken the risk of examining the plaintiff in the peculiar facts and circumstances of the case.

4.9 The First Appellate Court's reasons No.8, 9, and 10 are also incorrect. In para No.3 of the written statement, the defendants have pleaded that Sh. Kartar Singh has already paid the consideration of the house in question to Sh. Chander Bhan. As per Order VI Rule 2 of the Code of Civil Procedure, 1908, only the facts in concise form are required to be stated. Evidence is not required to be made a part of the pleadings. Similarly, reason No.8 is insignificant because even if it is assumed that in the beginning the property was rented out to Sh. Kartar Singh, still there were subsequent developments, which prove that the possession of defendants on the disputed property was not as tenants. Similarly, reason No.10 is also incorrect because Sh. Chander Bhan was examined by the defendants as their witness. Hence, they could not give any suggestion to Sh. Chander Bhan in examination-in-chief.

4.10 The First Appellate Court's reason No.11 is bizarre. In the power of attorney, it was recorded that Sh. Kartar Singh can get the property mutated in his favour. The Appellate Court has found that there was no necessity to get the property mutated in his favour. Even, if there was no necessity, still mutation records are maintained to update the revenue

records. The second part of reason No.11 is also strange because it was for Sh. Chander Bhan to explain why he executed a Special Power of Attorney in favour of Sh. Kartar Singh. On reading of the statement of Sh. Chander Bhan it is evident that he has nowhere alleged that there was any misrepresentation or fraud played by Sh. Kartar Singh. It gives rise to a strong presumption that Sh. Chander Bhan voluntarily executed the Special Power of Attorney in Sh. Kartar Singh's favour. Hence, the second part of the reason No.11 is also unfounded because Sh. Chander Bhan has executed two separate power of attorney documents namely Ex.P-1 and Ex.P-2. Both are scribed in English language and Sh. Chander Bhan has signed in Hindi Language. Ex.D-2 has been signed, attested and registered at Delhi, where he resides, whereas, the defendants are residing in the village.

4.11 Similarly, reason No.12 is unsubstantiated because in the Special Power of Attorney, Sh. Kartar Singh has been specifically authorized to sign the pleadings and give statement in place of Sh. Chander Bhan. He has been specifically authorized to give statement as per his comprehension and no such limitation has been specifically mentioned in the Special Power of Attorney. Thus, Sh. Kartar Singh has been given the freedom to make statements as per his wisdom and understanding. Hence, there was not any specific restriction upon Sh. Kartar Singh to not suffer that statement in favour of his children.

4.12 The reason No.13 is also fallacious. Sh. Kartar Singh had specifically made a statement that he had paid Rs.10,000/-, 15-20 days before the execution and registration of the Special Power of Attorney. Even if it was recorded in the Special Power of Attorney that he can receive the consideration, still the inclusion of the abovesaid statement will not make the Special Power of Attorney a doubtful instrument. It may be

superfluous assertion.

4.13 The reason No.14 is again anomalous. A registered Special Power of Attorney is not a waste piece of paper. Through this Special Power of Attorney, Sh. Chander Bhan has authorized Sh. Kartar Singh to sell the house, execute the sale deed, engage a counsel, sign the vakalatnama & pleadings and appear in Court on behalf of his principal (i.e. Sh. Chander Bhan). Even, if it was not a General Power of Attorney, still, it can be used for executing sale deed as well as suffering statement in the Court, i.e. for the specific purposes mentioned in the instrument. Reason No.14 has some substance. However, considering the overall facts of the case, it is evident that Sh. Kartar Singh was given all the powers to act in any manner according to his prudence. Hence, the power to file a written statement admitting certain facts in favour of his children in the suit filed by his children stands included and in no way can be excluded; because he was especially empowered to suffer statements on behalf of Sh. Chander Bhan. Particularly, when he was given authority to use the house in the manner he likes.

4.14 The reason No.15 has no substance because Sh. Chander Bhan has not produced any evidence that he was not the exclusive owner. In any case, no one else (i.e. the other co-sharers) has come to the Court to claim possession of the disputed property.

4.15 The last reason i.e. reason No.16 is also insubstantial because in the peculiar facts of the case, the plaintiff was not entitled to receive the rent after execution of the Special Power of Attorney on 03.08.1982.

5. Discussion by this Court:-

5.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along

with the requisitioned record of the trial Court.

5.2 To recapitulate the facts and evidence, it is evident that Sh. Chander Bhan had voluntarily executed a Special Power of Attorney in favour of Sh. Kartar Singh, authorizing him to sell or use the property in accordance with his prudence. He was also authorized to engage a counsel, sign pleadings on Sh. Chander Bhan’s behalf and to appear in the Court to give depositions as per his ordinary prudence and understanding.

5.3 Keeping in view the aforesaid circumstances, it is reasonable to infer that the Special Power of Attorney was executed for valuable consideration.

6. **Decision:-**

6.1 Consequently, the appeal is allowed.

6.2 The judgment and decree passed by the First Appellate Court is set aside, and the suit filed by the plaintiff shall stand dismissed.

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

March 14th, 2024

**(ANIL KSHETARPAL)
JUDGE**

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*