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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-698-2021 (O&M)
Reserved on : 14.05.2024
Date of Decision : 20.05.2024

Ashok KumarAppellant

VERSUS

Harish Chander & Ors.Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satbir Rathore, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant No.1-appellant challenging concurrent findings returned by both the Courts decreeing the suit for declaration and possession filed by the plaintiff-respondents.
2. The brief facts relevant to the present case are that the plaintiff-respondents filed a suit for declaration that they are owners of the property bearing municipal number B-II/395 property no.2250/4A situated at Gopal Nagar, Jalandhar and sale deed dated 13.12.2006 executed by defendant No.2 (Jugal Kishore) in the capacity of attorney of Raj Kumar in favour of defendant No.1-appellant (Ashok Kumar) in respect of shop which is part



and parcel of the property is illegal, interpretive, null and void and for the possession of the shop on the basis of title. It was averred that one Raj Kumar was owner of the property marked as ABCD and he had three sons - Rakesh, Anup and Ashwani. Two of his sons, Anup and Ashwani, died during the lifetime of their father Raj Kumar who himself died on 02.02.2002. Vide sale deed dated 05.03.2007 the legal representatives of Raj Kumar sold the property in favour of the plaintiff-respondents for a sum of Rs.3,70,000/- and delivered the vacant possession of the portion shown in green colour in the plan to the plaintiff-respondents whereas the shop was in illegal possession of the defendants who are father (Jugal Kishore) and son (Ashok Kumar) respectively. The plaintiff-respondents requested the defendants to hand over the vacant possession of the shop but they refused point blank and on the contrary filed a suit for permanent injunction [Ashok Kumar Vs. Harish Chander & Ors.] taking a stand that defendant No.1-appellant herein (Ashok Kumar) was owner of the shop on the basis of a sale deed dated 13.12.2006 registered on 14.12.2006 executed by defendant No.2 (Jugal Kishore) as attorney of the original owner Raj Kumar. The defendant No.2 (Jugal Kishore) is none other than the father of the defendant No.1-appellant herein (Ashok Kumar). It was stated that defendant No.2 (Jugal Kishore) had no right or authority to execute the sale deed in favour of his own son i.e. defendant No.1-appellant herein and that Jugal Kishore was never appointed attorney by Raj Kumar and even if any Power of Attorney is proved to have been executed by Raj Kumar in favour of defendant No.2 (Jugal Kishore) then the same came to an end with the death of Raj Kumar

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who died on 02.02.2002. It was pleaded that defendant No.2 (Jugal Kishore) misused the Power of Attorney of a dead person and for that reason a criminal case was registered against father and son (Jugal Kishore and Ashok Kumar) and they were arrested. Hence, the present suit. The defendants filed written statement raising preliminary objections of locus standi, maintainability, concealment of facts, non-joinder of necessary parties, cause of action etc. It was submitted that Raj Kumar was the owner of the property and the defendant No.2 (Jugal Kishore) was inducted as a tenant 50 years ago at a monthly rent of Rs.25.00 and that on 23.12.1992 the said Raj Kumar entered into an agreement to sell for sale of the shop and also received the entire sale consideration. It was further submitted that in order to facilitate the execution of the sale deed Raj Kumar executed an irrevocable Power of Attorney dated 23.12.1992 in favour of defendant No.2 (Jugal Kishore) who as attorney executed the sale deed dated 13.12.2006 in favour of defendant No.1-appellant (Ashok Kumar). During the proceedings of the case the defendant no.2 (Jugal Kishore) died and his LRs were impleaded as party. However, they did not appear and contest the suit and were proceeded against ex-parte.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled to the relief of possession as prayed for ? OPP



3. Whether the present suit is not maintainable in the present form ? OPD
4. Whether the plaintiffs have no cause of action to file the present suit ? OPD
5. Whether the suit of the plaintiff is bad for non joinder of necessary parties ? OPD
6. Whether no cause of action had accrued to the plaintiff to file the present suit ? OPD
7. Whether the plaintiffs have not approached with the clean hands ? OPD
8. Whether the site plan annexed with the plaint is incorrect ? OPD
9. Relief.

4. The Trial Court vide judgment and decree dated 23.02.2017 decreed the suit of the plaintiff-respondents. Aggrieved by the same, an appeal was preferred by the defendant No.1-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 19.12.2019. Hence, the present regular second appeal.

5. Learned counsel for the defendant No.1-appellant would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondents. It is argued that the sale deed dated 13.12.2006 in favour of the defendant No.1-appellant was fully proved being a registered document and that the said sale deed was preceded by an agreement to sell dated



23.12.1992 when Raj Kumar received the entire sale consideration from defendant No.2 (Jugal Kishore).

6. I have heard the learned counsel for the defendant No.1-appellant.

7. In the present case the original owner of the property including the shop was Raj Kumar. The plaintiff-respondents have set-up a sale deed in their favour executed by the LRs of Raj Kumar on 05.03.2007. The defendant No.1-appellant had in turn set-up a sale deed dated 13.12.2006 purportedly executed in his favour by defendant No.2 (Jugal Kishore) as attorney of Raj Kumar. The power of attorney by Raj Kumar in favour of defendant No.2 (Jugal Kishore) is dated 23.12.1992. However, interestingly, Raj Kumar himself died on 02.02.2002. After 02.02.2002 the power of attorney in favour of defendant No.2 (Jugal Kishore) became inoperable and therefore no sale deed qua the suit property could be executed after 02.02.2002. The sale deed dated 13.12.2006 in favour of the defendant No.1-appellant was executed by a person having no legal authority to do so. It is a settled proposition of law that a power of attorney lapses on the death of the executor. On the death of the executant of the power of attorney, the attorney no longer has any power to sell the property on the basis of the power of attorney. In these facts and circumstances, there can be no hesitation to conclude that the sale deed dated 13.12.2006 is null and void and this sale deed did not confer any title in favour of the defendant No.1-appellant. The agreement to sell dated 23.12.1992 in favour of defendant No.2 (Jugal



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Kishore) would be of no consequence as an agreement to sell does not confer title. An agreement to sell or a power of attorney are not documents of transfer and as such the right, title and interest in an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882 is executed and is got registered under Section 17 of the Indian Registration Act, 1908. The decision of the Hon'ble Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr. [(2009) 7 SCC 363]** also deprecates the transfer of immovable property through sale agreement, general power of attorney and Will instead of a registered conveyance deed. No other point was argued.

8. In view of the above, the impugned judgments and decrees suffer from no illegality. The suit of the plaintiff-respondents has rightly been decreed. The present appeal is without merits and the same is dismissed. Pending applications, if any, also stand disposed off.

20.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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