



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2223-2023 (O&M)

Reserved on: 26.11.2024

Pronounced on: 09.12.2024

SWARAN KAUR

... APPELLANT

Vs.

SWARAN SINGH AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Arun Bansal, Advocate, for the appellant.

Mr. Sunil Chadha, Sr. Advocate, with
Mr. Akshay Chadha, Advocate, for the caveators-respondents.

DEEPAK GUPTA, J.

Civil Suit No.37 of 2017 (*CNR No.PBSA02-001243-2017*) filed by plaintiffs – Swaran Singh and others (*now respondents N:1 to 7*) seeking decree for specific performance in respect of the suit property, was decreed by the Court of the learned Civil Judge (Senior Division), SAS Nagar, Mohali vide judgment dated 16.05.2019. The appeal bearing CA No.281 of 2019 (*CNR No.PBSA01-005014-2019*) filed by contesting defendant Swaran Kaur (*now appellant*) has been dismissed by the First Appellate Court of learned Additional District Judge, SAS Nagar, Mohali vide judgment dated 29.10.2022. Against these concurrent findings, the defendant of the case has filed the present Regular Second Appeal.

2. In order to avoid confusion, parties shall be referred as per their status before learned trial Court. Trial Court record was called and the same has been perused with the able assistance provided by counsels for both the sides.

3.1 Admittedly, defendant No.1-Smt. Swaran Kaur (*appellant herein*) was allottee of the suit property i.e. Plot No.F-234 measuring 500 sq. yards situated at Industrial Focal Point, Phase VIII, SAS Nagar Mohali, on 99 years lease basis, allotted by defendant No.2 (*now respondent N: 8*) in her favour.

3.2 As per the case pleaded by the plaintiffs, defendant No.1 was not in a position to pay the installments and so, she wanted to sell the same. An amount of ₹1,95,824/- was paid on 8.8.2001 by Joginder Singh, the predecessor-in-interest of the plaintiffs through a draft prepared from his account, before execution of the agreement to sell. Later, on 22.08.2001, defendant No.1 entered into an agreement to sell Ex.P1 with Joginder Singh, the predecessor of the plaintiffs, for consideration of ₹1 lakh, which included ₹35,000/- already paid by defendant No.1 to defendant No.2 and ₹65,000/- as the premium amount. A separate receipt (Ex.P2) was executed by her in this regard. In addition to the agreement to sell, defendant No.1 also executed a registered Will dated 28.08.2001 (Ex.PW4/C) in favour of plaintiff No.1 – Swaran Singh son of Joginder Singh duly registered in the Office of Joint Sub Registrar, Chandigarh vide Wasika No.1573. She also executed a General Power of Attorney dated 28.08.2001 (copy Ex.PW3/K) in favour of plaintiff No.7 – Surinder Kaur wife of Swaran Singh, i.e. Daughter-in-law of Joginder Singh regarding the aforesaid plot, which was also duly registered in the Office of Joint Sub Registrar, Chandigarh vide Wasika No.2537. After executing these documents, defendant No.1 was left with no interest in the suit property. The original allotment letter was also handed over by her to Joginder Singh. The remaining installments regarding the suit property were paid to defendant No.2 by Joginder Singh, inasmuch as he made payment of the following amounts from time to time: -

Sr. No.	Date	Amount (in ₹)
1.	08.08.2001	1,95,824/-
2.	31.03.2003	2,37,540/-
3.	29.06.2016	3,67,000/-
4.	12.05.2017	5,00,000/-
5.	04.07.2017	42,65,559/-
	TOTAL	55,65,923/-

3.3 Possession of the plot was handed over by defendant No.2 to plaintiff No.7 i.e. attorney of plaintiff vide letter dated 08.09.2017. Joginder Singh had expired on 15.03.2002. During his life time, he had always been

ready and willing to perform his part of contract, as he had already paid the entire sale consideration. The inheritance of Joginder Singh devolved upon plaintiffs No.1 to 3 and Ajmer Singh, the real brothers of plaintiffs No.1 to 3 on the basis of registered Will dated 27.08.1999. The inheritance of Ajmer Singh had devolved upon plaintiffs No.4 to 6 vide a duly recorded mutation. Entire outstanding amount has been deposited by plaintiffs No.1 and 7 with the office of defendant No.2 from time to time. It was pleaded by the plaintiffs further that inadvertently, in the General Power of Attorney, there is no mention of the word 'sale' although in para No.2 at page No.2, it has been mentioned that plaintiff No.7 can execute and sign necessary lease deeds and other concerned agreements/deeds of the plot with the government and to present the same before the Estate Officer, PSIC, Chandigarh and before all other authorities, departments etc. Plaintiff No.1 approached the defendant to execute the necessary GPA. Initially, she assured to sign the same but later on, plaintiff No.7 received a notice dated 05.10.2007 issued by defendant No.1 through her counsel to the effect that she had cancelled GPA dated 28.08.2001 regarding the suit property, despite the fact that said GPA was irrevocable and defendant No.1 was not competent to revoke the same. With all these averments, plaintiffs brought the suit seeking decree for specific performance of agreement to sell dated 22.08.2001.

3.4 Defendant No.1 in her written statement though admitted to be allottee of the suit property but claimed that she denied to have executed any agreement to sell in favour of Joginder Singh. According to her, after the death of her husband, there was no male member to take care of her case and as such, she had entrusted the job to her brother-in-law. She also claimed that amount alleged to have been deposited by Joginder Singh from time to time had been paid by her, which was converted by Joginder Singh into drafts. Even the receipt was issued in her name. She further submitted that Power of Attorney was given to Joginder Singh and he was not given right to deliver the suit property or to sell the same. She further denied execution of any Will in favour of plaintiff No.1. She further pleaded to have

cancelled the General Power of Attorney. Objection was also raised that alleged agreement to sell was signed in the year 2002 and, therefore, the present suit is barred by limitation.

3.5 Defendant No.2 in its separate written statement admitted having received the demand draft of ₹1,95,824/- dated 08.08.2001 under the thumb impression of Joginder Singh on behalf of Surinder Kaur. It was also admitted GPA dated 28.08.2001 was executed by Swaran Kaur – defendant No.1 in favour of Surinder Kaur but submitted that the said GPA does not enshrine the power to sell the plot in the question. Amount regarding the plot in question is admitted to have been received from time to time and that possession of the plot was offered to GPA-Surinder Kaur i.e. plaintiff No.7 and the same was handed over to her on 19.07.2017. It was submitted further that request of transfer of the plot was received from plaintiff No.7 - Surinder Kaur along with original GPA; but defendant No.2 had requested for fresh GPA with power of sell along with the requisite transfer documents.

3.6 Necessary issues were framed. Evidence produced by both the parties was taken on record. Learned trial Court decreed the suit by holding that a valid agreement to sell was executed by defendant No.1 in favour of Joginder Singh and that she had also executed a registered Will and General Power of Attorney in favour of plaintiff No.1 and plaintiff No.7, respectively. The appeal filed by defendant No.1 has been dismissed by the First Appellate Court as has already been stated.

4. Assailing the afore-said findings, it is contended by learned counsel for the appellant- defendant No.1 that Courts below have ignored the fact that in alleged agreement to sell is dated 22.08.2001, there is a recital therein regarding the execution of registered General Power of Attorney and Will, despite the fact that these Will and GPA were executed on 28.08.2001. It is contended that it is surprising that how and in what circumstances, the mention of Will and GPA dated 28.08.2001 could have been incorporated in the alleged agreement to sell dated 22.08.2001. It is further submitted that evidence of the defendant has been ignored to the

effect that payment was made by Joginder Singh on behalf of the contesting defendant, as the money had been given by her to him. It is also contended that agreement to sell was executed in 2001 and therefore, suit for specific performance filed in 2015 was barred by limitation. Learned counsel contends that a fraud has been played upon a widowed lady, who on asking her brother-in-law i.e. *Devar* had given attorney to Surinder Singh by believing him. It is also the contention that alleged agreement to sell was not a registered document and, as such, it did not convey any right in favour of Joginder Singh. With all these submission, prayer is made for setting aside judgments and decrees passed by the Courts below and to dismiss the suit of the contesting respondents/ plaintiffs.

5. Refuting the afore-said contentions, it is contended by learned Senior Advocate for the plaintiffs/ respondents that agreements to sell, Will as well as registered Power of Attorney have been duly proved by the testimony of PW1 – Swaran Singh, who has not at all been cross-examined by the defendant and this in itself is sufficient to infer that defendant did not dispute the testimony of PW1. It is further pointed out that these documents are also proved by the testimony of the attesting witnesses as examined by the plaintiffs. The payments made by Joginder Singh or his family members from time to time to defendant No.2 are also duly proved on record. Regarding the contention of the appellant- defendant that there is recital regarding the Will and General Power of Attorney in the agreement, though the later two documents were executed on 28.08.2001, it is pointed out by learned counsel that stamp paper for all these three documents was purchased on the same date i.e. 22.08.2001 by Smt. Swaran Kaur as is proved from the Stamp Vending Register brought by PW5, an official of the DC Office. Learned counsel has further drawn attention towards the testimony of PW1, who testified that after execution of the agreement to sell dated 22.08.2001, it was evening time and therefore, the GPA and Will were executed and got registered on 28.08.2001. Learned counsel contends that in these facts and circumstances, the mere fact that mention of Will and GPA was made in the agreement to sell, will not make the case of the plaintiffs as

unbelievable. It is also contended that there is limited scope for interference in the concurrent findings of facts by the Courts below on the part of the High Court and that no such circumstance has been brought on record by the appellant so as to disturb the concurrent findings of facts by the Courts below. With all these submissions, prayer is made for dismissal of the appeal.

6. I have considered the submissions of both the sides at depth and appraised the entire record thoroughly and carefully.

7. The agreement to sell dated 22.08.2001 (Ex.P1) along with receipt of ₹1 lakh of the same date Ex.P2 besides the General Power of Attorney and Will, both executed and registered on 28.08.2001 are duly proved by the testimony of PW1 – Swaran Singh. The agreement to sell is duly witnessed by Hari Singh and Mohan Lal; whereas the General Power of Attorney as well as the Will are witnessed by Gurdeep Singh and Raghbir Singh, Advocate. Apart from the testimony of PW1- Swaran Singh, plaintiffs examined Hari Singh as PW2, i.e. attesting witness of agreement to sell, who proved due execution thereof. Plaintiffs also examined Raghbir Singh, Advocate as PW4, who duly proved the due execution and registration of the General Power of Attorney as well as Will by defendant No.1 – Swaran Kaur. PW5-Smt. Santosh, an official in the DC Office brought the stamp vending register of Shri Mohan Lal Singh, the Stamp Vendor and proved that the stamp papers of all these documents, i.e. General Power of Attorney, Will and the agreement to sell were purchased on the same date i.e. 22.08.2001 vide S.No.31302 to 31303 by Smt. Swaran Kaur. PW2-Rajat, an official in the office of defendant No.2 has proved the various payments made from time to time by Joginder or other family members as per the details given earlier.

8. It is very important to notice and as has been rightly observed by both the Courts below that testimony of PW1 – Swaran Singh has gone completely un rebutted. He was not at all cross-examined on the part of the contesting defendant. This in itself is sufficient to infer that defendant does

not dispute the statement as made by PW1 and the documents as proved by him.

9. The contesting defendant- appellant simply harper on the fact that there is reference of the Will and the GPA dated 28.08.2001 in agreement to sell dated 22.08.2001. In this regard, the testimony of PW1 Swaran Singh is quite material, who clearly stated that stamp paper for all the three documents was purchased on the same date, which fact is supported by the testimony of PW5. PW1 has also testified that by the time agreement to sell was executed, it was odd hours and, therefore, the Will and the GPA were executed on 28.08.2001. As already stated that there is no cross-examination on the part of the defendant to the statement of PW1 and so, there is no reason to disbelieve the statement of PW1 in this regard.

10. As such, the Courts below did not commit any error in coming to the conclusion that vide an agreement dated 22.08.2001, Defendant No.1 – Swaran Kaur - appellant had agreed to sell the suit property in favour of Joginder Singh, the predecessor-in-interest of the plaintiffs. It also stands proved that on 28.8.2001, defendant No.1 had executed a registered Will in favour of plaintiff No.1 – Swaran Singh son of Joginder Singh. She had also executed a General Power of Attorney in favour of Surinder Kaur, i.e. Daughter-in-law of Joginder Singh on the same date, i.e.28.08.2001 clearly indicating her intention to sell the property, inasmuch as she had received the entire sale consideration. The contents of the agreement to sell clearly proves that out of ₹1 lakh, ₹35,000/- was towards the amount, which had already been paid by her to defendant No.2, whereas ₹65,000/- was towards premium amount.

11. The evidence on record further proves that much prior to the agreement to sell on 22.08.2001, it is Joginder Singh who through a draft dated 08.08.2001 had paid an amount of ₹1,95,824/- to defendant No.2. In her testimony as DW1, defendant No.1 – Swaran Kaur does not deny the fact that this amount of ₹1,95,824/- was deposited by Joginder Singh. It is further important to notice that in her testimony, DW1 – Swaran Kaur says

that except an amount of ₹1,35,000/- paid by her to Joginder in 2001 and ₹2,65,000/- paid by her to Joginder in 2003, no other amount to defendant No.2 was paid by her and that all other amounts were either paid by Joginder or his family members. Even regarding this amount of ₹1,35,000/- and 2,65,000/-, defendant No.1- Swaran Kaur could not give any satisfactory reply regarding the sources. She did not produce any receipt regarding having paid these amounts to Joginder Singh for depositing with defendant No.2.

12. Apart from the implied admission of defendant No.1 regarding the remaining amount having been paid by Joginder Singh or his family members, the own witnesses examined by the defendants proved the payment. DW2 proves that an amount of ₹42,65,559/- was paid to Defendant No.2 through a demand draft having been prepared from the joint account of plaintiff -Swaran Singh and that of Ishneet Singh. As per statement of DW3, an amount of ₹3,68,266/- was paid through demand draft prepared from the account of Swaran Singh. As per DW4, amount of ₹5,02,000/- was paid on 22.05.2017 through a demand draft prepared out of the account of Surinder Singh.

13. Thus, it stands proved that vide an agreement dated 22.08.2001, defendant No.1 had agreed to sell the suit property to Joginder Singh. She had received the premium amount of ₹65,000/- apart from ₹35,000/- which had already been paid to defendant No.2. All other payments had been made by Joginder Singh and his family members to defendant No.2. Since the General Power of Attorney had been executed by defendant No.1 in favour of plaintiff No.7, therefore, the possession was delivered to plaintiff No.7 as attorney of defendant No.1. The contents of the Will as well as GPA would show that these were irrevocable on the part of defendant No.1 and, therefore, the cancellation of the General Power of Attorney by defendant No.1 in 2017 is nothing but a malafide act on her part to deny the fruits of agreement to sell in favour of the plaintiffs- i.e. successors-in-interest of Joginder Singh. Findings to this effect as returned by courts below are upheld.

14. The contention of the learned counsel for the appellant to the effect that suit was barred by limitation, has no merit. Perusal of the agreement to sell Ex.P1 would reveal that no target date was fixed for execution of the sale deed. Rather, it was mentioned therein that as per the stipulation in the agreement to sell, the executant i.e. defendant No.1 will not revoke or cancel the General Power of Attorney or Will till the said plot is transferred in the name of purchaser or his nominee. No specific date is mentioned for execution of the sale deed. In these facts and circumstances, I agree with the contention raised by counsel for the respondents that cause of action arose in their favour, when the intention of defendant No.1 was clear from the cancellation of the GPA in 2017, which she had executed in favour of plaintiff No.7. As such, suit filed within three years from the cause of action, has been rightly held by the Courts below to be within limitation.

15. On account of the entire discussion as above, this Court does not find any ground whatsoever, to interfere in the well reasoned concurrent findings of facts as recorded by the Courts below. No substantial question of law is found to be involved. As such, finding no merit, present appeal is hereby dismissed with costs.

09.12.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>