

RSA-3837-2013 (O&M) 1 2024:PHHC:000743

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3837-2013 (O&M)
Date of decision: 05.01.2024
Reserved on : 13.12.2023

Gurpreet Singh

....Appellant

Versus

Neeraj and others

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Ruchi Sekhri, Advocate for the appellant

Mr. Viren Sibal, Advocate for the respondents

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, defendant no.1 assails the correctness of the concurrent findings of fact arrived at by the courts below, while decreeing the plaintiffs' suit for grant of decree of possession, mesne profit, recovery of goods and for grant of decree of permanent injunction.

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

3. Hari Chand @ Hari Ram was owner of the property. He died in the year 1988. He left behind three Class I heirs namely Smt. Vijay Rani (widow) and Neeraj and Baby, who are his two children. He had inherited the property from his ancestors. The suit property is a residential house located at Moran Wali Gali near

Shahi Smadhan Road, Patiala. The plaintiffs are heirs of late Sh.Hari Chand. They claim to be the owners of the property. It is their case that in the beginning two portions on the first floor of the building were let out to Sh.Sukhdev Singh son of Sh. Joginder Singh, who later on vacated the premises and handed over the possession to the plaintiffs, whereas the plaintiffs rented out the ground floor to defendant no.1 and others, who at the relevant time were working as Constables in the Punjab Police. Subsequently, defendant no.2 Sh.Kanwaljit Singh on the basis of a forged power of attorney of plaintiff no.3 Smt. Vijay Rani, executed a sale deed in favour of defendant no.1 Sh.Gurpreet Singh for the alleged sale consideration of Rs.1,00,000/-. It is the case of the plaintiff that on 15.09.1996, her signatures on certain blank papers were obtained by defendant no.1 Sh.Gurpreet Singh, who was a Punjab Police Constable in the Police Station.

4. Defendant no.1, while contesting the suit, claimed that he is the bonafide purchaser of the property from plaintiff no.3 through Sh.Kanwaljit Singh (defendant no.2) and plaintiff no.1 and 2 are not Sh.Hari Ram's children.

5. In the first round, the trial court decreed the suit on 22.08.2006, however, the First Appellate Court remanded the case back to the trial court for fresh decision vide order dated 24.09.2008. Subsequently, also the trial court vide judgment and decree dated 15.05.2009 decreed the suit, which in, appeal has been

upheld by the First Appellate Court vide judgment passed on 20.12.2012.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record and the written arguments filed by the learned counsel representing the parties.

7. Regular Second Appeals in States of Punjab, Haryana and Union Territory Chandigarh are filed under Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as '1918 Act'). A five Judge Bench in **Pankajakshi (Dead) through LRs vs. /chandrika and others (2016) 6 SCC 157**, has held that the Regular Second Appeals in the States of Punjab, Haryana and UT, Chandigarh are not regulated by Section 100 of the Code of Civil Procedure, 1908 but Section 41 of the Punjab Courts Act, 1918. The scope of interference under Section 41 of the 1918 Act is also limited as recently explained by the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh (2019) 17 SCC 71**, **Avtar Singh and others vs. Bimla Devi and others (2021) 13 SCC 816** and **'Dhanpat vs. Sheo Ram' 2020 SCC online SC 606**. It is held by the Supreme Court that the court's interference is limited to errors apparent in interpreting the law and procedures, excluding errors related to the question of fact.

8. Learned counsel representing the appellant has filed a detailed note of his arguments running into 12 pages. However, broadly the following five contentions have been raised:-

- i) Plaintiff no.1 and 2 namely Neeraj and Baby did not step into the witness box.
- ii) From the testimony of PW1-Sher Singh, an official of the Sub-Registrar, Patiala, it is established that the sale deed dated 03.06.1987, was registered by Sh.Kanwaljit Singh on the basis of the power of attorney executed by Smt. Veena.
- iii) From the testimony of DW8 Inder Kumar, Junior Assistant in the office of Sub Registrar, the execution of the registered General Power of Attorney, dated 31.10.1996, is proved.
- iv) Plaintiff no.1 in a civil suit filed by Sukhdev Singh has submitted that she has given the house in question to his mother Smt. Vijay Rani/Vijay Lakshmi.
- v) The deposition of Sh.Rattan Kumar, attesting witness of the power of attorney, is not reliable.

9. This Court has considered the submissions made by the learned counsel representing the parties. It may be noted here that Smt. Veena Rani plaintiff no.3, the mother of plaintiff no.1 and 2 has

appeared in evidence. She bravely faced the onslaught of questions during the cross examination, however, the learned counsel representing the defendant failed to impeach her credibility. It may be noted here that Smt.Vijay Lakshmi @ Smt. Vijay Rani was a widow. It is her case that defendant no.1, who was a tenant in occupation, was serving in the Punjab Police and he had been threatening her. Forced by the circumstances, she temporarily shifted to Hoshiarpur in order to save her children's life and defendant no.1, while taking benefit of the plaintiffs' absence, broke open the locks and took over the possession of the first floor of the premises. It has also been proved that signatures of Smt. Vidya Rani @ Vijay Lakshmi were obtained in the police station. In the aforesaid circumstances, no adverse inference can be drawn against the plaintiff no.1 and 2 for their failure to step into the witness box.

10. The second submission of the learned counsel representing the appellant lacks substance because PW1 Sher Singh has deposed only on the basis of the official record. Hence, his deposition cannot be read in the manner suggested by the learned counsel representing the appellant. Same is the position with regard to argument no.3 with reference to deposition of DW8 Inder Kumar, Junior Assistant working in the office of Sub Registrar.

11. With reference to submission no.(iv), it may be noted that the written statement filed by the plaintiff no.1-Neeraj has not been proved. It was only marked as 'PD'. Smt. Vijay Rani was not

confronted with the aforesaid written statement when she appeared in evidence. In any case, the statement made by plaintiff no.1 would not make any difference, particularly when it has been proved that Smt. Veena Rani did not voluntarily execute the power of attorney.

12. The last argument of the learned counsel representing the appellant is with reference to the statement of Sh.Rattan Kumar who was a witness to the power of attorney. He has categorically deposed that Sh.Kanwaljit Singh was also working as a Jeweller. He admits his signatures but denies his presence in the office of Sub Registrar. Though the learned counsel representing the appellant has contended that his statement is not reliable, however, this Court has once again gone through the deposition. He has specifically stated that Smt. Vijay Rani never executed any power of attorney in favour of Sh.Kanwaljit Singh nor he ever visited the office of Sub Registrar for signing the power of attorney. He has further stated that he has not signed the power of attorney at the office of the Sub Registrar but he signed the power of attorney when Sh.Kanwaljit Singh brought the document at Nabha and he then signed the said document in good faith. Learned counsel representing the appellant has tried to impeach the credibility of Rattan Kumar on the ground that he, in the cross examination, has stated that he knew Smt. Vijay Rani for the last 10 years. This statement was recorded in the year 2004. Whereas the power of attorney was executed in the year 1996. Thus, it is evident that deposition of Sh.Rattan Kumar to the

effect that he was not acquainted with Smt.Vijay Rani @ Vijay Lakshmi at the time of execution of the general power of attorney is proved to be correct.

13. The last argument of the learned counsel representing the appellant is with regard to deposition of DW7- Sukhdev Singh who is the son of the attesting witness Sh.Man Singh, Nambardar, who died during the pendency of the suit. Sh. Sukhdev Singh has only proved the signatures of his father on the power of attorney, however, the circumstances in which the power of attorney was executed has not been established. Moreover, it has come in evidence that there was no occasion for Smt.Vijay Rani @ Vijay Lakshmi to execute power of attorney in favour of Sh.Kanwaljit Singh, who within a short span of time, transferred the property in favour of defendant no.1 Gurpreet Singh, who was already in possession of the property as a tenant.

14. Keeping in view the entire circumstances, the findings of fact arrived at by the courts below are plausible. In Regular Second Appeal, this Court is not anticipated to intervene solely because two interpretations are possible; instead, intervention is generally warranted when there is a discernible error or misapplication of law, underscoring the necessity for interference.

15. Keeping in view the aforesaid facts, no ground to interfere is made out. Hence, dismissed, accordingly.

16. All the pending miscellaneous applications, if any, are

also disposed of.

05.01.2024	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No