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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 04.04.2024.

Kulbir Singh

...Appellant.

Versus

Prem Singh Sidhu and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Malkeet Singh, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that previously,
defendant-Prem Singh Sidhu had appointed Hardeep Singh Sidhu as his true
and lawful attorney vide Power of Attorney dated 28.09.2005, which was
later on cancelled by executing another Power of Attorney dated 22.10.2005
in favour of Jarnail Singh. In the instant suit defendant No.1 has been sued
through Jarnail Singh his new Power of Attorney holder. It was averred that
defendant No.1 was exclusive owner in possession of the land as detailed in
the head note of the plaint. On 08.10.2005, defendant No.1 through his

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attorney Hardeep Singh, in the presence of the attesting witnesses, agreed to sell the land in dispute for total sale consideration of Rs.32,04,375/- vide agreement to sell dated 08.10.2005. Defendant No.1, through his attorney, received a sum of Rs.20,00,000/- as earnest money at the time of execution of the agreement to sell in question. The sale deed was to be executed on or before 25.06.2008 as per the terms and conditions incorporated in the agreement to sell. On 25.06.2008, plaintiff remained present in the office of Sub Registrar, Phillaur, with sufficient amount for the purpose of getting the sale deed executed as per the terms and conditions of the agreement, but defendant did not turn up to perform his part of the agreement. Plaintiff also got his presence marked in the office of Sub Registrar, Phillaur, by way of affidavit dated 25.06.2008. Plaintiff was and is still ready to perform his part of the agreement to sell. The plaintiff requested the defendants many times to admit his claim, but they refused to do so compelling the plaintiff to knock the door of the Court. Hence, this suit.

3. The suit of appellant/plaintiff was dismissed by the trial Court, vide judgment and decree dated 05.02.2014. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was dismissed, vide judgment and decree dated 10.08.2017. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff, before this Court.

4. Learned counsel for the appellant/ plaintiff has contended that both the Courts below have disbelieved the agreement to sell dated 08.10.2005 on flimsy, whimsical and fanciful interferences drawn beyond the evidence on the record. General Power of Attorney dated 28.09.2005

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was executed by respondent No.1 in favour of respondent No.2. Respondent No.2 executed agreement to sell dated 08.10.2005, as per the authorization conferred on him through the aforesaid General Power of Attorney and sum of Rs.20,00,000/- was received on account of earnest money and the balance amount of consideration was agreed to be received on the day of execution and registration of the sale deed in favour of the appellant, for which the target date was fixed as 25.06.2008 by mutual understanding of the parties. But intention of respondent No.1 became dishonest after receipt of huge amount of Rs.20,00,000/- by way of earnest money which was paid by his attorney respondent No.2. He has contended that respondent No.2 has categorically deposed regarding the same and credibility of his testimony could not be shattered despite his lengthy cross-examination. Thereafter, respondent No.1 executed special Power of Attorney in favour of Jarnail Singh, who is his real brother-in-law on 22.10.2005, authorizing him to get the General Power of Attorney dated 28.09.2005, in favour of respondent No.2 cancelled. He has argued that admittedly the notice with respect to cancellation of the General Power of Attorney was served vide Ex.D6 dated 07.11.2005, approximately one month after the execution of the agreement to sell. But both the Courts below have fallen in error while holding that the agreement to sell was antedated after the receipt of the notice with respect to cancellation of the General Power of Attorney and as such, respondent No.1 was not bound by the agreement to sell executed by respondent No.2. He has submitted that the both the Courts below have wrongly gave much weightage to the fact that the original Power of Attorney dated 28.09.2005

had not been produced in the Court and was intentionally withheld by the plaintiff. He has submitted that DW3 Jarnail Singh, who is General Power of Attorney holder of respondent No.1 has admitted during his cross-examination that the original General Power of Attorney was returned by Hardeep Singh previous Attorney, to Prem Singh respondent, in the connected suit filed for possession and mesne profits on account of use and occupation of the land by Hardeep Singh, where Jarnail Singh had appeared as PW3. So, it is abundantly proved that the original Power of Attorney was in possession of respondent No.1 or his attorney Jarnail Singh and the same was intentionally withheld. Thus, the wrong findings have been given with regard to the secondary evidence. He has also submitted that it has been wrongly held that the agreement to sell dated 08.10.2005 was antedated and was prepared with the connivance of witnesses Ranjodh Singh and Pardeep Singh alongwith Hardeep Singh, as both of them are closely related to Hardeep Singh. He has contended that the execution of agreement to sell dated 08.10.2005 and readiness and willingness on the part of appellant/plaintiff has been duly established on the record. But the evidence on record has not been appreciated by both the Courts below in the right perspective and undue weightage has been given to the unbelievable and unsustainable evidence produced by the respondents/ defendants.

5. I have heard learned counsel for the appellants and have gone through the record thoroughly.

6. This fact is not disputed that the alleged agreement to sell dated 08.10.2005 had been executed on the basis of Power of Attorney dated 28.09.2005 executed by respondent No.1 Prem Singh in favour of Hardeep

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Singh. The original Power of Attorney has not been produced on record. No material has been produced on record to substantiate the plea as alleged by the plaintiff that the original Power of Attorney was in possession of subsequent Power of Attorney holder Jarnail Singh. Moreover, this plea had neither been taken either in the written statement nor in examination-in-chief of Hardeep Singh. So, the original Power of Attorney dated 28.09.2005 which was the basis for executing the agreement to sell dated 08.10.2005 has not been proved on record. It has been rightly observed that the permission to prove this Power of Attorney through secondary evidence was granted subject to proof of its execution and loss, which has not been proved on record. It has been held by the Hon'ble Apex Court in **J. Yashoda Vs. Smt. Shobha Rani, 2007(3), Civil Court Cases 195** that “to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Secondary evidence may be given when the original is shown or appear to be in possession of power of the person against whom the document is sought to be proved.”

7. In the instant case, It has not been proved that the photocopy of Power of Attorney produced on record was the actual copy of the original and same has been lost or in possession of person against whom this document is sought to be produced. Another infirmity has also been pointed out in the case of the appellant/ plaintiff, that Power of Attorney was not got embossed from the Office of Commissioner, Jalandhar before executing the agreement to sell.

8. The perusal of Ex.P2, the agreement to sell, reveals that it has

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not been mentioned therein, that by relying upon, which specific jamabandi the khasra numbers therein had been written. While appearing as DW2, Hardeep Singh has stated that from fard jamabandies Ex.P9 to Ex.P11 the agreement to sell Ex.P2 was written at his instance. But perusal of these jamabandies Ex.P9 to Ex.P11 reveals that the same had been issued on 20.06.2008 and 23.06.2008 respectively i.e. much after the date of alleged execution of the agreement to sell dated 08.10.2005. It strengthens the version of respondent/ defendant Prem Singh that this alleged agreement was got prepared by Hardeep Singh in connivance with appellant/ plaintiff and alleged witnesses, when respondent/ defendant Prem Singh got issued the notice, through his attorney Jarnail Singh, to his previous attorney Hardeep Singh, for vacating the suit property after cancellation of his Power of Attorney. While appearing as DW2-Hardeep Singh has also admitted that an application was filed on 05.06.2008 by Jarnail Singh before the NRI Sabha to get back the possession from Hardeep Singh and that this application was referred by NRI Sabha to Deputy Commissioner, Jalandhar. He has admitted the factum of registration of FIR No.141 Ex.D1 against Kulbir Singh, Ranjodh Singh and stamp vendor Harbinder Singh and that they had filed a petition for quashing the said FIR before this Court and vide order dated Ex.D2 of this Court, the said petition filed by them was dismissed as withdrawn. It has been rightly held that this registration of FIR for forging and fabricating one agreement to sell against previous attorney Hardeep Singh, attesting witness Ranjodh Singh, purchaser Kulbir Singh and stamp vendor Harbinder Singh lends corroboration to the version of

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respondent/ defendant Prem Singh with regard to forgery committed by the appellant/ plaintiff.

9. The agreement to sell in question had not been got typed from the licensed deed writer. Even the name of the typist has not been written on regular stamp paper and adhesive stamps were affixed on a plain paper, which also creates doubt regarding genuineness of this agreement.

10. As per the appellant/ plaintiff, respondent/ defendant Prem Singh through his attorney Hardeep Singh, agreed to sell the land in dispute for total consideration of Rs.32,04,375/- vide agreement to sell dated 08.10.2005 and earnest money of Rs.20,00,000/- was paid by him to Hardeep Singh i.e. attorney of defendant Prem Singh. Admittedly, attorney in favour of Hardeep Singh was got cancelled by respondent Prem Singh vide registered notice dated 07.11.2005. Said Hardeep Singh while appearing as DW2 had deposed in examination-in-chief that earnest money amount of Rs.20,00,000/- received by him was duly paid by him to Prem Singh, but admittedly the aforesaid amount had not been deposited by him in the account of Prem Singh. Rather, during his cross-examination he tried to set up a new version while stating that he had made payment of Rs.20,00,000/- to Jarnail Singh after execution of agreement to sell. But again there is no material on record to substantiate the above said plea regarding handing over of Rs.20,00,000/- by Hardeep Singh to Jarnail Singh. No prudent person would hand over such a huge amount of Rs.20,00,000/- without taking any receipt. The Courts below have rightly held that as such there is no evidence with regard to the passing of sale

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consideration of Rs.20,00,000/- to respondent/ defendant Prem Singh.

11. The agreement in question was executed on 08.10.2005, whereas the date of execution of sale deed was fixed as 25.06.2008, and this period of around three years further raises suspicion with regard to genuineness of this agreement. It has not been explained why such a long time was fixed for the execution and registration of the sale deed and why possession of the suit land was not delivered to the plaintiff.

12. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.

13. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

04.04.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No