

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 997 of 2020 (O&M)

Reserved On: 15.01.2024
Pronounced On: 19.01.2024

Karamjit Singh
... Appellant(s)

Versus

Pritam Singh and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. Arvindpal Singh Grover, Advocate
for the appellant(s).

Mr. Sarvesh Malik, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. After having examined the judgments passed by both the Courts below along with the requisitioned record, analyzed, evaluated and considered the arguments of the learned counsel representing the parties, this Court is of the considered view that the case is required to be remitted back to the trial Court for a fresh decision. Hence, bare minimum facts are being

3. Pritam Singh (since deceased) filed a suit on 29.04.2006 for the grant of decree of declaration that the general power of attorney executed by him in favour of the defendant dated 17.11.2004 is a result of misrepresentation and fraud and consequently, the sale deeds executed by the defendant No.1 in favour of defendant No.2 to 5 are illegal, null and void. The plaintiff claimed that he is blind and hard of hearing and he was misrepresented by the defendant No.1 as he had received notice from the Land Acquisition Collector which was required to be replied. He was taken to the Court Complex and asked to append his thumb impressions by someone who was representing himself as an Advocate. Thereafter, he was again taken to the office of the Punjab Urban Development Authority. On 08.12.2004, he came to know that defendant No.1 sold some part of his land. Thereafter, he went to the office of the Registrar and moved an application, however, the Registrar went ahead and registered the sale deed in favour of the defendant No. 2 to 5. He had also lodged a complaint with the police which resulted in FIR No. 65 dated 12.12.2004. The defendant No.1, while contesting the suit, submitted that the plaintiff was neither blind nor hard of hearing. He himself executed the agreement to sell and has been regularly drawing pension from the bank, therefore, exposed to the world. The sale considerations, received on execution of the sale deeds, have already been paid to Satwinder Singh son of Darshan Singh, who is relative of the plaintiff. The remaining defendants filed their written statements claiming that they are the bonafide purchasers of the property on the payment of the sale considerations.

Courts below, it is evident that both the Courts below have failed to either frame a distinct issue with regard to the plea of defendant No.2 to 5 to the effect that they are the bonafide purchasers. In fact, despite specific plea raised by defendant No.2 to 5 that they are the bonafide purchasers, the Courts failed to frame a distinct issue on this aspect as required under Order XIV Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). In the First Appellate Court, though the argument of the defendants has been noticed, however, the Court has not dealt with in an appropriate manner. The First Appellate Court has made an effort to sidestep the issue. It shall be noted here that it is not the plaintiff's case that the defendant No.1 had colluded with the defendant No. 2 to 5 or they are *inter se* related. It was important for the defendant No.2 to 5 to save the sale deeds in their favour on the plea of bonafide purchasers. However, both the Courts below have failed to examine the same.

5. Furthermore, it is evident that both the Courts below have decided the suit on the basis of conjectures, inferences, hypothesis and presumptions. The first conjecture drawn by both the Courts below is to the fact that defendant No.1 has failed to disclose the reason for execution of the general power of attorney by the plaintiff. It was for the plaintiff to prove that the general power of attorney was the result of misrepresentation or fraud. The defendant was not expected to disclose the reason for the execution of the general power of attorney in his favour. Furthermore, it is evident that the plaintiff and defendant No.1 were neighbours for sufficiently long time. Moreover, it is also proved and admitted by Satwinder Singh that the plaintiff had also executed an agreement to sell in favour of Surjit Singh.

Subsequently, the sale deed, in accordance with the agreement to sell, was not executed, resulting in issuance of notice by Surjit Singh which was duly replied by Pritam Singh by engaging a lawyer. Further, it is evident that Pritam Singh was residing near Tricity namely, Chandigarh, Panchkula and Mohali. The land was acquired on account of the expansion of Mohali City. In these circumstances, Pritam Singh cannot be considered as a rustic villager who has no exposure to the outside world.

6. Both the Courts below have also erred in recording a finding that Pritam Singh was blind. The plaintiff, in order to prove that fact, has examined Dr.J.R.Saini who runs a private hospital in Ambala. On the careful reading of his statement, it is evident that he had only operated Pritam Singh for cataract which is a normal incidence in old age. At the relevant time, Pritam Singh was more than 70 years of age. When cross-examined, Dr.J.R.Saini failed to produce any record maintained by him. Rather he states that he has not maintained any register with regard to OPD and he is not in possession of any record from which it can be ascertained that the receipts (Ex.PW.4/A and Ex.PW.4/B) were entered in his record. On being asked to produce the record, he stated that he cannot come time and again because his patients would suffer. In these circumstances, his evidence could not be relied upon unless some reliable evidence is produced to prove that Pritam Singh was blind. Moreover, both the Courts below have overlooked the fact that the Registrar had directed to constitute a Medical Board when Pritam Singh went for registration of the sale deed in the year 2006. At that time, Pritam Singh was alleged to be of 92 years. The Board opined that Pritam Singh is hearing impaired and has ophthalmic disability. However, he

is alert and his mental faculties are not compromised. Ophthalmic disability does not mean that Pritam Singh was totally blind.

7. Furthermore, both the Courts below erred in reading the deposition of the witnesses by picking up the isolated sentences which were divorced from the complete deposition. The evidence of the witnesses is required to be read in entirety before coming to any conclusion. In this case, the defendants have examined the Registrar, namely Mandeep Singh Dhillon who had registered the general power of attorney on 17.11.2004. The existence of photographs as well as the thumb impressions of Pritam Singh on the general power of attorney is not disputed. In the aforesaid general power of attorney, the defendant No.1 was authorized to execute the sale deeds.

8. Furthermore, both the Courts below have erred in drawing an inference that the defendant No.1 had executed four sale deeds within a short span of 20 days. It should be noted here that in the facts of the case, once the general power of attorney was given for sale of the property, it was not appropriate for the Courts to doubt the registered general power of attorney only on the ground that the sale deed shall be executed within a short time.

9. Both the Courts below have also erred in overlooking the fact that Pritam Singh died during the pendency of the suit. An application filed by Satwinder Singh, who is the grandson of the sister of Pritam Singh, was brought on record as legal representative. However, when Satwinder Singh appeared in evidence, he admitted that Pritam Singh had executed a Will in favour of his nephews. In these circumstances, the Court should have made

decide the controversy once for all. Though it is correct that the Court, while bringing on record the legal representative, is not required to decide the right to succession of the property of the deceased, however, the Court is expected to bring on record the legal representatives who *prima facie* represent the estate of the party died during the pendency of the suit.

10. Both the Courts below have also erred in overlooking the fact that the plaintiff came to the Court with a specific stand that some notices from the Land Acquisition Collector have been received which are required to be replied and therefore, power of attorney was executed, which is factually incorrect. It has come in evidence that in the year 2004, no notice was issued by the Land Acquisition Collector. Moreover, on 10.12.2004, Pritam Singh cancelled the general power of attorney, however, there is no allegation that it was executed by misrepresentation or fraud. Furthermore, Pritam Singh, before his death, tendered his affidavit in lieu of his examination-in-chief. He did not allege that the sale consideration has not been received by him.

11. Moreover, it appears that both the Courts below have erred in relying upon the statements recorded in some other case which were exhibited without proving the correctness of the aforesaid statements. The statement made during the course of some other litigation is a piece of evidence which is required to be proved by leading evidence. The deposition of a witness in some other litigation is not *per se* admissible in a different litigation unless it is proved in accordance with law. The defendants did not get an opportunity to cross-examine those witnesses which is an important and significant part of adjudicatory process. The correctness of

the oral evidence is required to be put to test by giving an opportunity to other party to cross-examine the witness in order to dig out the correct facts.

12. Keeping in view the aforesaid discussion, it is evident that the matter is required to be remitted back to the trial Court for a fresh decision because in the absence of a distinct and separate issue, the case of the plaintiff will be prejudice if this Court straightway, in the regular second appeal, proceeds to decide the issue of bonafide purchasers. Again proper legal representatives have not been brought on record. Tomorrow, they can claim that such judgment is not binding as they were not brought on record despite this facts was brought to the knowledge of the Court. Hence, the present appeal is allowed. The judgments passed by both the Courts below are set aside and the trial Court is requested to decide the suit afresh after bringing on record the proper legal representatives as well as after framing the additional and distinct issue with regard to the defendants' plea of they being the bonafide purchasers for consideration.

13. Needless to observe that both the Courts below shall decide the matter afresh uninfluenced by the observations made by the Court.

14. The parties, through their learned counsel, are directed to appear before the trial Court on 27.02.2024.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 19, 2024

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No