

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No. 197 of 2008.

Reserved on : 2nd April, 2019.

Decided on : 30th April, 2019.

Shri Devinder Bhardwaj and another

.....Appellants/Defendants.

Versus

Sh. Ravinder Lal

....Respondent/Plaintiff.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants: Mr. Bhupender Gupta, Senior Advocate with Ms. Rinki Kashmiri, Advocate.

For the Respondent: Mr. R.L. Sood, Senior Advocate with Mr. Arjun Lal, Advocate.

Sureshwar Thakur, Judge.

The instant appeal is directed against the verdict recorded by the learned Additional District Judge, Solan, H.P., upon, Civil Suit No.2-S/1 of 2006, wherethrough, the plaintiff's suit for rendition of a decree

¹ Whether reporters of the local papers may be allowed to see the judgment?

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for declaration, and, for setting aside the sale deed executed by defendant No.1, vis-a-vis, defendant No.2, and, serialized as deed No.438 of 4.5.2005, with, the Sub Registrar, Solan, was, hence decreed.

2. Briefly stated the facts of the case are that the plaintiff filed a suit qua declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 bearing No.438 of 4.5.2005 registered with Sub Registrar, Solan, to be void abinitio and restraining the defendant from interfering over the suit land in any manner. It has been averred that the plaintiff is owner in possession of the land comprised in Khata No.213, Khatauni No.308, Khasra No.1414/137, measuring 300 sq. meters, situated at Mauza Salogra Solan, Tehsil and District Solan, H.P. Defendant No.1 was appointed as power of attorney to manage and to lookafter the suit land on 30.11.1995 vide registered deed No.273. It has been averred that since defendant No.1 failed to perform the job which was

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assigned to him as general power of attorney, it was got cancelled vide registered deed No.47 of 1.3.1997 registered with Sub Registrar, Solan, with whom general power of attorney was earlier registered. Defendant No.1 was intimated qua the cancellation of the power of attorney and photo copy of cancellation deed was handed over to him and receipt was also taken. It has been alleged that in the first week of September, 2005, the plaintiff came to know that some people had visited the suit land claiming the land to be owned by them, thereby on enquiry came to know that defendant No.1 had executed a sale deed in favour of defendant NO.1 qua the suit land. The general power of attorney under which he was authorised to deal with having been cancelled. He had no authority to execute the sale deed bearing No.438 registered with Sub Registrar, Solan, thereby it has been prayed that neither defendant No.1 was having any right, title or interest over the suit land

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nor he could have created any right, title or interest in favour of defendant No.1. Defendant No.1 has played fraud and has executed the sale deed without any power. The market value of the suit land was Rs.1,20,000/- per biswa as the average value of the land comes out Rs.6,49,866/-. However, defendant No.1 had sold it for the amount of Rs.3,50,000/-. Defendant No.1 was tried to be contacted but to no result. Mutation was also attested in favour of defendant No.1 bearing mutation No.712 of 30.052005 on the basis of which defendant No.1 is now claiming himself to be owner in possession of the suit land, whereas defendant has acquired no right, title or interest by a sale deed which has been executed unauthorised person.

3. The defendants contested the suit and filed joint written statement, wherein, preliminary objections have been taken qua estoppel, cause of action, maintainability, jurisdiction, court fee etc. on merits, it

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has been pleaded that the plaintiff had entered into an agreement for sale of the suit land in favour of Shri Swaran Singh Cheema son of Sh. Sant Singh for a consideration of Rs.1,55,000/- on 28.9.1995. The amount of Rs.30,000/- was paid by Swaran Singh Cheema to the plaintiff and remaining amount was to be paid on or before 30.11.1995 when the sale deed was got to be registered. Defendant No.1 was one of the witness to that deed. When on 30.11.1995 the remaining amount was to be paid, Swaran Singh Cheema showed his inability to purchase the same land, and was reluctant to pay the remaining amount and ultimately a sale in favour of defendant no.1 was made who paid the amount of Rs.1,55,000/- to the plaintiff on the same day i.e. 30.11.1995 and possession of the suit land was delivered to defendant No.1 by the plaintiff. The same day general power of attorney was also executed by the plaintiff in favour of defendant No.1 for executing the necessary

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sale deed in favour of any person and it was undertaken that the general power of attorney would not be revoked as for all intents and purposes defendant No.1 was owner of the land in suit as the full consideration amount having been paid and possession also having been delivered. It was agreed that defendant No.1 can get the sale deed executed as of his choice. The amount of Rs.30,000/- which has been paid by Swaran Singh Cheema was paid to him and Saran Singh Cheema was satisfied with the sale of the land in favour of defendant No.1. The receipt qua the payment of the amount was also executed thereby the plaintiff had lost his right, title and interest over the suit land. The general power of attorney thereafter was with defendant No.1 which was never got cancelled. The allegation of cancellation of the general power of attorney and thereafter providing of intimation to defendant No.1 has been disputed. It has been averred that full consideration amount having been received by

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the plaintiff and the amount of the earlier purchaser Swaran Singh Cheema having been refunded, defendant No.1 has become owner. It has also been averred that defendant No.1 had sold the suit land vide registered sale deed to defendant No.1 and handed over its possession, he being authorised under general power of attorney to effect sale. The other averments made by the plaintiff have been stated to be wrong and it has been submitted that no fraud so far was palyed by the defendant No.1 with the plaintiff and the defendant No.2 is bonafide purchaser for valuable consideration. It has also been averred that selling of the land at less than the market price has also been denied whereby it has been prayed that in view of the value of the land the court has got jurisdiction and and at the same time the land having been sold by power of attorney and defendant No.2 having paid valuable consideration in good faith, the suit deserves dismissal.

4. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:-

1. Whether the sale deed No. 438 dated 4.5.2005 is void abinitio as alleged? If so its effect? OPP.
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff is estopped due to his own acts, conduct and acquiescence to file the present suit? OPD.
4. Whether the plaintiff is out of possession of the suit land and as such he has no locus standi to file the present suit?OPD.
5. Whether the plaintiff has no enforceable cause of action to file the present suit?OPD.
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD.
7. Relief.

5. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court decreed the plaintiff's suit.

6. Now the defendants/appellant(s) herein, have instituted the instant Regular First Appeal, before, this Court, wherein they assail the findings, recorded in its impugned judgment and decree, by the learned trial Court.

7. Uncontrovertedly, the plaintiff, was, the recorded owner in possession, of, the suit property. Through validly proven agreement to sale, borne respectively in Ext. P-1, and, in Ex. P-2, he, had contracted, to execute a registered deed of conveyance, vis-a-vis, the suit property, with, one Swaran Singh. However, the afore Swaran Singh, has not, instituted any suit, rather for enforcing the contract of sale, borne in Ex.P-1, and, in Ex. P-2. Contrarily, the entire fulcrum of the dispute engaging the parties at contest, is, hinged

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upon, the entitlement or otherwise of the plaintiff, to, rescind Ex.PW3/A, wherethrough, he constituted defendant No.1, as his general power of attorney, hence for the purpose(s) enumerated therein, inclusive of his being bestowed, with an authorization, to, execute a registered deed(s) of conveyance, with respect to the suit property. The conferment, of, an authorization, upon, defendant No.1, through Ex.PW3/A, stood rescinded by the plaintiff, through, an apposite therewith cancellation deed, borne in Ex.P-3.

8. Initially, and, at the out set, it is to be determined, whether the arguments addressed before, this Court by the learned counsel, appearing for the appellants/defendants (i) qua with Ex. D-1 rather containing, a, receipt qua the plaintiff, receiving a sum of Rs.1,55,000/- for the sale of suit land, from, defendant No.1, and, its further containing, recitals qua the plaintiff, hence, constituting defendant No.1, as his general power

of attorney, through, Ex.PW3/A, and, also it echoing qua the latter exhibit being irrevocable, rather with plaintiff, subsequent thereto, through Ex.P-3 hence rescinding the general power of attorney, borne in PW3/A, qua whether hence rendering, the afore Ex.P-3, to, hold any vigour. The afore conundrum, is, of grave importance, as, therethrough the learned counsel for the aggrieved defendants, has contended, that Ex.D-1 hence operating, as, a protective statutory shield, vis-a-vis, him, and, the afore statutory protective cover, erupting from, the mandate, of, Section 53-A of the Transfer, of, Property Act, (ii) and, thereupon the vesting of title, in defendant No.2, through, a registered deed of conveyance, vis-a-vis, the latter, by defendant No.1, rather not being inflicted, hence, with any aura, of, any invalidity. Contrarily, the plaintiff being estopped, to, on anvil of Ex.P-3, hence cast, any challenge, vis-a-vis, the validity of execution, of sale deed, as stood executed inter se defendant No.1,

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and, defendant No.2. However, for the reasons hereinafter assigned, the afore submission falters, (iii) as it is embedded, upon, unmindfulness of the learned counsel, for the defendants/appellants, that the contract of sale, borne in Ex.P-1, and, in Ex. P-2, rather standing executed inter se the plaintiff, and, one Swaran Singh , and, when Ex.PW3/A, wherethrough, the plaintiff hence constituted defendant No.1, as his general power of attorney, even for executing a registered deed of conveyance, vis-a-vis, the suit property, rather being executed, on 30.11.1995, hence, subsequent thereto, (iv) thereupon, the effect(s) of the apposite contract(s) of sale, respectively embodied in Ex.P-1, and, in Ex. P-2, when is construed, vis-a-vis, Ex.PW3/A, standing executed subsequent thereto, is, qua an inference being erectable, vis-a-vis, the general power of attorney, borne in Ex.PW3/A, being executed only for enabling or hence thereupon rather power being bestowed, upon,

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defendant No.1, to, execute a registered deed of conveyance, with, one Swaran Singh. Corollary whereof, when is construed, with, the factum, of Swaran Singh not striving to enforce, the contract of sale embodied in Ex.P-1, and, in ExP-2, is, (a) qua, the reliance, if any, placed, upon Ex. D-1, with, an, articulation therein, vis-a-vis, the entire sale consideration, vis-a-vis, the suit property, being received by the plaintiff, from defendant No.1, (b) and, with a further communication borne therein, vis-a-vis, the requisite general power of attorney, being irrevocable, (c) rather being entirely inconsequential, and, rather standing negated, (d) given Ex. D-1 reciting therein, qua its, drawing occurring on 30th November, 1995, hence, in contemporaneity, vis-a-vis, the execution of Ex.PW3/A, (e) and, when as aforestated, the execution of Ex.PW3/A, is construable, qua its rather facilitating the completion of contracts of sale, respectively borne in Ex.P-1, and, in Ex. P-2, and, when the alienee therein,

one Swaran Singh has failed, to, enforce, the afore contracts of sale, (f) thereupon, it is to be concluded qua tendering, if any, of the amount of sale consideration, as, borne, in, Ex.D-1 , rather being tenderings by defendant No.1, vis-a-vis, the plaintiff rather for or on behalf of the afore Swaran Singh, who, however, for reiteration, as aforestated, has not, strived to enforce the contract(s) of sale, respectively embodied, in, Ex.P-1, and, in Ex. P-2.

9. Be that as it may, it appears that the defendant No.1, despite, being fully aware, and, mindful qua, in, contemporaneity, vis-a-vis, the drawings of Ex.PW3/A, and, of, Ex.D-1, and, also with his further being aware, and, awakened, qua the purpose, of, conferment, of, an authorization, upon him, by the plaintiff, through, his executing Ex.PW3/A, rather being, for, completion of the contracts of sale, borne in Ex.P-1, and, in Ex.P-2, (a) thereupon, merely, for, a recital occurring therein, qua his personally liquidating, the, amount of sale consideration

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therein, has, concerted to hence thereupon, make an untenable capitalization. However, the afore concert, cannot either to be accepted or countenanced, as, thereupon, the combined effects, of, execution of Ex.P-1, and, of Ex. P-2, by the plaintiff, vis-a-vis, a person, other than defendant No.1, and, the enabling facilitative conferment, hence, of a power of attorney, through Ex.PW3/A, upon, defendant No.1, for completing the contracts of sale, respectively, embodied in Ex.P-1, and, in Ex. P-2, would be rendered wholly nugatory. Obviously, the afore mishap is to be avoided, thereupon, the argument as addressed by the learned counsel, for the appellants, is, to be rejected.

10. Even otherwise, the sale deed qua the suit property, was executed by defendant No.1, vis-a-vis, defendant No.2, on 4.5.2005, and, in case, since, the drawing, of Ex.D-1 on 30.11.1995 upto 2005, rather defendant No.1, under, the garb of Ex.D-1, held rights, if

any, to propagate, the provisions encapsulated, in Section 53-A of the Transfer of Property Act, he, was enjoined to subject, the suit property, to user. However, no evidence has been adduced on record, (a) that, since 1995, upto 2005, rather defendant No.1 hence subjected the suit property to any user, nor any documentary evidence, has been adduced on record, in personification, of, the factum qua the apposite column, of possession in the jamabandi, as, appertaining to the suit property, and, vis-a-vis, the afore facet, hence, rather holding reflections, bearing concurrence, with, the recitals borne in Ex.D-1, (b) and, nor when any evidence, to rebut the apposite reflections, occurring in the column of possession, borne in the jamabandi appertaining to the suit land, and, vis-a-vis, the afore period, is adduced, (c) thereupon, all the reflections borne in the jamabandi, with graphic echoings therein qua the plaintiff, being the owner in possession of the suit property, acquire(s)

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conclusivity, (d) and, the further sequel thereof, is, qua the passing of possession, by the plaintiff, to defendant No.1 through Ex. D-1, and, after his receiving, the entire sale consideration, rather not facilitating defendant No.1 to contend, that he has acquired therethrough the statutory leverage engrafted in Section 53-A of the Transfer of Property Act, for, hence, resisting the plaintiff's suit. Contrarily, the afore inference(s), drawn by this Court, and, on a combined reading of Ex.P-1, P-2, D-1, and, of, Ex.PW3/A, hence, qua execution of Ex.PW3/A, being facilitative, for, completion of contract(s) of sale, respectively, borne in Ex.P-1, and, in Ex. P-2, rather acquiring, the, fullest therewith tenacity.

11. Furthermore, what erodes the efficacy of the afore submission addressed by the learned counsel, for the defendant, is, the factum, of, the sale deed, as, executed by defendant No.1, vis-a-vis, defendant No.2, in the year 2005, rather containing a recital qua

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defendant No.1, while, acting as GPA of the plaintiff, his, hence, executing, the, registered deed of conveyance, vis-a-vis, the suit land qua defendant No.2. Consequently, the afore recital, does estop, defendant No.1, to, contend that with, Ex.D-1 hence carrying therein the afore recitals, rather forbidding the plaintiff, to, annul Ex.PW3/A, by his subsequent thereto hence executing Ex.P-3.

12. Nowat, this Court is enjoined to delve, into/ upon, the contention reared by the vendee, of the sale deed, executed in the year 2005, qua his being, a, bonafide purchaser, for value or for consideration, of, the suit property. However, his attempt, on the afore anvil, to validate the sale deed, executed inter se defendant No.1 and defendant No.2, is rather scuttled, by defendant No.2 making an admission in his cross-examination qua his visiting, the, Tehsil Office for hence verifying, the, subsisting validity of the general power, of, attorney,

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borne in Ex.PW3/A, (a) and, upon his visiting the afore office, his making certain inquiries, from, the official available thereat, and, his being apprised qua Ex.PW3/A rather still surviving, and, holding validity. The effect thereof when is combined with his thereafter also making an admission, qua his verifying the validity, and, subsistence of Ex.PW3/A, rather foisting an inference qua his despite, holding knowledge qua rescinding, of Ex.PW3/A, by the plaintiff, by the latter executing Ex.P-3,, his, yet proceeding to execute a registered deed of conveyance, vis-a-vis, the suit property, (b) thereupon, he is amenable to construed to be not an ostensible owner, nor he is amenable to be construed, to execute, the afore sale deed, with defendant No.1, without any notice, qua the authorization conferred, upon, defendant No.1, by the plaintiff, rather coming to be rescinded, and, annulled. Consequently, his attempt to validate, the, afore submission, is futile, and, hence, is rejected.

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13. The effect of the afore discussion, is that the judgment, and, decree rendered by the learned Court below is maintained and affirmed. In sequel, there is no merit in the instant appeal, and, it is dismissed accordingly. Decree sheet be prepared accordingly. All pending applications also stand disposed of. Records be sent back forthwith.

30th April, 2019.
(jai)

(Sureshwar Thakur)
Judge.