



**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**Regular Second Appeal No.462 of 2007.
Date of decision: 09.09.2016**

Smt.Vidya Devi **....Appellant-Defendant**

Versus

Shri Hem Raj **..Respondent-Plaintiff**

Coram

The Hon'ble Mr.Justice Sandeep Sharma,Judge.

Whether approved for reporting ?¹ Yes.

For the Appellant: Mr.R.L. Chaudhary, Advocate.

For Respondent: Mr.Digvijay Singh, Advocate.

Sandeep Sharma,J.

This appeal has been filed by the appellant-defendant against the judgment and decree dated 11.11.2004, passed by the learned Presiding Officer, Fast Track Court, Mandi, District Mandi, H.P., reversing the judgment and decree dated 25.5.2000, passed by the learned Sub Judge Ist Class, Court No.1, Mandi, District Mandi, whereby the suit filed by the respondent-plaintiff has been dismissed.

2. The brief facts of the case are that the plaintiff-respondent (*herein after referred to as the `plaintiff`*), filed a

¹ *Whether the reporters of Local Papers may be allowed to see the judgement? Yes.*

suit for declaration and injunction against the appellant-defendant (*hereinafter referred to as the `defendant`*) stating therein that he is joint owner in possession alongwith other co-sharers and having 1/48th share in the suit land comprised in Khata Khatauni No.488/803 to 806, Khasra Nos.220, 227, 276, 278, 281, 279, 280, Kittas 7, measuring 177.88 Sq.Meters, situated in Mauja Bhagwahan/366/4, Tehsil Sadar, District Mandi, H.P. (*hereinafter referred to as the suit land*).

3. It has been averred by the plaintiff that the defendant, who is government employee and known to him since long, allured him for securing some bank loan for him so as to start some business and for that purpose she asked him to go to Tehsil Office with her for execution of some documents and under this impression he joined her and went to Tehsil Office on 20.11.1995, but on the way, she provided liquor to him and under the influence of liquor she got signed some documents from him. It has further been averred by the plaintiff that on the next day i.e. 21.11.1995, he narrated the whole story to his brother Ramesh, who went to Tehsil Office with him and made enquiries. The plaintiff has averred that he came to know from Tehsil Office that the defendant has got executed power of attorney from him qua his share in the suit land in favour of her brother Padam Nabh. The plaintiff has further averred that on 21.11.1995

itself, he got the power of attorney revoked in the presence of the defendant and her witnesses. The plaintiff has further averred that on 27.5.1996, the defendant came to his house and asked him for delivery of possession of his 1/48th share in the suit land and only then he came to know that mutation qua suit land had been sanctioned in favour of the defendant qua the suit land on 15.2.1996 as per sale deed No.358. It is further averred by the plaintiff that he had neither sold the suit land to the defendant nor had he received any consideration from her and that he had not delivered the possession of the suit land to the defendant. It is also averred by the plaintiff that his share in the suit land was already mortgaged with one Jagdish against a sum of Rs.10,000/- and, in view of this also no sale deed of the share of the plaintiff could have been executed in favour of the defendant. It is alleged by the plaintiff that neither he had received any consideration nor he had executed any sale deed in favour of the plaintiff. Hence, the plaintiff filed a suit in the trial Court seeking declaration that the sale deed dated 15.2.1996 and mutation attested in consequence thereof dated 3.4.1996 are wrong, illegal, null and void and not binding upon the plaintiff and the revenue entry to the contrary is also null and void with consequential relief of restraining the defendant from interfering in the suit land.

4. Defendant, by way of filing written statement, raised preliminary objections on the grounds of maintainability, locus standi, cause of action, estoppel and valuation for the purpose of court fee and jurisdiction. On merits, the defendant has averred that the plaintiff has already sold his entire share from the suit property prior to filing of the suit and therefore, he is no more owner in possession of the suit land and it is the defendant who is co-sharer in the suit land along with other co-sharers and that Khasra No.227, does not belong to the parties to the suit. Defendant has further averred that in fact the plaintiff had agreed to sell his entire share vide an agreement to sell dated 9.12.93 to one Sh.Sohan Lal S/o Sh.Karam Chand for a consideration of Rs.20,000/- and the brother of the plaintiff namely; Ramesh, had also agreed to sell his entire share in the suit land. Defendant has further averred that the plaintiff vide an agreement to sell dated 9.12.1993 had agreed to sell his entire share in the suit land to said Sh.Sohan Lal, for a consideration of Rs.20,000/- in the presence of the witnesses and both of them delivered the possession of the suit property to Sohan Lal, who further sold the share of the plaintiff and his brother in the suit land in her favour by delivery of possession to her. It has further been averred by the defendant that out of the total sale consideration of Rs.30,000/-, an amount of Rs.20,000/- had

been received by the plaintiff and his brother Ramesh Kumar from said Sh.Sohan Lal at the time of execution of the agreement and the remaining amount of Rs.10,000/- had been agreed to be received at the time of execution and registration of sale deed. Defendant has further stated that, in between, said Sh.Sohan Lal, sold the suit property to her and she had paid the remaining amount to the plaintiff and his brother Ramesh Kumar. It has been averred by the defendant that the plaintiff had demanded Rs.5000/- from her, which had been paid by her and in lieu of that the plaintiff had agreed to execute the registered sale deed in her favour, which could not be registered. But at the same time, the plaintiff got his general power of attorney executed in favour of Padam Nabh, and he had got the sale deed qua the suit land executed in her favour after getting the remaining balance amount of Rs.5000/-, the possession of the suit land had also been delivered to the defendant. Defendant has denied the revocation of general power of attorney of the plaintiff on 21.11.1995 and stated that the sale deed had been executed and registered on 24.11.1995 on the basis of the general power of attorney of the plaintiff and in consequence thereto the mutation had also been entered and accepted. It has further been averred by the defendant that she is now owner in possession of the suit land qua 1/48th

share of the plaintiff and prayed for dismissal of the suit filed by the plaintiff.

5. The plaintiff has not filed any replication to the written statement.

6. The learned trial Court, on the basis of pleadings, settled inasmuch as 8 issues and except Issue No.8, decided all the issues in favour of the defendant and accordingly dismissed the suit of the plaintiff.

7. Feeling aggrieved and dis-satisfied with the judgment and decree dated 25.5.2000, the plaintiff filed an appeal before the learned District Judge, which was allowed by the learned Presiding Officer, Fast Track Court, Mandi, District Mandi by holding that the suit of the plaintiff is decreed and the sale deed No.358 dated 15.3.1996 executed in favour of the defendant and mutation No.924 dated 3.5.1996 attested in consequence thereof are declared to be illegal, null, void and not binding upon the plaintiff and further the entries in the revenue record to the contrary are also declared to be null and void.

8. This second appeal was admitted on 19.3.2009 on the following substantial question of law:

“(1) Whether the first appellate court has misread and misinterpreted documentary as well as oral evidences led by the defendants?”

2. Whether the plaintiff is liable under law to execute sale deed in favour of

the defendant in the event if his General Power of attorney was not legally empowered to execute the said deed, in view of the fact that the plaintiff has received the full consideration, handed over the possession and agreed to execute sale deed?"

9. Perusal of Ex.DC and Ex.PA i.e. copies of Jamabandi for the year 1991-92, clearly suggests that plaintiff was having 1/48th share in the suit property. Similarly, it duly stands proved on record that on the strength of power of attorney executed by the plaintiff in favour of P.N. Sharma, P.N. Sharma sold the share of plaintiff in the suit property, as mentioned above, to the defendant and on the basis of same, mutation was also attested in favour of defendant. Plaintiff by way of suit sought declaration and injunction restraining the defendant qua the suit land, description whereof has been given hereinabove, by stating that suit land was duly owned and possessed by him alongwith other co-sharers and he is having 1/48th share of that property. He also claimed that defendant under the influence of liquor got some document signed by him, which she lateron used for getting the suit land transferred in her name. Plaintiff further stated that on 21.11.1995, he narrated the whole story to his brother who alongwith him went to Tehsil Office and on inquiry found that defendant got power of attorney executed from him qua

his share in the suit land in favour of her brother P.N. Sharma. Accordingly, on 21.11.1995, he got the power of attorney revoked in the presence of the defendant and her witnesses. He also claimed that when defendant came to his house on 27.5.1996 and asked for delivery of the possession of 1/48th share of suit land, only then he came to know that she has become owner of the suit land in terms of sale deed dated 15.2.1996. Plaintiff also claimed that neither he sold the suit to the defendant nor he had received any consideration from her and he never delivered the possession of the suit land to the defendant.

10. Careful perusal of evidence led on record clearly suggests that the plaintiff was unable to prove on record that power of attorney Ex.PA, executed by him in favour of P.N. Sharma authorizing him to sell his 1/48th share in the suit property, was a result of fraud upon him by the defendant. To the contrary defendant, while leading cogent and convincing evidence, was able to prove on record that power of attorney dated 11.4.2000 was duly executed by plaintiff, whereby he had authorized P.N. Sharma i.e. DW-4 to sell his share in the suit property.

11. Close scrutiny of record of the Courts below suggests that there is overwhelming evidence adduced on record by the defendant to prove that power of attorney Ex.DA and receipt Ex.D1, whereby plaintiff had received total

consideration, was executed by the plaintiff after fully understanding the contents of the same. DW-2 has specifically stated that the plaintiff had agreed to sell his suit property for Rs.20,000/- and hence for the same she paid an amount of Rs.20,000/- to the plaintiff on 20.11.1995 and thereafter plaintiff got scribed power of attorney in Tehsil Office in the presence of Som Nath, Advocate, Sohan Lal and Harish Kumar, but fact remains that the same was later on registered in favour of P.N. Sharma. Accordingly, on 24.11.995, P.N. Sharma, in terms of power of attorney Ex.DA, executed sale deed in her favour.

12. Similarly, perusal of DW-3, DW-4 and DW-5 clearly proves on record that plaintiff had executed a power of attorney in favour of Shri P.N. Sharma in Tehsil Office and no liquor was served to the plaintiff at the material time and P.N. Sharma executed the sale deed Ex.DB on the basis of power of attorney. Hence, this Court, after perusing the overwhelming evidence adduced on record by the defendant, sees no reason to interfere in the findings recorded by both the Courts below that power of attorney Ex.DA was executed by the plaintiff in favour of P.N. Sharma authorizing him to sell his share in the suit property in favour of defendant. Defendant was also able to prove her case by placing on record receipt Ex.D1, whereby the plaintiff had received an amount of Rs.20,000/- on account of consideration qua the

suit land which was sold by P.N.Sharma, being power of attorney holder of the plaintiff.

13. Similarly, DW-1 i.e. the then Sub Registrar also supported the case of the defendant that the power of attorney Ex.DA was executed by the plaintiff in his presence after fully understanding its contents and same were admitted by the plaintiff before him at the time of its registration.

14. Now, question, which remains to be determined by this Court, at this stage, is, "whether at the time of alleged execution of sale deed, P.N. Sharma was authorized to effect the sale, if any, in favour of defendant on the strength of power of attorney Ex.DA?" Plaintiff also claimed that sale deed is null and void since he had revoked the power of attorney allegedly executed by him on 21.11.1995, whereby he had allegedly authorized P.N. Sharma to effect sale, if any, of his share in favour of defendant.

15. Plaintiff, while appearing as PW-1, has stated on oath that he revoked the power of attorney on subsequent day. He stated that on 20.11.1995 he was taken to Tehsil Office by defendant under the pretext to prepare some papers for obtaining bank loan and where he was provided liquor by the defendant to considerable extent and as such under the influence of liquor defendant got executed some papers from him. He also stated that on 21.11.1995, when he came to

Tehsil Office alongwith his brother, he came to know that power of attorney has been got registered by the defendant qua his share in favour of her brother namely P.N. Sharma. However, close scrutiny of examination-in-chief and cross-examination conducted on PW-1 nowhere suggests that any suggestion worth the name was put to him by the defendant with regard to revocation of power of attorney, if any, allegedly executed by him in favour of P.N. Sharma. Plaintiff also placed on record revocation deed Ex.PK, wherein it finds mention that power of attorney executed by the plaintiff in favour of P.N. Sharma on 20.11.1995 stands revoked by a deed of revocation Ex.PK. Candid admission made by DW-1 in his cross-examination fully corroborates the statement given by PW-1 i.e. plaintiff wherein he stated that he had revoked power of attorney allegedly executed by him on 21.11.1995 in favour of P.N. Sharma authorizing him to effect sale of his share in the suit land in favour of defendant. If cross-examination conducted on these material witnesses PW-1 and DW-1 is seen, it clearly emerge from their admission that plaintiff had revoked power of attorney Ex.D2 by executing revocation deed Ex.PK. Hence, this Court finds considerable force in the findings returned by the Court below that the plaintiff was able to prove on record that power of attorney Ex.D2, allegedly executed by him in favour of P.N. Sharma, was revoked by revocation deed, which was

got registered in the office of Sub Registrar on 21.11.1995. Perusal of Ex.PK i.e. revocation deed dated 21.11.1995, clearly suggests that power of attorney executed by the plaintiff in favour of P.N. Sharma on 20.11.1995 was revoked by the plaintiff for all intents and purposes and as such P.N. Sharma had no authority, whatsoever, after 21.11.1995 to execute the sale deed in favour of defendant on the strength of power of attorney Ex.D2. It also emerged from the record that the learned trial Court though was fully convinced with the evidence led on record by the plaintiff that he had revoked power of attorney Ex.DB executed in favour of P.N. Sharma vide revocation deed dated 21.11.1995, but the same was discarded/rejected solely on the ground that no notice of revocation of the power of attorney was ever given to DW-3 P.N. Sharma by the plaintiff prior to execution of the sale deed and as such sale deed was declared legal. In this regard learned first appellate Court rightly concluded that registration of the deed of revocation itself can be safely deemed to be a notice to the persons subsequently acquiring the property comprised in the instrument.

16. Careful perusal of revocation deed, which stands duly proved on record, clearly suggests that after 21.11.1995 P.N. Sharma had no right/authority to sell the property on behalf of the plaintiff. In the instant case, it also stands proved on record that sale deed Ex.DB was executed on

24.11.1995, but undoubtedly on that day P.N. Sharma, power of attorney holder of plaintiff, had no authority, whatsoever, to effect sale, if any, in favour of defendant on the strength of power of attorney Ex.D2 which stood revoked w.e.f. 21.11.1995. Revocation Deed Ex.PK stands duly proved on record. Since P.N. Sharma had no authority to effect sale, if any, after 21.11.1995, on the strength of power of attorney, sale deed Ex.DB executed by him on 24.11.1995 is not binding upon the plaintiff and as such learned first appellate Court rightly concluded that the trial Court has committed grave illegality while holding sale deed Ex.DB to be legal and binding upon the plaintiff.

17. Now, question which remains to be seen, “whether plaintiff is liable to execute sale deed qua his share in the suit land in favour of defendant on account of sale consideration, which he allegedly received vide Ex.D1? In the present case, it is own case of the defendant that sale deed Ex.DB was executed in favour of defendant by P.N. Sharma, who was given power of attorney Ex.DA by the plaintiff. But once it stands proved on record that Ex.DA was revoked by the plaintiff vide revocation deed Ex.PK, P.N. Sharma, power of attorney of plaintiff, had no authority to execute sale deed in favour of defendant after 21.11.1995. Moreover, defendant has nowhere led any evidence on record to prove that plaintiff had agreed to execute sale deed, if any,

in favour of defendant. Rather, plaintiff was able to prove on record that power of attorney, executed by him in favour of P.N. Sharma, was revoked on 21.11.1995 i.e. definitely before execution of sale deed dated 24.11.1995 Ex.DB. Similarly, perusal of Ex.D1 i.e. receipt allegedly issued by the plaintiff to the defendant, while selling his share in the suit land i.e. Khata Khatauni Nos.481/803,803, 806, nowhere suggests that plaintiff had received an amount of Rs.20,000/- in terms of sale deed Ex.DB, which came to be registered on 15.2.1996. Rather, perusal of aforesaid receipt suggests that on 20.11.1995 plaintiff sold land, as described above, for a consideration of Rs.20,000/- to the defendant, possession whereof was also delivered on the same day and more interestingly, there is no mentioning, if any, with regard to execution of sale deed i.e. Ex.D1, from where it can be inferred that pursuant to receipt of consideration, as referred in Ex.D1, plaintiff had undertaken before defendant to get the sale deed executed in her favour through his power of attorney, P.N. Sharma.

18. Perusal of Ex.D3 reveals that present plaintiff alongwith his brother; namely; Ramesh had already sold land, which is subject matter of the present suit, to one Shri Sohan Lal vide agreement to sell dated 9.12.2003, but defendant, while leading cogent evidence on record, neither by leading convincing evidence on record nor by putting

specific suggestion to the plaintiff, was able to prove on record that he had not sold suit land to Sohan Lal on 9.12.1993. Leaving everything aside, as has been discussed in detail, it stands duly proved on record that power of attorney Ex.DB, executed by the plaintiff in favour of P.N. Sharma, stood revoked vide revocation deed dated 21.11.1995 i.e. Ex.PK and as such power of attorney holder Mr.P.N. Sharma had no authority to effect sale, if any, in favour of defendant on the strength of power of attorney Ex.DB allegedly executed by the plaintiff on 20.11.1995. Moreover, careful perusal of written statement filed by defendant itself suggests that at first instance vide agreement to sell dated 9.12.1993, plaintiff sold suit land to one Shri Sohan Lal for a consideration of Rs.20,000/- and the possession of said property to the extent of his share was delivered to said Shri Sohan Lal and later on said Shri Sohan Lal sold this property vide agreement to sell dated 19.10.1995 to the defendant and was also delivered the possession of the property. As per plaintiff, on 9.12.1993 plaintiff and his brother had agreed to sell entire property to Shri Sohan Lal for a total consideration of Rs.40,000/-, out of which Rs.30,000/- were received by the plaintiff and his brother Ramesh Kumar from said Shri Sohan Lal, at the time of execution of agreement and remaining amount of Rs.10,000/- was agreed to be received at the time of

execution and registration of sale deed. Defendant has specifically stated that said Shri Sohan Lal sold this property to her and she paid remaining amount to the plaintiff and his brother Ramesh Kumar, accordingly, on 20.11.1995, she requested the plaintiff to execute the registered sale deed qua her share.

19. Close scrutiny of written statement, especially para-2, itself suggests that it is admitted case of defendant that she had purchased suit land from Shri Sohan Lal in whose favour plaintiff had already effected agreement to sell as stated by him in the plaint as well as in deposition made before the Court. Plaintiff has specifically stated in his statement that since he had already sold his share in the suit land in favour of Shri Sohan Lal, there was no occasion for him to effect sale, if any, qua the similar piece of land in favour of defendant. Aforesaid assertion made by the plaintiff in plaint stands duly corroborated by the reply given by the defendant in para-2 of the written statement, where she admitted that she purchased suit land from Shri Sohan Lal and paid remaining amount to the plaintiff and his brother Ramesh Kumar. It clearly emerge from aforesaid admission made by the defendant in written statement that amount of consideration, if any, qua the suit land was paid to Shri Sohan Lal. Though defendant has stated that remaining amount was paid to the plaintiff, but while making

deposition before the Court below while contesting the suit, defendant made an whole hearted attempt to prove on record that entire consideration was paid to the plaintiff.

20. Hence, in view of above, specifically when it stands duly proved on record that Shri P.N. Sharma had no authority after 21.11.1995 to execute sale deed, if any, in favour of defendant on the strength of power of attorney Ex.DA allegedly executed in his favour by the plaintiff, this Court sees no illegality and infirmity in the judgment passed by the first appellate Court, wherein it decreed the suit of the plaintiff declaring sale deed No.358 dated 15.3.1996 and mutation No.924 dated 3.4.1996 null and void and not binding upon the plaintiff. Substantial question of law is answered, accordingly.

21. Since this Court, while exploring answer to aforesaid question of law perused the entire evidence led on record by the parties, it cannot be said by any stretch of imagination that learned first appellate Court below misread, misinterpreted and mis-appreciated the documentary as well as oral evidence led by the defendant. Rather, first appellate Court, while deciding actual controversy involved in the matter, dealt with each and every aspect of the matter very meticulously and this Court sees no reason to interfere in the same. Hence, substantial question No.2 is answered accordingly.

22. In view of the detailed discussion made hereinabove, this appeal is dismissed. The judgment passed by the learned first appellate Court below is upheld and that of the learned trial Court is set aside and the suit filed by the plaintiff is decreed. There shall be no order as to costs.

22. Interim order, if any, is vacated. All miscellaneous applications are disposed of.

September 9, 2016
(aks)

(Sandeep Sharma)
Judge.

High Court