

Before Lisa Gill, J.

MAHINDER THROUGH HIS LRS—Appellant

versus

RAJ KUMAR RATHI AND OTHERS—Respondent

RSA No.6226 of 2017

January 06, 2022

***Code of Civil Procedure, 1908—S.100—Suit for possession—
Specific performance of agreement—Concurrent findings of fact—
No question of law arises—Appeal dismissed.***

Held that, both the learned courts below have returned concurrent findings of fact after correct and proper appreciation of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

(Para 17)

Avnish Mittal, Advocate
for the appellant.

Puneet Bali, Senior Advocate
with Shivam Sharma, Advocate
and Vishwajeet Singh, Advocate
for respondents No.2 and 3.

Raj Mohan Singh, Advocate
for Rajesh K.Sheoran, Advocate
for respondent No.4.

LISA GILL, J.

(1) Appellant-plaintiff has filed this regular second appeal challenging judgments and decrees dated 22.09.2014 and 28.07.2017 passed by the learned Additional Civil Judge (Senior Division), Gurgaon and learned Additional District Judge, Gurugram, respectively, whereby suit for possession by way of specific performance of agreement dated 09.01.2001 filed by the plaintiff, has been dismissed.

(2) Brief facts necessary for adjudication of the appeal are that, appellant/plaintiff filed a suit for specific performance of

agreement to sell dated 09.01.2001 with the averments that defendant No.1 was the owner of plot No.50 measuring 1.5 Kanals situated at Sector 21, Urban Estate Gurgaon vide allotment/intimation No.8650 dated 19.05.1986. Plot in question was under litigation as defendant No.4 i.e., Haryana Urban Development Authority (HUDA) had no such site at the spot, therefore, another plot bearing No.20 in Sector 5, Urban Estate, Gurgaon vide allotment No.130 dated 24.08.1997 at a new rate, was offered to defendant No.1. It is pleaded that defendant No.1 entered into an agreement to sell dated 09.01.2001 in respect to the said plot for a sum of Rs.15,00,000/- out of which appellant/plaintiff paid a sum of Rs.5,00,000/- to defendant No.1 at the time of execution of the agreement. Remaining consideration amount was agreed to be paid by appellant/plaintiff to defendant No.1 at the time of transfer of the said plot by HUDA department/execution and registration of sale deed in his favour, which would be done when defendant No.1 would secure possession of the newly offered plot. Appellant/plaintiff further pleaded that it was agreed that defendant No.1 would give one month's notice to the plaintiff after taking possession of the newly offered plot. However, defendant No.1 failed to execute the sale-deed in terms of the agreement to sell, whereas the plaintiff was and is always ready and willing to perform his part of the contract. Plaintiff, it is asserted, came to know that defendant No.1 executed a power of attorney in favour of defendant No.2 on 31.10.2001 in respect to the plot in question, registered with the Sub-Registrar, Nuh and that defendant No.2 with a mala-fide and dishonest intention transferred the said plot in favour of his wife, defendant No.3, without any sale consideration and without the knowledge and notice of defendant No.1. It is pleaded that on inquiry from HUDA on 20.12.007 plaintiff came to know that defendant No.2 had already contracted to sell the plot to one Dalip Singh by way of agreement, who had further informed defendant No.4 on 06.06.2005 not to transfer the said plot to anyone. It is pleaded that defendants No.2 to 4 had colluded with each other and transferred the abovesaid plot in favour of defendant No.3. Appellant/plaintiff called upon defendant No.1 to admit claim of the plaintiff and execute sale-deed in his favour in terms of the agreement dated 09.01.2001 after receipt of balance sale-consideration, but defendant No.1 refused to do so on 20.12.2007. Hence, the suit was filed on 24.12.2007.

(3) Suit was contested by the defendants with defendant No.1 filing a separate written statement, which was adopted by defendants No.2 and 3. A preliminary objection was taken by defendant No.1 that

the suit was based upon forged and fabricated document, which the answering defendant has never signed/executed. The said document, it is stated, did not bear his original signatures, which are in fact a printed copy, which were electronically scanned from the second page of General Power of Attorney dated 31.10.2001 executed by defendant No.1 in favour of defendant No.2, duly submitted before HUDA for the purpose of execution of Conveyance Deed of the plot, in question. It is pleaded that plaintiff gained access to the documents in order to achieve his ulterior motives. It is denied that defendant No.1 ever signed or executed agreement to sell dated 09.01.2001 in favour of the plaintiff or that he ever received a sum of Rs.5,00,000/- from the plaintiff as advance sale price or earnest money from him. It is stated that the plaintiff had never approached defendant No.1 for execution of the alleged agreement and he is, in fact, a stranger to defendant No.1. It is further pleaded that the only deal in respect to the plot in question entered into by defendant No.1, was with defendant No.2, Naresh Kumar pursuant to which General Power of Attorney was registered in the office of Sub-Registrar, Nuh on 31.10.2001 and the said General Power of Attorney was duly submitted in the office of HUDA, Gurgaon. It is pleaded that defendant No.1 had authorized defendant No.2 to represent him before HUDA in respect of the plot in question for every purpose, whatsoever, to enter into an agreement to sell with any party and to receive advance/earnest money and issue receipt, to get the sale-deed executed and get it registered before the Sub-Registrar and to receive the sale consideration etc. It is further pleaded that defendant No.2 executed sale-deed in favour of defendant No.3, his wife, on the basis of said valid General Power of Attorney and the said act of defendant No.2 was duly ratified by defendant No.1. Dismissal of the suit was thus prayed for by defendant No.1.

(4) However, an application dated 19.09.2008 was moved by defendant No.1 under Order 12 Rule 6 CPC to withdraw the abovesaid written statement filed by him and he sought to admit the claim of the plaintiff. Defendants No.2 and 3 then filed an application seeking to contest the suit by filing separate written statement and the said defendants were permitted to file their written statement by the learned trial court. Various preliminary objections were taken by defendants No.2 and 3. It is pleaded that defendant No.1 had no contractual obligation qua the alleged agreement. Moreover at the time of filing of the suit, answering defendant was owner of the suit property. Furthermore, defendant No.2 was not aware of any agreement dated 09.01.2001 and that the plot was sold to defendant No.3 by

defendant No.2 for valuable sale consideration of Rs.30,15,500/- which was duly paid through cheques No.791370 and 791371, both dated 07.05.2007 and remaining amount of Rs.10,15,500/- was paid in cash. Question of readiness and willingness did not arise in the absence of any genuine agreement alleged to have been executed by defendant No.1 in favour of the plaintiff. It is pleaded that the plaintiff only sought to usurp the property in question. Allegations of defendant No.2 intending to sell the suit property to one Dalip were denied. Dismissal of the suit was prayed for.

(5) Replication to the written statement filed on behalf of defendants No.2 and 3 was filed.

(6) Learned trial court framed the following issues on the basis of the pleadings of the parties:-

1. Whether the plaintiff had entered into an agreement to sell dated 09.01.2001 with the defendant? OPP
2. Whether the plaintiff has been ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to decree for specific performance as prayed for? OPP
4. Whether the sale deed executed by defendant No.2 in favour of defendant No.3 is illegal and without any sale consideration as such liable to be set aside? OPP
5. Whether suit is barred by law of limitation? OPD
6. Whether the plaintiff has concealed the material facts from the court, if so its effect? OPD
7. Relief.

(7) Thereafter, on an application moved by the plaintiff, following additional issues were framed by the learned trial court on 12.03.2014:-

- i) Whether Power of Attorney executed by defendant No.1 in favour of defendant No.2 was/is valid in the eyes of law? OPP
- ii) Whether the sale of suit property by defendant No.2 to defendant No.3 on the basis of the power of attorney was valid or not? OPP

(8) Evidence was led by both the parties to prove their respective claims.

(9) Learned trial court on considering the evidence on record, facts and circumstances, concluded that the plaintiff had failed to prove due execution of agreement dated 09.01.2001, whereas it is proved that defendant No.1 executed a valid power of attorney in favour of defendant No.2, who had rightly executed a registered sale-deed in favour of defendant No.3. It is noted that defendant No.1 did not even step into the witness box to record his testimony. Suit filed by the plaintiff was, accordingly, dismissed. Appeal preferred by the appellant/plaintiff challenging judgment and decree dated 22.09.2014 passed by the learned trial court, was dismissed by the learned Additional District Judge, Gurugram vide judgment and decree dated 28.07.2017. Learned Additional District Judge, Gurugram observed that collusion between the plaintiff and defendant No.1 is clearly reflected and proved on record whereas execution of General Power of Attorney was never denied by its executant, defendant No.1.

(10) Aggrieved therefrom, present regular second appeal has been filed.

(11) Learned counsel for the appellant vehemently argued that both the learned courts below have grossly erred in law and on facts in dismissing the suit filed by the appellant/plaintiff. It is submitted that once defendant No.1 on moving an application under Order 12 Rule 6 CPC specifically admitted the claim set up by the plaintiff, it was incumbent upon the learned trial court to have decreed the suit. The fact that defendant No.1 had earlier filed the written statement contesting the suit was of no relevance in the face of subsequent admission by defendant No.1. Agreement dated 09.01.2001, it is submitted, is duly proved on record. Learned courts below have wrongly ignored the opinion of the handwriting and fingerprint expert examined by the plaintiff. Furthermore, both the learned courts below have erred in as much as the onus to prove Issue No.4 i.e., '*Whether the sale deed executed by defendant No.2 in favour of defendant No.3 is illegal and without any sale consideration as such liable to be set aside?*', has been placed on the plaintiff. The onus of proving this issue should have been placed on the defendants. Once defendants No.2 and 3 set up the plea that defendant No.3 is a bonafide purchaser for consideration, it was incumbent upon them to prove the same. Learned counsel for the appellant further argued that the General Power of Attorney dated 31.10.2001 is not even on record. The same is

available on record as a marked document i.e., Mark D1. Therefore, no reliance whatsoever can be placed on such a document. The General Power of Attorney holder did not even step into the witness box to prove the same. Furthermore, there is no explanation as to why it was executed at Nuh, whereas the parties were at Gurugram/Delhi. There is furthermore no proof of consideration amount being passed between defendants No.2 and 3. Reference is made to Ex.PW4/A i.e., the account statement of defendant No.3. Learned counsel for the appellant has further vehemently argued that agreement dated 09.01.2001 has been proved by the plaintiff. He refers to the testimony of the plaintiff, PW1 and to the testimony of the attesting witness, PW2 Vijay Kumar. It is submitted that the learned first appellate court should have re-appreciated the entire evidence and discussed the same in detail and thereafter, recorded its conclusion. However, the same has not been done, therefore, there is complete non-compliance of the provisions of Order 41 Rule 31 CPC thereby vitiating the impugned judgments. It is thus prayed that present appeal be allowed and both judgments and decrees dated 22.09.2014 and 28.07.2017 passed by learned Additional Civil Judge (Senior Division), Gurgaon and learned Additional District Judge, Gurugram, respectively, be set aside and suit filed by the plaintiff/appellant be decreed throughout. *Per contra*, learned counsel for the respondents while refuting the arguments raised on behalf of the appellant asserted that both the learned courts below have rendered well reasoned and logical judgements based on proper appreciation of the evidence on record. It is contended that the plaintiff, in fact, has tried to defraud the answering respondent on the basis of a document drawn up in a fraudulent manner. It is submitted that apart from the fact that agreement dated 09.01.2001 is a fraudulent document, its execution has not been proved on record and neither is there anything on record to indicate the receipt of Rs.5,00,000/- as earnest money by defendant No.1. Furthermore the plaintiff, it is submitted, never came forward to assert his alleged right for a period of almost six years, which is indicative of his conduct and clear lack of bonafides. It is further contended that defendant No.1 had filed a specific and categorical written statement denying the execution of the agreement to sell dated 09.01.2001 stating that he had never appended his signatures on the said document with the signatures being lifted from the General Power of Attorney dated 31.10.2001 in favour of defendant No.2. Defendant No.1, it is stated, specifically admitted and asserted execution of General Power of Attorney dated 31.10.2001 in favour of

Naresh Kumar, defendant No.2, which is a duly registered document, the original having been submitted at the office of HUDA, Gurugram. Execution of said General Power of Attorney dated 31.10.2001 has never been denied by defendant No.1 and neither is it claimed to be a fraudulent document. Moreover, this General Power of Attorney never been revoked by defendant No.1 at any stage. Sale-deed dated 07.05.2007 specifically mentions the cheques issued by defendant No.3 in favour of defendant No.2 and in case they have been encashed at a later stage, it would be of no relevance as defendants No.2 and 3 are admittedly husband and wife. It is, thus, prayed that this appeal be dismissed.

(12) Heard learned counsel for the parties and have gone through the record with their able assistance.

(13) It is to be noticed at the outset that service of respondent No.1 is not complete, despite notice of motion having been issued on 22.12.2017. Learned counsel for the appellant did not seek any further time for completing service upon respondent No.1 and in fact impressed and asserted that final arguments in the matter should be heard. Accordingly, learned counsel for the appellant and respondents No.2 to 4 were heard.

(14) It is a matter of record that defendant No.1 was the owner of plot No.20 in Sector 5, Urban Estate, Gurgaon. In the suit seeking relief of specific performance of agreement dated 09.01.2001, defendant No.1 at the first instance contested the suit by filing written statement, taking various pleas, as have been detailed in the foregoing paras, which are not repeated for the sake of brevity. Subsequently, defendant No.1 chose to file an application under Order 12 Rule 6 CPC admitting the claim of the plaintiff. However, it is to be noted that execution of General Power of Attorney dated 31.10.2001 by defendant No.1 in favour of defendant No.2 has not been denied at any stage, by defendant No.1. Even in the application under Order 12 Rule 6 CPC, no such stand has been taken by defendant No.1. It is to be noted that categorical stand has been taken by defendant No.1 in the written statement filed by him earlier, that agreement dated 09.01.2001 is a forged and fabricated document prepared by the plaintiff by lifting/electronically scanning his signatures from General Power of Attorney dated 31.10.2001. It has further been stated by defendant No.1 in his written statement that the one and only deal in respect of the plot in question which he had entered into, was with defendant No.2. It is further specifically stated that defendant No.2 is duly authorized to

represent him before HUDA in respect of the plot, in question, for every purpose whatsoever, to enter into an agreement to sell with any party and to receive advance/earnest money and issue receipt, to get the sale-deed executed and get it registered before the Sub-Registrar and to receive the sale consideration etc. Argument raised by learned counsel for the appellant that original General Power of Attorney has not been placed on record, therefore no benefit should accrue to the defendants, is devoid of any merit. This is so for the reason that a perusal of the trial court record reveals that the original General Power of Attorney dated 31.10.2001 which was available on the record of HUDA, was summoned. Photographs of the document/signatures of defendant No.1 thereon were duly taken by the handwriting and fingerprint expert under orders of the learned trial court. Copy of the said General Power of Attorney is on record as Mark D1. A perusal thereof reveals that its executant had conferred power upon defendant No.2, to not only enter into agreements with any party, but had also bestowed the power to execute sale deed before the Sub-Registrar and further to receive the sale-consideration in full and final. Therefore, sale-deed executed by defendant No.2 in favour of defendant No.3 is valid. Legality thereof has never been challenged at any point of time by defendant No.1 before the court of competent jurisdiction. It is to be noted that defendant No.1, at no point of time has alleged any kind of fraud or misrepresentation in this regard. Furthermore, General Power of Attorney dated 31.10.2001 had not been revoked, at any point of time. Thus, it has been rightly held by the learned trial court that execution of the sale-deed by defendant No.2 in favour of defendant No.3 on the basis of General Power of Attorney dated 31.10.2001 is valid. It has been correctly held by the learned trial court that in regard to the passing of sale consideration to the power of attorney holder and whether the money has passed to the real owner or not, same is between real owner and the attorney and as such sale transaction cannot be held to be invalid. In the same vein, argument raised by learned counsel for the appellant that sale-consideration is not proved to have been passed from defendant No.3 to defendant No.2, is clearly untenable in the factual matrix of the case and hence rejected. In the given factual matrix of the case and evidence on record, it cannot be said that defendant No.3 is not a bonafide purchaser. The property in question was reflected to be in the ownership of defendant No.1 in the records of defendant No.4-HUDA.

(15) Opinions of the handwriting experts have been correctly discarded by the learned courts below as both the experts have given

reports in favour of their respective clients. Having gone through the record, I am in agreement with the observations of learned Additional District Judge, Gurugram in respect to the document, Ex.P1. Both the learned courts below have correctly observed that collusion between plaintiff and defendant No.1 is clearly reflected and proved on record. Last but not the least, there is no merit in the argument raised by learned counsel for the appellant that there is non-compliance of provisions of Order 41 Rule 31 CPC which calls for setting aside of the impugned judgement and decree. Hon'ble Supreme Court in *G. Amalorpavam and others* versus *R.C. Diocese of Madurai and others*¹ has observed as under:-

“9. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment

¹ (2006) 3 SCC 224

even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 CPC.”

(16) Perusal of impugned judgment and decree dated 28.07.2017 passed by the learned Additional District Judge, Gurugram, reveals that there has been substantial compliance of provisions of Order 41 Rule 31 CPC. Learned Additional District Judge, Gurugram has considered the entire controversy between the parties and the decision has been arrived at after proper and due appreciation of the evidence on record, post satisfactory appraisal of the respective sides. Impugned judgment is thus a valid one.

(17) Both the learned courts below have returned concurrent findings of fact after correct and proper appreciation of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

(18) No other argument has been raised.

(19) Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 22.09.2014 and 28.07.2017 passed by the learned Additional Civil Judge (Senior Division), Gurgaon and learned Additional District Judge, Gurugram, respectively, which warrants any interference by this Court.

(20) Present appeal is, consequently, dismissed with no order as to cost.
