

(1987) 12 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : R.S.A No. 1101 of 1978

Amrik Singh (Deceased) Represented by his Legal Heirs APPELLANT
Darshan Singh and others

Vs

Sohan Singh (Deceased) Represented by his Legal Heirs RESPONDENT
Gurdev Kaur and others

Date of Decision : 12-12-1987

Acts Referred:

Contract Act, 1872 — Section 207

Citation : (1987) 12 P&H CK 0053

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Surjit Bindra, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This is Plaintiff's second appeal whose suit for declaration has been decreed by the trial Court but was dismissed in appeal.

2. Originally the suit was filed by Amar Singh, who died during the pendency of the suit. He alleged that Sohan Singh, Defendant No. 1 was his son. He being old and infirm appointed him as his general attorney vide general Power of Attorney dated 7 7 1969, authorising him to sell or manage his land as Mukhtar-etam. Sohan Singh Respondent started abusing the trust reposed in him and started wasting the property of the Plaintiff Amar Singh. Thus, the relations between Amar Singh and Sohan Singh Defendant got strained. On 8-8-1970. Amar Singh deceased, told Sohan Singh that his Power of Attorney stands cancelled from 8-8-1970 and that he would get it cancelled by a registered deed of cancellation at Ferozepur within a day or two. Sohan Singh, therefore, was asked by Amar Singh not make any alienation. On 9-8-1970, Amar Singh came to know that Sohan Singh was bargaining with Defendant No. 2 Karnail Singh to mortgage his land at Butala. Amar Singh, therefore, told both the Defendants not to enter into any mortgage transaction and said that the Power of Attorney in favour of Sohan

Singh had been cancelled on 8-8-1970 Amar Singh went the Ferozepur on 10-8-1970 after telling the Defendants that he was going to Ferozepur to cancel the Power of Attorney and he actually cancelled the same on 10-8-1970 vide deed Exhibit D 2 and served a notice upon Sohan Singh to that effect. In spite of the cancellation of the Power of Attorney, Sohan Singh mortgaged the land in dispute with Defendant No 2 Karnail Singh for a sum of Rs. 35,000/- vide deed dated 11-8-1970. Thus according to the Plaintiff, the said mortgage is unauthorised, void and not binding upon him.

3. In the written statement Sohan Singh Defendant pleaded that mortgage deed was executed with the permission and consent of Amar Singh Plaintiff and that he was living with him. Thus, the mortgage deed was binding upon the deceased Amar Singh. Karnail Singh Defendant No. 2 also pleaded that the land was mortgaged by Defendant No 1 in his favour with the active consent of Amar Singh deceased.

4. On the pleadings of the parties the only controversy was as to whether the mortgage in question was validly executed by the Mukhtar-i-am in favour of the mortgagee ?

5. The trial Court after considering the entire evidence came to the conclusion that the mortgage was not validly executed by Sohan Singh Mukhtar-i-am in favour of Karnail Singh mortgagee. The Defendants have failed to discharge the onus of the issue to prove that the mortgage in question was validly executed by Sohan Singh. In view of that finding Plaintiffs suit was decreed. Out of the total consideration of Rs. 35,000/- Karnail Singh Defendant had paid Rs. 20,000/- before the Sub Registrar to Sohan Singh Rs. 15 000/- were yet to be paid. The trial Court, therefore, restrained Karnail Singh Defendant from paying Rs. 15,000/- to Sohan Singh Defendant as the balance mortgage amount and from taking forcible possession or from interfering with the possession of the suit land in occupation of Darshan Singh and Bir Singh tenants of Amar Singh deceased. Karnail Singh Defendant was never aggrieved of the said decree and he never filed any appeal against the same. Sohan Singh filed the appeal. The learned Additional District Judge reversed the finding of the trial Court and came to the conclusion that power of Attorney, in favour of Sohan Singh was not cancelled orally nor any information about the same was given by Amar Singh to Sohan Singh and Karnail Singh Defendants According to the lower appellate Court the power of attorney was cancelled at Ferozepur on 10-8-1970 on which date the mortgage deed was also executed by Sohan Singh at Amritsar. According to the lower appellate Court; by that time Sohan Singh must not be having any information that Power of Attorney in his favour has been cancelled and Karnail Singh also may not be having any such information In view of these findings the Plaintiff's suit was dismissed.

6. The learned Counsel for the Plaintiff-Appellant contended that the findings of the trial Court has been reversed in appeal arbitrarily by the Lower Appellate Court. The evidence on record has been mis read, According to the learned

Counsel, from the evidence on the record, it was amply proved that both Sohan Singh and Karnail Singh were informed by Amar Singh deceased that he should not execute any deed on his behalf and the regular cancellation deed was going to be executed by him. Sohan Singh was the son of Amar Singh deceased whereas Karnail Singh Defendant mortgagee also belongs to the same village and was residing about 40 yards away from the residence of Amar Singh. Thus, argued the learned Counsel the revocation may be expressed or may be implied in the conduct of the principal agent and therefore, once Sohan Singh was informed of the intention of Amar Singh Plaintiff, the Power of Attorney will be deemed to have been cancelled.

7. After hearing the learned Counsel for the Appellant 1 find force in his contention. The very fact that Karnail Singh, mortgagee in whose favour mortgagedeeds was executed by Sohan Singh did not file any appeal against the decree of the trial Court shows that he was satisfied with decree. Since Sohan Singh had received the amount of Re. 20,000/- from him, he filed an appeal. It is in the evidence that Sohan Singh, Karnail Singh and Amar Singh deceased used to reside in the same Patti of village Butala. There is hardly a difference of 40 yards between the houses of Amar Singh and Sohan on the one hand and Karnail Singh Defendant on the other hand. The trial Court from the evidence of Ajit Singh, PW 1, concluded that before the bargain of mortgage was struck, Amar Singh and Sohan Singh were residing at Butala and they had been told about the cancellation of the deed. It is no more disputed that relations between Amar Singh deceased and his son Sohan Singh Defendant were not cordial. Litigation was going on between them. Thus, their relations being strained, Sohan Singh was not expected to act on behalf of his father as his Attorney. Simply because there was a Power of Attorney in his favour executed earlier in the year 1969, he could not act on his behalf. It was all the more so, when he was already informed about the intention of Amar Singh that he was going to cancel his Power of Attorney. In these circumstances, the trial Court has rightly concluded that Sohan Singh and Karnail Singh Defendants entered into a bargain regarding mortgage of the land without caring about the revocation of the general Power of Attorney by Amar Singh deceased. The approach of the Learned Additional District Judge in this behalf was wholly wrong, illegal and misconceived. The revocation of the power of Attorney could be either expressly or impliedly as provided under-Section 207 of the Indian Contract Act, which reads thus:

Revocation and renunciation may be express or may be implied in the conduct of the principal or agent respectively.

That being so the approach of the lower appellate Court that Amar Singh deceased only told Sohan Singh and Karnail Singh that Power of Attorney was going to be cancelled did not mean that he had actually revoked the same was wrong. According to the Lower Appellate Court, mere notice to revoke the Power of Attorney was not sufficient. As observed earlier this approach was wrong in view of the provisions of Section 207 of the Indian Contract Act reproduced

above.

8. In the circumstances the appeal succeeds, the judgment and decree of the Lower Appellate Court are set aside and that of the trial Court decreeing the Plaintiff's suit is restored, with no order as to costs.