
(2004) 02 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1028 of 2004

Rajesh Singh and Another	Vs	APPELLANT
Smt. Hardev Kaur and Others		RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 15

Citation : (2004) 137 PLR 752 : (2005) 2 RCR(Civil) 282

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 227 of the Constitution is directed against order dated 12.1.2004 passed by the Additional Civil Judge (Senior Division), Guhla, allowing an application of defendant-respondents No. 1 to 4 wherein prayer was made for filing of written statement and serious doubts were expressed about the genuineness of power of attorney relied by the defendant-respondent No. 5. His right to file written statement has also been challenged.

2. The petitioners have filed a Civil Suit No. 338 of 2002 on 25.10.2001/12.6.2002. They have claimed possession by way of specific performance of agreement to sell dated 27.12.1999 alleged to be entered into by defendant-respondent No. 5 on his behalf as well as on behalf of defendant-respondents No. 1 to 4 in his capacity as their General Power of Attorney. The suit was contested by defendant-respondent No. 5 alone by allegedly filing written statement on his own behalf as well as on behalf of defendant-respondents No. 1 to 4. During the pendency of the suit, defendant respondents No. 1 to 4 filed an application with a prayer that they should be allowed to file their written statement alleging that they were never served personally and the report on summons with regard to service on them has been procured by

plaintiff-petitioners in collusion with defendant-respondent No. 5. It is further alleged that defendant-respondent No. 5 posing himself to be authorised by defendant-respondents No. 1 to 4 had manipulated service of summons, which in fact he was not authorised. It was further alleged that defendant-respondents No. 1 to 4 never authorised defendant-respondents No. 5 to enter into any agreement with the plaintiff-petitioners for selling their land. Therefore, it is claimed that after they acquired knowledge of the pendency of the suit on 17.4.2002, they are entitled to defend the suit independently.

3. The application was contested by the plaintiff-petitioners asserting that defendant-respondents No. 4 is Karta of the family and defendant-respondents No. 1 to 4 had executed a General Power of Attorney on 29.11.1994 in his favour authorising him to alienate the suit land along with their other land. It was further pleaded that he was also authorised to defend cases pertaining to their land, if any, pending in any Court. Therefore, the agreement to sell dated 27.12.1999 entered into by defendant-respondents No. 5 on his behalf on behalf of the defendant-respondents No. 1 to 4 is a valid agreement. It is claimed that defendant-respondents No. 1 to 4 have been duly served through their Power of Attorney, who has also filed written statement. After the filing of the suit and written statement, issues were framed and even the evidence by both the parties stand concluded. However, on 5.6.2003, an application was filed by defendant-respondents No. 1 to 4 alleging the facts already noticed above. The learned Civil Judge came to the conclusion that defendant-respondents No. 1 to 4 were not served. However, service was accepted by defendant-respondents No. 5. The findings of the learned Civil Judge read as under:-

"From the perusal of the reports on summons for dated 29.10.2001 shows the summons on behalf of the applicants were received by the defendant No. 5 and thereafter he filed the written statement dated 29.10.2001 on behalf of himself as well as on behalf of the present applicants admitting the execution of the agreement. Undoubtedly service of process on recognised agent is effective as if the same had been served on the party in person, in contemplation of Order 3 Rule 3 CPC and moreover the defendant No. 5 is Karta of the family, so the service through adult member of the applicants' family is sufficient in view of Order 5 Rule 15 of CPC but there is no report on the summons whether the applicants were not present in the house at the relevant time or they were out of station. No reason has been given on the summons why the process server opted to serve the same through defendant No. 5 instead of serving them as personally. It shows the applicants intentionally have been kept in dark from the pendency of the suit. Undoubtedly there is a registered General Power of Attorney No. 28 dated 29.11.1994 executed by the applicants in favour of the defendant No. 5 authorising him to sell their land and to defend any case pertaining thereto along with other powers but the main purpose of executing the said general power of attorney is a matter of evidence because the executor/applicants are denying from empowering the defendant No. 5 with regard to selling the suit land. Admittedly, defendant No. 5 dominates the family being

Karta. Three persons of the executors of the said power of attorney are illiterate so the main purpose of executing the power of attorney cannot be decided without allowing the said executors/applicants to defend the case in their personal capacity. Moreover, no prejudice would be caused to opponent as they can be compensated in terms of money for delay. On the other hand, the applicants would be materially prejudiced if they are deprived from their valuable right to defend the case.

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Thus, keeping in view the totality of the facts and circumstances of the case, I am of the considered view that the applicants should be given an opportunity to defend their case in the interest of justice. Consequently, the application is allowed.

4. Mr. R.K. Jain, learned Counsel for the plaintiff-petitioners has argued that there is patent illegality committed by the Civil Judge because defendant-respondent No. 5 has acted on the basis of the registered Power of Attorney No. 98/4 dated 30.11.1994. According to the learned counsel, on the basis of the same Power of Attorney, defendant-respondent No. 5 had executed six sale deeds in March/April 1995 and no objection was raised. It has been further argued that despite the specific objection pleaded in the reply to the application filed by defendant-respondents No. 1 to 4, the Civil Judge has brushed aside the aforesaid mentioned plea of the plaintiff-petitioners resulting into passing of the impugned order.

5. After hearing the learned counsel at a considerable length, I am of the considered view that this petition is devoid of merit and is, thus, liable to be dismissed because there appears to be serious dispute with regard to General Power of Attorney No. 28 dated 29.11.1994, on the basis of which, the agreement to sell dated 27.12.1999 is alleged to have been executed and the earnest money of Rs. 2.5 lacs has been passed. Moreover, the suit is still at the trial stage and the plaintiff-petitioners would hardly suffer any prejudice in comparison to the prejudice which would be caused to the defendant-respondents No. 1 to 4 in the event their contention with regard to General Power of Attorney No. 28 dated 29.11.1994 is found to be correct. It is evident that defendant-respondents No. 1 to 4 would suffer a far greater prejudice and their propriety right would be adversely effected. The plaintiff-petitioners cannot possibly shy away from facing the true owner of the property, which is subject matter of the agreement to sell dated 27.12.1999 alleged to have been executed on their behalf namely defendant-respondents No. 1 to 4. Therefore, the impugned order is just and fair and the instant petition is wholly misconceived.

6. The argument of the Learned Counsel that defendant-respondent No. 5, on the basis of Power of Attorney No. 98/4 dated 30.11.1994 had already sold the land belonging to the defendant-respondents No. 1 to 4 by six registered sale deeds has not impressed me because principle of estoppel would not apply

against the defendant-respondents No. 1 to 4. The Power of Attorney No. 98/4 dated 30.11.1994 is different than the one bearing No. 28 dated 29.11.1994, which constitute the basis of agreement to sell dated 27.12.1999. If defendant-respondents No. 1 to 4 have not objected to the sale deed executed under the former Power of Attorney, it does not follow that they are estopped from objecting the agreement to sell executed under the General Power of Attorney No. 28 dated 29.11.1994. The argument is wholly misconceived and deserves to be rejected out rightly.

7. For the reasons recorded above, this petition fails and the same is dismissed.