

Before Rakesh Kumar Jain, J.

SARBJIT KAUR AND OTHERS,—Defendant/Appellants

versus

MOHINDER SINGH AND ANOTHER,—Plaintiff/Respondents

R.S.A. No. 1745 of 1993

20th May, 2008

Code of Civil Procedure, 1908—Transfer of Property Act, 1882—Ss. 10 and 11—Execution of registered general power of attorney in favour of defendant No. 1 duly proved—Defendant No. 1 entitled to sell land on behalf of plaintiff as his duly authorized power of attorney—Execution of agreement to sell by plaintiff himself—Condition of 10 years for sale of land in allotment letter does not provide that it cannot be sold at all—State or department who allotted land raising no objection—Sale deeds proving not to be void—Suit filed only for possession without seeking cancellation of sale deed is also not maintainable—Appeal allowed, judgment & decree passed by 1st Appellate Court set aside.

Held, that the plaintiff has mentioned in para No. 3 of the plaint that on 17th February, 1981, two documents were got executed which were general power of attorney and an agreement to sell. Document Ex. PW2/A refers to that agreement to sell,—vide which the plaintiff himself wanted to sell the property to defendant No. 1. Therefore, he had the intention to sell the property in dispute. Once power of attorney has been proved to have been duly executed which contains power to sell, then defendant No. 1 as a power of attorney who was given specific power, was entitled to sell the land.

(Paras 18 & 19)

Further held, that the plaintiff himself cannot take the plea that he had no right to sell the land once it is proved that the land has been sold on his behalf by his duly authorized power of attorney. It was, in fact, for the State or the department concerned to have raised the objection who had allotted the land to the plaintiff. Moreover, the

conveyance deed Mark 'A' provides that even in case of such a sale, the penalty is of resumption, therefore, the power to sell is not curtailed.

(Para 22)

Further held, that since the sale deeds executed in favour of defendants No. 2 and 3 by defendant No. 1 have not been proved to be void being without authority or competence, the present suit only for possession without seeking cancellation of sale deed is also not maintainable.

(Para 24)

T.N. Gupta, Advocate, *for the appellants.*

Munishwar Puri, Advocate, *for the respondents.*

RAKESH KUMAR JAIN, J.

(1) Plaintiff filed a suit for possession in respect of land measuring 60 kanals 8 marlas situated in village Dauke and 19 kanals 13 marlas situated in village Raja Tal, Tehsil and District Amritsar.

(2) The plaintiff has alleged that his father was serving in Indian Army as a Soldier. He died in 1962 in China War. The government had decided to give him gallantry award in the shape of land, which was allotted on 19th August, 1981 with a condition that the same cannot be alienated prior to the expiry of ban of 10 years. It is further alleged that defendant No. 1 was a clever man who had learnt about the gallantry award and got some sort of document executed from the plaintiff on or before 17 February, 1981 even before the allotment was made. It is alleged that defendant No. 1 got executed a general power of attorney and an agreement to sell in his favour, but the plaintiff its denied validity. It is further alleged that plaintiff has come to know that defendant Nos. 2 and 3 are asserting that they have acquired the property in dispute from defendant No. 1 on the basis of two sale deeds and has further learnt that defendant Nos. 2 and 3 have sold some land out of 19 kanals 13 marlas and have mortgaged some land with defendant No. 10 for the purpose of taking loan.

(3) Defendant Nos. 1, 2 and 3, 4 to 9 and 10 filed separate written statements. Defendant No. 1 has alleged in the written statement that the sale deeds dated 25th January, 1982 and 15th March, 1982 executed by him in favour of defendant Nos. 2 and 3 are impediment in the way of the plaintiff to get relief of possession, therefore, without seeking cancellation of these two sale deeds, the suit for possession is not maintainable. It was alleged that the plaintiff himself had appointed defendant No. 1 as his general power of attorney and had provided the permission for sale and mortgage the land as well.

(4) In the written statement filed by defendant Nos. 2 and 3, preliminary objections were taken that the suit for possession is not maintainable and they are *bonafide* purchasers for consideration. They had taken all the objections which were taken by defendant No. 1, with an addition that they had spent Rs. 20,000 for improvement of the land. Similarly, defendant Nos. 4 to 9 claimed themselves to be *bonafide* purchasers of the land measuring 11 kanals 5 marlas purchased at the cost of Rs. 9,000,—*vide* registered sale deed dated 25th November, 1982. Defendant No. 10 alleged to have advanced loan of Rs. 20,000 to defendant Nos. 2 and 3 against the land in dispute measuring 49 kanals 6 marlas which was required by them for levelling of the suit land and laying underground channels.

(5) Plaintiff filed separate replications to the written statements filed by all the defendants denying their averments and reiterating the stand taken in the plaint.

(6) On 7th March, 1984, the trial Court framed the following issues :—

1. Whether the suit is maintainable in the present form ?
OPP
2. Whether the suit is properly valued for the purpose of Court fee and jurisdiction ? OPP
3. Whether the plaintiff executed a valid power of attorney in favour of defendant No. 1 ? OPP

4. Whether the plaintiff was not competent to sell the property ? OPD
5. Whether the plaintiff was estopped by his act and conduct from filing this suit ? OPD
6. Whether the defendants have effected improvements on the suit land. If so to what extent and to what effect ? OPD
7. Whether the suit is bad for misjoinder of parties ? OPD
8. Relief.

(7) Both the parties led their oral as well as documentary evidence. The trial Court while deciding issue No. 1 held that the suit for possession without seeking cancellation of sale deeds by defendant No.1 in favour of defendant Nos. 2 and 3 is not maintainable. Issue No. 2 was decided against the plaintiff on the ground that the suit should have been filed for the cancellation of the sale deeds for which proper Court-fee had to be affixed on the sale consideration. Issue No. 3 was pertaining to the due execution of the power of attorney by the plaintiff in favour of defendant No. 1. The trial Court held that the power of attorney Ex. D2 has been duly executed, therefore, this issue was also decided against the plaintiff. Issue No. 4 was pertaining to the competency of the plaintiff to sell the property in respect of which the trial Court held that the power of attorney Ex. D2 had clearly provided authority to defendant No. 1 to transfer the land to any one. Issue No. 5 was decided in favour of the defendants in which it was held that the plaintiff is estopped by his own act and conduct from filing this suit. Issue No. 6 was relating to the improvements having been made by defendant Nos. 2 and 3 which was also decided in their favour. Issue No. 7 was not pressed and as such, it was decided against the defendants and on issue No. 8, the suit was dismissed with costs.

(8) The first Appellate Court has found that the power of attorney Ex. D2 was executed by Mohinder Singh plaintiff on his own without any misrepresentation, fraud or undue influence. However, the first Appellate Court while relying upon the decision of the Lahore High

Court reported as **Mt. Jan versus Mt. Fajjan and another (1)**, and **Nand Kaur versus Mastan Singh and others (2)**, held that the defendant No. 1 was not authorized by the plaintiff to alienate the suit property on the basis of power of attorney. It was further held that since there was a condition in the allotment that the plaintiff would not be entitled to sell the land up to a period of 10 years, therefore, the sale deed executed by defendant No. 1 in favour of defendant Nos. 2 and 3 are void and for that matter, it was also decided that the suit for possession without seeking cancellation of sale deeds was maintainable as the void sale deeds have to be simply ignored. Thus, the first Appellate Court allowed the appeal and decreed the suit.

(9) Now defendant Nos. 1 to 9 are in second appeal before this Court.

(10) Mr. T.N. Gupta, learned counsel for the appellant has framed following substantial questions of law which were taken on record,—*vide* order dated 22nd February, 2008, which are reproduced below :—

- (i) Whether the registered power of attorney Ex. D1 executed by the plaintiff in favour of defendant No. 1 has been correctly interpreted by the Appellate Court ?
- (ii) Whether restriction upon the plaintiff's right of alienation of the disputed land was null and void being *ultra vires* of Sections 10 and 11 of the Transfer of Property Act ?
- (iii) Whether the finding of the appellate Court on issue No. 3 in para 15 of the judgment in terms that the defendant had got certain words incorporated in the power of attorney taking advantage of his illiteracy and poverty is not perverse ?
- (iv) Whether the finding of the Appellate Court on Issue No. 5 relating to estoppel is not perverse ?
- (v) Whether the plaintiff could sue for possession without seeking cancellation of the sale deed ?

(1) 1938 Lahore 351

(2) 1990 Civil Court Cases 501

(11) Mr. T.N. Gupta, learned counsel for the appellants has argued that the first Appellate Court has erred in law while interpreting registered power of attorney Ex. D1 relying upon the decision of the Lahore High Court in the cases of **Mt. Jan** (*supra*) and **Nand Kaur** (*supra*) of this Court while holding that the plaintiff had not authorized defendant No. 1 to alienate the suit property. He has further referred to the document Ex. PW2/A and argued that the plaintiff himself entered into an agreement to sell the suit property to Devinder Singh defendant No. 2 son of defendant No. 1, therefore, he had the intention to sell the land in question and for that purposes, he had given power of attorney to defendant No. 1 to sell the land. The exact language used in the General Power of Attorney is reproduced below :—

“Every act done by my General Attorney will be owned by me.
My General Attorney will have full powers to transfer my
land so obtained to any body by mortgage, sale, exchange,
lease, time bound lease or by any other mode of his choice”

(12) Learned counsel for the appellants has further relied upon the decision of this Court in the case of **Harmeet Kaur versus Partap Kaur and others** (3), and has argued that though initial recital is with regard to the management of the land but since power to lease, mortgage and sell have also been specifically given to the concerned attorney, it has to be taken that he had the power to sell.

(13) In respect of the second question, it is argued that ban of 10 years in respect of sale is in direct conflict with Sections 10 and 11 of the Transfer of property Act, which are reproduced below :—

“10. **Condition restraining alienation.**—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him ; provided that the property may be transferred to or for the benefit of a women (not being a

Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created.—Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.”

(14) Learned counsel has further relied upon decisions in the case of **Jagir Singh and another versus Chanchal Singh** (4) **Puran Chand versus Jagat Ram** (5) and **Manohar Shiv Ram Swami versus Mahadeo Guruling Swami** (6) **Smt. Lilawati and others versus firm Ram Dhari Suraj Bhan and another** (7) and **B. Anjaneyulu versus V.G. Raghunathan** (8). It is further argued that for the purposes of creating such a ban, there has to be a legislative support which has not been shown by the plaintiff. Moreover, it has been argued that the document mark A which is a conveyance deed provides that in case of sale prior to 10 years, the land shall be resumed, but it does not provide that it cannot be sold at all. Therefore, the plea of 10 years ban is not available to the plaintiff.

(4) 1984 S.L.J. 471

(5) 1986 (2) PLR 485

(6) AIR 1988 Bombay 116

(7) AIR 1971 (Pb. & Hy.) 87

(8) 1995 (1) Civil Court Cases-291

(15) In the end, learned counsel for the appellants has argued that in case, it is found by this Court that the plaintiff had given authority to defendant No. 1, in respect of alienation of the suit land, then the same made by him would not be void as held by the first Appellate Court and in that eventuality, the suit filed only for possession without praying for declaration of cancellation of sale deed on payment of *ad valorem* Court fee is not maintainable in view of the Full Bench decision of this Court in the case of **Niranjan Kaur versus Nirbigan Kaur (9)**.

(16) Mr. Munishwar Puri, learned counsel for respondent No. 1/plaintiff submitted that the decision of the Lahore High Court in the case of **Mt. Jan** (*supra*) and of this Court in the case of **Nand Kaur** (*supra*) are fully applicable to the facts of this case and submitted that defendant No. 1 was only empowered through Ex. D2 for the purpose of management of the suit land and had no power to alienate the same. It was further argued that he could have sold the property only if the sale was imminent for the management of the land. It is further highlighted that the allotment of land to the plaintiff was conditional as the same could not have been sold within the period of ban of 10 years. Therefore, the sale cannot be recognized. It is further submitted that so far as the maintainability of the suit is concerned, since the sale deeds executed by defendant No. 1 in favour of defendant Nos. 2 and 3 are without any legal authority, the same are void and for that purposes, suit for declaration for cancellation of sale deed is not required and a simple suit for possession is maintainable.

(17) I have heard learned counsel for the parties and have perused the record with their assistance.

(18) Insofar as the first question is concerned, the plaintiff has mentioned in para No. 3 of the plaint that on 17th February, 1981, two documents were got executed which were general power of attorney and an agreement to sell. Document Ex. PW2/A refers to that agreement to sell,—*vide* which the plaintiff himself wanted to sell the property to defendant No. 1. Therefore, he had the intention to sell the property in dispute. The authorities relied upon the first Appellate Court and

cited before this Court by learned counsel for the respondent are in the case of **Mt. Jan** (*supra*) and **Smt. Nand Kaur's case** (*supra*), wherein it has been held that where authority given for specific purpose followed by general purpose, then it has to be construed to have been given for special purpose, are of no avail to the respondent in view of the later decision of this Court in the case of **Harmeet Kaur's Case** (*supra*) in which the following observations have been made :—

“After hearing learned counsel for the parties and examining the records of the case with their assistance, I find no merit in the contention of learned counsel as noted above. I have gone through the power of attorney Ex. DW5/1 as also findings of the appellate Court on the precise point as has been raised by learned counsel for the plaintiff, wherein it has been clearly observed by the learned Additional District Judge that the contents of the power of attorney would cloth him with the following powers :—

- (a) Power to give the disputed land on lease
- (b) Power to mortgage the disputed land
- (c) Power to sell the disputed land

No, doubt, the power of attorney contains the initial recital with regard to management of land but the powers to lease, mortgage and sale have also been specifically given to the concerned attorney. It may be recalled, at this stage, that it was a case of general power of attorney and that being so, the judgment relied upon by learned counsel in support of his contention in the **Prince Line Ltd. versus The Trustees of the Port of Bombay, A.I.R. 1950, Bom. page 130** that where the special powers are followed by general words, the general words are to be construed as limited to what is necessary for the proper exercise of the special powers and as enlarging these powers only when necessary for carrying out of the purposes for which the authority is given

would be of no assistance to learned counsel for the plaintiff’.

(19) In my view, the aforesaid later decision in **Harmeet Kaur’s Case** (*supra*) answers the question in favour of the appellants that once power of attorney has been proved to have been duly executed which contains power to sell, then, defendant No. 1 as a power of attorney who was given specific power, was entitled to sell the land.

(20) So far as the second question is concerned, counsel for the respondent has failed to show any statutory force in respect of the ban imposed for 10 years. In fact, under Rule 4(1) of part II of the Punjab Package Deal Properties (Disposal) Rules, 1976 (framed under Section 18 of the Punjab Package Deal Properties (Disposal) Act, 1976, the widows of disabled soldiers etc. killed in Chinese Aggression of 1962 were entitled for allotment of land up to limit of 10 ordinary acres of cultivable land @ to be fixed by the State Government. The aforesaid rule is reproduced below :—

- 4.1 Allotment of land in rural area to permanently disabled soldiers widows etc. of the soldiers killed in action (i) permanently disabled soldiers, widows or parents or children of the solidiers killed in the Chinese aggression of 1962 and Pakistan aggression 1965, shall be entitled to the allotment on payment of the cultivable land as far as possible up to the limit of 10 ordinary acres inclusive of their own holding, if any, at such rate per standard acre as may be fixed by the State Government from time to time ;
- (ii) If any widow or a solidier killed inaction has remarried before the allotment of the land, she shall lose her right to get the allotment and in that case, allotment shall be made in the name of her children from the deceased soldier and in case, the widow is issueless, the allotment shall be made to the parents of the killed soldiers irrespective of the fact, whether or not, they have submitted separate applications by the prescribed date. In such a case, the application submitted by a

widow, by prescribed date, shall be deemed to have been duly submitted in time by the children or the parents of the deceased soldier, as the case may be :

Provided that in the case of the minor children of the deceased soldier, the allotment of land shall be made through their guardian.

- (iii) If any allottee of land, who was a widow, remarries within a period of 10 years from the date of allotment, the land allotted to her shall be liable to be cancelled by the Tehsildar (Sales) or Naib Tehsildar (Sales) after due notice even if full price thereof had been paid and the area thus received shall be allotted to the children of the deceased soldier, if any, through their guardian or to the parents of the deceased soldier, as the case may be.
- (iv) The price of the land shall be recovered in 20 half yearly interest free instalments ; the first instalment equivalent to 5 per cent of the price, payable at the time of allotment of the land by the Tehsildar (Sales) or Naib Tehsildar (Sales). The next instalment shall be payable at the end of the first crop after the expiry of one year from the date of allotment.
- (v) No allottee shall be permitted to sell or alienate in any manner, the land allotted to him or her before the expiry of a period of ten years, even if the full price had been paid.
- (vi) In the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of 7 per cent per annum for the over due period and in the extent of default of two successive instalments, the Tehsildar (Sales) or Naib Tehsildar

(Sales) shall be competent to cancel the allotment, resume the land and forfeit the money already paid :

Provided that no order shall be made against any person until after the issue of a notice, in writing to the person calling upon him to show cause within such time, as may be specified in the notice, why such order should not be made.

- (2) **Deed of conveyance to be executed.**—Where any land is allotted to any person under this chapter and full price thereof has been realized, a Deed of Conveyance shall be executed in form specified in Appendix ‘A’ to these rules.

However, by notification dated 20th January, 1979 published in the Punjab Gazettee Legislation, dated 16th February, 1979, clause (v) of the above rules whereby ban imposed for sale up to 10 years was deleted and clause (vi) *Supra* was renumbered as clause (v) and was reframed. The amended rule (4) is reproduced below :—

4. In the said rules, in rule 4, in sub-rule (1),—
- (i) for clause (i), the following clause shall be substituted, namely
- “(i) Permanently disabled soldiers, widows or parents or children of the soldiers killed in the Chinese Aggression of 1962 and Pakistan Aggression of 1965 and widows of the personnel of the Armed Forces, Border Security Force and Punjab Armed Police killed in the Indo-Pakistan Conflict of 1971, shall be entitled to the allotment on payment of the cultivable land as far as possible, up to the limit of ten ordinary acres inclusive of their own holdings, if any, at such rate, per standard acre as may be fixed by the State Government from time to time. For the purpose of valuation of land, ordinary acres shall be converted

into standard acres, in accordance with the prescribed scale.”;

(ii) in clause (ii), for the words “inaction, has remarried”, the words and figures “the Chinese Aggression of 1962 or Pakistan Aggression of 1965 remarries a person other than real brother of her deceased husband, shall be substituted;

(iii) for clauses (v) and (vi), the following clause shall be substituted, namely :—

“(v) in the event of default in the payment of any instalment by an allottee, he shall be liable to pay interest at the rate of seven per cent per annum for the over due period and in the event of default of two successive instalments, the Tehsildar (Sales) or Naib-Tehsildar (Sales) shall recover the amount of defaulted instalments with interest as arrears of land revenue”.

(21) Since the Conveyance Deed mark A was issued by Tehsildar (Sales) on 9th December, 1981 long after deletion of original clause (iv) of Rule 4 (1) of 1976 rules,—*vide* amended rules of 1979, there is no statutory force of imposing the ban.

(22) In the case of **B. Anjaneyulu** (*supra*), the Hon’ble Andhra Pradesh High Court while interpreting Section 10 of the Transfer of Property Act, held that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. It was further held that every citizen under the Constitution of India has a right under Article 300-A of the Constitution to property and such a right shall not be curtailed unless it is in accordance with law. If there should be any restriction on such a right, the same could be only by appropriate legislature i.e. either by parliament or of the State Legislature. It was further held that one of the most important rights of a owner is a right

to alienate the property, which cannot be taken away without the statutory force of law. Similarly, the decision rendered in the case of **Puran Chand's Case** (*supra*), it was further held that stipulation in the sale deed regarding reversion of the land to the vendors in case of non-construction within a stipulated period was void and unenforceable. In the case of **Smt. Lilawati** (*supra*), it was held that the vendee is entitled to ignore a condition which cuts down his enjoyment of the absolute right of property and any direction in the sale deed which is contrary to the enjoyment of such absolute estate is void and unenforceable. In the case of **Manohar's Case** (*supra*), while interpreting Section 10 of the Transfer of Property Act, it was held that sale deed including clauses prohibiting sale to some one outside family was void. Moreover, the plaintiff himself cannot take the plea that he had no right to sell the land once it is proved that the land has been sold on his behalf by his duly authorized power of attorney. It was, in fact, for the State or the department concerned to have raised the objection who had allotted the land to the plaintiff. Moreover, the conveyance deed mark 'A' provides that even in case of such a sale, the penalty is of resumption, therefore, the power to sell is not curtailed. }

(23) The first Appellate Court has observed in para 17 of its judgment that defendant Mohinder Singh was not given authority by the plaintiff to sell the land and as such, the sales made by him were void and to avoid such a sale, no declaratory suit is required to be filed.

(24) Since the sale deeds executed in favour of defendant Nos. 2 and 3 by defendant No. 1 have not been proved to be void being without authority or competence, the present suit only for possession without seeking cancellation of sale deed is also not maintainable.

(25) In view of the above discussion, I allow this appeal, set aside the judgment and decree of the first Appellate Court dated 5th June, 1993 and restore the judgment and decree of the trial Court dated 28th February, 1989, whereby the suit of the plaintiff was dismissed with costs.