

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **RSA No. 4714 of 2012(O&M)**
Date of Decision : 17.08.2015.

Sh. Rajesh and others **...Appellants**

Versus

Sh. Tarsem Lal and others **...Respondents**

2. **RSA No. 4715 of 2012 (O&M)**

Sh. Rajesh and others **...Appellants**

Versus

Sh. Tarsem Lal **...Respondent**

AND

3. **RSA No. 4716 of 2012 (O&M)**

Smt. Raj Rani and others **...Appellants**

Versus

Sh. Tarsem Lal and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjay Jain, Advocate for the appellants.

K. Kannan, J. (Oral)

All the suits hinged on the strength of a plea made by the

plaintiffs that the transactions of sales made by the power of attorney was not valid. According to the respective plaintiffs in the three suits, the original transaction contemplated was only borrowal of some money from the first defendant and the first defendant, however, fraudulently attempted to take an agreement of sale which they came to know only when the document of power of attorney had been prepared on 15.07.1994 with authority to the agent to sell the property. The plaintiff would claim that they know about the deceit practiced by the defendant and they wanted to cancel the power of attorney and executed documents of cancellation on 18.07.1994 and issued a notice of cancellation on the following date on 19.07.1994. The defence was, the sale had actually been effected by the power of attorney on 22.07.1994 and 25.07.1994 and the plea in defence was that the power of attorney never knew about the alleged cancellation of the power and consequently the transaction of sales made in exercise of the power granted under the documents would remain valid.

The most crucial point for consideration was whether there was a valid cancellation of the contract of agency, which is implicit in a deed of power of attorney. Section 206 of the Contract Act requires a communication of the cancellation of the power of attorney. An unilateral document of cancellation by the principal cannot operate eo instanti. On the other hand, the cancellation will operate in the

manner provided under Section 206, which requires a reasonable notice to be given of revocation of agency. Section 207 of the Contract Act states that the revocation could be expressed or implied and in this case, the plaintiffs were attempting to show that the notice was issued by the registered post on 19.07.1994 and registration notice filed in Court. When there was a denial in respect of notice, the presumption that is available for service would stand diluted and in terms of the decision of the Hon'ble Supreme Court in **Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana, 1976(2) SCC 409**, the burden of establishing service shall be cast on the person, who states that a particular registered post had been sent. The mere fact that the document is sent by registered post cannot prove anything, if there is a denial and the plaintiffs, who sought to rely on the lack of authority for an agent to sell, had failed to discharge the onus on him to show that the agent had been informed about the revocation of agency. If revocation is not established, the plaintiff cannot escape the consequence from the action of the agent in selling the property. The only benefit which the plaintiff can obtain is to seek for a proper account from his agent in the manner that the law contemplates and cannot allow for impeaching the transactions of sales themselves.

I will find the issue of whether the sales were valid or not, fell to be decided on a singular consideration of whether there was a

valid revocation. The character of the instrument of agreement as an agreement of sale and not an agreement of mortgage was a pure consideration of fact which the courts below have found as documents of sales and I will find no cause for intervention of such finding.

In the ultimate analysis, there is no substantial question of law that involved for intervention.

All the second appeals are dismissed.

August 17, 2015.
kanchan

(K. KANNAN)
JUDGE