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

RSA-2569-2016

Date of decision : 05.04.2018

Kewal Ram

... Appellant(s)

Versus

Avtar Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Pruthi, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit claiming possession on the basis of the agreement to sell dated 29.12.2009 allegedly executed by Avtar Singh/defendant No.1 in lieu of receipt of ₹3 Lacs, had been dismissed by the trial Court vide judgment and decree dated 29.01.2013 and affirmed by the lower Appellate Court vide judgment and decree dated 24.08.2015.

The appellant-plaintiff instituted the suit against the defendants from dispossessing from the suit property on the premise that he was owner in possession of the suit property vide transfer deed dated 13.09.2008 executed in his favour by his father. He started carrying on the business and he raised a loan from the bank. He also raised a loan of ₹3 Lacs on

29.12.2009 from Avtar/defendant No.1 and executed an agreement to sell as security thereof, in the name of defendant Avtar Singh and Santokh Singh. He also executed a power of attorney and returned a sum of ₹1,40,000/- Lacs out of the loan amount, but Avtar Singh/defendant misused the power of attorney and got the sale deed dated 02.11.2010 executed on the basis of the power of attorney in favour of defendant Nos.3 and 4.

The aforementioned suit was contested by the defendants by taking all preliminary objections, much less, the factum of the agreement to sell was admitted, but not a security. It was averred that the execution of power of attorney was basically a complete sale as the entire consideration of ₹ 6 Lacs had been paid.

The trial Court on the basis of the preponderance of evidence dismissed the suit and the appeal preferred thereto before the lower Appellate Court met with the same fate.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees of both the Courts below are not sustainable in the eyes of law as the fraud had been played upon the plaintiff and on that account, the injunction was sought

I am afraid that the aforementioned argument is not sustainable in the eyes of law, for, once the appellant-plaintiff was aware of factum of the sale deed and that to on the basis of the power of attorney, should have challenged the same, perhaps he was afraid that he had actually received the consideration and under the garb of injunction, wanted to try the litigation.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees rendered by both the

Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

05.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No