

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

RSA No.5868 of 2016 (O&M)

Date of decision : 10.09.2018

Lakhmir Singh

...Appellant

Versus

Balbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.B. Raheja, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

It has been found by both the Courts below that the plaintiff, originally entered into an agreement to sell with defendant No.1 on 05.05.2005 with respect to the land measuring 1 kanal 10 marla at the rate of ₹17,500/- per marla and received the earnest money of ₹50,000/-. Thereafter, he further received ₹1,50,000/- on 22.06.2005. Thus, after receipt of ₹2,00,000/-, the plaintiff gave General Power of Attorney, to defendant No.1 to sell the property.

Defendant No.1 has executed the sale deed in favour of defendant No.2 on 24.08.2010. The plaintiff came to the Court claiming that he is owner in possession of land measuring 1 kanal 10 marlas as the sale deed executed by defendant No.1 in favour of his wife-defendant No.2 is after the cancellation of the General Power of Attorney.

Both the Courts after examining the evidence, have found that the information of cancellation of the General Power of Attorney has never been

conveyed to defendant No.1. The plaintiff is said to have sent a notice of the cancellation under the Postal Certificate, delivery whereof to the other party has not been proved.

Both the Courts have examined this aspect and have found that the plaintiff has become dishonest after having entered into an agreement to sell and having received the major part of the sale consideration from defendant No.1.

Although, learned counsel appearing for the appellant, submitted that there is a presumption of service of notice, however, this Court finds that there is a positive finding of the Courts below to the effect that notice of cancellation was not served upon defendant No.1. Still further, the power of attorney was issued on account of the agreement to sell under which the plaintiff had received major part of the consideration.

Learned counsel for the appellant has submitted that the bona fides of defendant No.2 are not established.

This Court feels that the bona fides of defendant Nos.1 and 2, stand proved, once it is established before the Court that there was agreement to sell in favour of defendant No.1 and he had paid not only the earnest money of ₹50,000/- but also additional amount of ₹1,50,000/-.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

10.09.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No