

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

RSA No.4067 of 2002 (O&M)

Date of decision : 14.02.2019

Santosh Kumari (deceased) through her LRs

...Appellant(s)

Versus

Chairman, Haryana State Electricity Board and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellant(s).

Ms. Vrinda Gupta, Advocate for
Mr. Prateek Mahajan, Advocate for respondent Nos.1-3.

Mr. Raghubir Tejpal, Advocate for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

As per office report, counsel for the appellant(s) has been duly informed. On 25.01.2019 also, counsel for the appellant(s) was not present and, therefore, the Office was directed to inform learned counsel. Today once again position is no different. Hence, this Court is left with no choice but to decide the case on merits.

Plaintiff-appellant(s) is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Plaintiff has filed the suit for declaration claiming that she is entitled to recover the amount on account of compulsory acquisition of the land which has been allegedly withdrawn by defendant No.4.

Official respondents filed reply and took a stand that the amount was paid to defendant No.4 as he was holding a power of attorney

from the plaintiff. Defendant No.4 also took a stand that he has withdrawn the amount from the official respondents on the basis of the power of attorney and passed it on to the plaintiff.

Learned trial Court, however, decreed the suit, reversed by the learned First Appellate Court.

Learned First Appellate Court has recorded that the plaintiff who was to prove her allegation that she did not give any power of attorney to defendant No.4 has not appeared in evidence. The First Appellate Court has also held that the suit only for declaration would not be maintainable. Once, defendant No.4 does not dispute that he has withdrawn the amount on the strength of the power of attorney executed by plaintiff, the plaintiff was required to prove two things, one that she did not execute the power of attorney, second that defendant No.4 did not pay her the amount. On both the counts, the plaintiff has failed.

Still further, if an amount is to be recovered, the plaintiff is required to file a suit for recovery of the amount and not for declaration. Still further, official respondents have already paid the amount and, therefore, no suit against them was maintainable. Hence, the present appeal is dismissed with liberty to the plaintiff-appellant to file a suit for recovery if permissible under law.

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

14.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No