

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

RSA No.1696 of 2017 (O&M)

Date of decision:22.04.2019

Surender Singh

... Appellant

Vs.

Ashok Mittal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rohit Ahuja, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

It is a classic case where the appellant-plaintiff despite having executed the registered power of attorney dated 15.12.2003 in an agreement to sell and having received the consideration by challenging the cancellation of the power of attorney filed the civil suit in 2005 and also by laying challenge to the sale deed dated 15.12.2003 executed by defendant no.1 in favour of defendant no.2.

The plaintiff alleged that he was legal owner of shop no.58, Market no.1, NIT Faridabad and had executed the power of attorney, aforementioned and in lieu thereof, had received a sum of Rs.6.00 lakhs but the same was returned. The cancellation has been proved on record much prior to the agreement, therefore, the sale deed was without any authority.

Defendant no.1 opposed the suit and alleged that he had paid the amount to the plaintiff, vide two separate cheques of Rs.2,70,000/- and

Rs.3,30,000/-. Defendants no.2 and 3 supported the case of defendant no.1 and so was the reply of defendant no.4.

The plaintiff in support of the aforementioned pleadings examined six witnesses and brought on record the certain documents, whereas defendants examined two witnesses.

Mr. Rohit Ahuja, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in treating the cancellation of power of attorney as 10.12.2003 whereas it was of 10.12.2004. In this regard, he has drawn the attention of this Court to the record. It is a fit case where the matter is required to be re-visited at least at the level of Lower Appellate Court, for, plaintiff has been prevented from availing the remedy under the provisions of Order 41 Rule 31 of Code of Civil Procedure. The defendants despite having been cross-examined did not place on record the agreement to sell, though specifically pleaded, therefore, alleged pleadings remained un-proved. The amount of Rs.6.00 lakhs was returned.

I am afraid the aforementioned arguments are not able to bring the case within the realm of perversity to form a different opinion than the one arrived at by the Courts below, for, the plaintiff has miserably failed to prove on record the refund of Rs.6.00 lakhs. It was a transaction as per the provisions of Section 202 of the Contract Act. The suit filed in 2005 by laying challenge to the sale deed of 2003 was an act of greed and nothing beyond. Even if the cancellation is of 10.12.2003, the plaintiff miserably failed to discharge the onus with regard to refund of Rs.6.00 lakhs received

by way of two different cheques, ibid.

Resultantly, the regular second appeal is dismissed.

April 22, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No