

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

**RSA No. 4097 of 2014 (O&M)
Date of Decision: 28.01.2020**

Smt. Kela Devi

.... Appellant

Versus

Prakash and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.D.Yadav, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant has filed present appeal against concurrent finding of fact arrived at by the Courts below.

The appellant-Kela Devi had executed a general power of attorney, registered with the Registrar on 20.09.2005 authorizing her brother Prakash to sell her share of the property inherited from Chandu Lal, their father. On the strength of aforesaid general power of attorney, her brother Prakash sold the property vide registered sale deed dated 22.09.2005. The plaintiff filed the present suit for declaration that such sale deed executed by her brother Prakash, is illegal. Defendant No. 1-Prakash contested the suit and pleaded that he has sold his share as well as share of his sister Kela Devi vide sale deed dated 22.09.2005, on the basis of attorney executed in his favour.

The general power of attorney was proved on file by examining both the marginal witnesses namely Lal Chand and Mukesh. Both the Courts on appreciation of evidence have concurrently found that the plaintiff has failed to prove her case.

This Court has heard learned counsel for the appellant at length and with his able assistance, gone through the judgments passed by the Courts below. Learned counsel for the appellant has contended that sale deed dated 22.09.2005 was in furtherance of the agreement to sell dated 30.08.2005. He submits that on the day agreement to sell was executed, defendant No. 1 Prakash had no authorization as the agreement to sell is prior to the power of attorney. He, hence, submitted that the sale of the property qua the share of the plaintiff can not be sustained. He further submitted that the plaintiff had lodged a criminal case against Prakash on the ground that general power of attorney dated 20.09.2005 has been forged. In the aforesaid criminal case, Prakash was convicted. In appeal, of course, he has been acquitted but revision against the same is pending.

This Court has considered the submission of the learned counsel. As regards the agreement to sell having been entered on 30.08.2005 before Prakash-defendant No. 1 was authorized, it may be noted that the agreement to sell does not create any right in the property as provided in Section 54 of the Transfer of Property Act. On the day the sale deed was executed by Prakash as General Power of Attorney holder, he was authorised. Therefore, the sale deed executed and registered on 22.09.2005 can not be set aside only on the ground that on the day agreement to sell was executed, Prakash had no power to enter into the transaction on her behalf. Transfer of title takes place on execution and registration of the sale deed and not on execution of the agreement to sell.

As regards next argument, learned counsel for the appellant fairly concedes that the judgment of conviction has been set aside by the learned Appellate Court and Prakash stands acquitted. Still further, a judgment passed by the Criminal Court is not as such, binding on the Civil Court. The plaintiff was required to lead evidence to prove her case, however, she failed therein. Both the Courts as noticed above, have found that the plaintiff has failed to lead sufficient evidence in support of her assertions in the plaint.

Keeping in view the aforesaid facts, there is no ground to interfere. Accordingly, the present appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

28.01.2020
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes