

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 1263 of 2018 (O&M)
Date of Decision: 31.1.2020**

Ujjagar Singh

---Appellant

versus

Naresh Mittal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. D.K.Bhatti, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration and mandatory injunction filed by the appellant-plaintiff claiming to be owner and in possession of House No. 303/A, LIG Housing Board Colony, Kalka, was dismissed.

Briefly stated, case of the appellant-plaintiff is that father of appellant purchased the aforesaid house and respondent No. 1 executed general power of attorney in favour of father of the appellant, registered vide No. 138/4 dated 9.10.1995. Father of appellant died on 29.11.2003 and as such, the appellant and proforma defendants stepped into shoes of their father, thus, entitle to get the property transferred in their name.

The courts have consistently held that power of attorney does

not give right of ownership in the suit property and the same also ceases to have effect, the moment Bant Singh passed away.

Counsel for the appellant would argue that unlimited powers including authority to sell the property, execute an agreement for sale, mortgage, exchange, executing gift, creating tenancy etc. were given to the attorney holder. It is further submitted that in the penultimate para of power of attorney, in the concluding line, it is mentioned that the attorney holder shall be entitle to all unwritten and unlimited rights in respect of the property. It is argued with vehemence that in view of recitals in the power of attorney, an interest in the suit property has been created in favour of Sh. Bant Singh, father of the appellant, therefore, the appellant is entitle to benefit of Section 202 of the Contract Act, 1987 (in short “the Act”) that deals with termination of agency, where agent has an interest in subject-matter.

Another submission made by counsel is that keeping in view the unlimited powers given to the attorney holder Sh. Bant Singh, all the terms and conditions contained in power of attorney would bind the heirs, successors, assignees etc. of the executant as well as beneficiary.

I have heard counsel for the appellant, perused the judgments impugned and copy of power of attorney supplied during the course of hearing.

Be that as it may, there is no dispute that as per the power of attorney, numerous rights including right to sell the property and transfer certain rights in the property by way of mortgage, creation of tenancy and so on were given to the attorney holder. However, nothing has been mentioned

in the power of attorney that executant had received any consideration for conferring rights upon the attorney holder. Counsel while referring to the provisions of Section 202 of the Act has read illustration 'A', quoted thus:-

“(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.”

Illustration (a) has got no bearing on the attorney given in favour of Sh. Bant Singh. At the cost of repetition, it is stated that nothing has been mentioned in the power of attorney that Sh. Bant Singh had parted with any consideration in favour of Naresh Mittal for executing this power of attorney nor any such fact has been brought on record during the course of evidence, fairly conceded by counsel. In the given circumstances, the appellant cannot derive any advantage to his contention by invoking Section 202 of the Act.

Indisputably, the attorney holder passed away in the year 2003. Counsel would inform that as per his instructions, even executant of power of attorney has passed away. The moment, the attorney holder passed away, it ceases to have any legal existence particularly in the circumstances that nothing has been mentioned in the power of attorney that on death of Bant Singh, his successors in interest would also be agents of Sh. Naresh Mittal to deal with the property in question, in view of the powers bestowed on the attorney holder. In this view of the matter, I find myself unable to accept contention of the appellant that consistent findings recorded by the courts suffer from an error much less perversity that would call for

intervention.

For the foregoing reasons, finding no merit, the appeal fails and
is accordingly dismissed in limine.

(Rekha Mittal)
Judge

31.1.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No