

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 999 of 2020 (O&M)

Date of Decision: 09.11.2022

Jaswinder Singh (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Manjit Kaur

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ramneek Vasudeva, Advocate
for the appellant(s).

Mr. Balwinder Singh and Mr. N.S.Dadwal, Advocates
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. While assailing the concurrent findings of facts, arrived at by both the Courts below in a suit for possession by way of specific performance of the agreement to sell, the defendant has filed the present appeal.

2. The relevant facts, in brief, are required to be noticed. The plaintiff (Smt.Manjit Kaur) has filed a suit for possession by way of specific performance of the agreement to sell dated 09.05.2013. It was asserted that

storey house, the defendant received an amount of ₹ 2,50,000/- out of the total sale consideration of ₹11,00,000/-. The agreement to sell has been executed on a non-judicial stamp paper of ₹2,000/-. Each page of the agreement to sell is signed by the appellant (defendant). The defendant, while contesting the suit, has claimed that the agreement to sell is a forged and fabricated document. He neither received the earnest money nor he entered into an agreement to sell with the plaintiff. He claimed that his signatures were obtained on the blank papers. The plaintiff, in order to prove her case, herself appeared in the witness box as PW.1 and examined both the marginal witnesses of the agreement to sell, namely Sh.Pritam Singh, Lambardar and Sh.Naginder Singh as PW.2 and PW.3, respectively. The defendant, also, himself appeared in the witness box as DW.3, whereas, he examined Sh.Iqbal Singh and Sh.Sikander Singh as DW1 and DW2, respectively.

3. While appearing in the evidence, the appellant-defendant has claimed that the plaintiff has fabricated an agreement to sell in connivance with the marginal witnesses. It was stated that these persons took his signatures on blank papers which were forged to create the agreement to sell (Ex.P1).

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts below along with the requisitioned record.

5. As already noticed, the agreement to sell has been executed on three pages of a non-judicial stamp paper worth ₹ 2,000/-. Each page of the agreement was signed by Sh.Jaswinder Singh (appellant), as well as by

Smt.Manjit Kaur, the proposed vendee.

6. The learned counsel representing the appellant further contends that the plaintiff has failed to prove her readiness and willingness as she did not disclose the details of her bank account or prove the source to pay the sale consideration. The learned counsel has read over the cross-examination of the plaintiff in the Court. On being questioned, the plaintiff has specifically stated that she withdrew the amount from her bank account, but since the defendant did not honour the agreement to sell to execute the sale deed, therefore, she re-deposited the same. There is no further cross-examination on that aspect of the matter. The learned counsel representing the defendant did not question her about the details of her bank account or the name of the bank account.

7. The alleged agreement to sell is dated 09.05.2013. The sale deed was to be executed on 30.05.2013 i.e. within the period of 21 days. The plaintiff visited the office of the Sub Registrar where the sale deed was to be registered, but the defendant did not come forward. Thereafter, the plaintiff sent a notice to the defendant on 04.06.2013 while calling upon him to execute the sale deed on 19.06.2013. The plaintiff was, again, present in the office of the Sub Registrar on 19.06.2013 but the defendant remained absent. She has got her affidavit attested from the Sub Registrar on 30.05.2013 as well as on 19.06.2013. The suit was filed on 06.07.2013 while, positively, asserting that she was always ready and willing to perform her part of the contract. In such circumstances, there is sufficient evidence to prove the plaintiff's readiness and willingness to perform her part of the contract.

8. The next argument of the learned counsel representing the

appellant is that it is the only house which the appellant owns. Therefore, the plaintiff should be granted the alternative relief of recovery of the amount on the principle of equity.

9. It may be noted here that the defendant, while filing the written statement, did not make any assertion with regard to his hardship. Consequently, no issue was framed. The learned counsel representing the defendant submits that in the evidence, the defendant has pleaded hardship.

10. It may be noted here that though, in the absence of pleadings and issues, such evidence is not liable to be considered, however, this Court has considered the same. It may be noted here that the defendant, while entering into the agreement to sell on 09.06.2013, knew that this is his only house. However, the defendant has entered into the agreement to sell on receipt of ₹2,50,000/-, therefore, the relief of possession by way of specific performance cannot be denied to the plaintiff only because this is the only house of the defendant particularly when the plaintiff was always ready and willing to perform her part and has shown a prompt and bonafide conduct.

11. Keeping in view the aforesaid facts, finding no merit in the present appeal, the same is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 09, 2022
“DK”

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