

**RSA-1772-2022 (O&M)  
and connected case**

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**135and 152 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**1.RSA-1772-2022 (O&M)**

Madan Lal .....Appellant  
Versus

Harjit Kaur  
..Respondent

**2.RSA-1757-2022 (O&M)**

Madan Lal .....Appellant  
Versus

Harjit Kaur  
..Respondent

Date of decision: 30.08.2022

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Deepak Nayar, Advocate for the appellant  
Mr. Prateek Sodhi, Advocate for the respondent

**ANIL KSHETARPAL, J (Oral)**

By this order, two Regular Second Appeals i.e RSA-1772-2022 and RSA-1757-2022 shall stand disposed of.

The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are 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 vs. Chandrika and others, (2016) 6 SCC 157.**

In RSA-1757-2022, notice of motion was issued for 04.11.2022 while staying the execution of the decree. However, when connected RSA-1772-2022 was listed on 29.08.2022, the following

order was passed:-

*“The learned counsel representing the parties admit that the connected appeal i.e Regular Second Appeal No.1757 of 2022, is adjourned to 04.11.2022. The learned counsel representing the caveator submits that he was not heard, though he had filed a caveat. He further submits that the appellant has filed the present appeal without withdrawing the SAO-24-2022 and SAO-25-2022.*

*The learned counsel representing the parties are ad idem that the present appeal as well as Regular Second Appeal No.1757 of 2022 be taken up for hearing on 30.08.2022, in the urgent list.”*

Hence, both the appeals have come up for hearing. With the consent of the learned counsel representing the parties, arguments have been heard in both the appeals.

There are two different agreements to sell between the parties. Agreement to sell dated 18.07.2002 is with respect to a house which is already in possession of Smt. Harjit Kaur whereas agreement to sell dated 21.01.2003 is with respect to a plot bearing no.19Min. Both the courts have decreed the respective suits. In the first round, two appeals were filed by the defendant, complaining that an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, has not been decided. On 28.02.2020 with the consent of the learned counsel representing the parties, the matter was remitted to the First Appellate Court to decide the application for permission to lead additional evidence. In the additional evidence, the defendant wishes to produce a gazette notification issued by the State of Punjab notifying that 10.10.2003 was a Gazetted Holiday. Thereafter, the First Appellate Court has decided the appeal.

Learned counsel representing the appellant contends that the aforesaid application has not been decided. On the other hand, learned counsel representing the respondent has produced a photocopy of the order dated 21.02.2022 passed by the First Appellate Court while dismissing the application after noticing that the aforesaid gazette notification has already been exhibited as Ex.DX. Learned counsel representing the appellant has failed to controvert the aforesaid factual position.

In the present case, execution of both the agreements to sell and their respective receipts of payment, from time to time, are not disputed. However, the defendant submits that in fact, two agreements to sell were executed on 18.07.2002 and subsequent agreement dated 21.01.2003 has been scribed on a blank thumb marked paper. The defendant has failed to prove the same. Moreover, no application for additional evidence was filed in RSA-1757-2022.

Learned counsel representing the appellant failed to draw the attention of the Court to any misreading or non-reading of the material evidence by the courts below. While deciding a Regular Second Appeal, the scope of interference is limited. In the absence of any substantive error, this Court does not find it appropriate to interfere.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

30.08.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)  
JUDGE**