

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1701 of 2013 (O&M)

Date of Decision: 25.07.2022

Tirlok Singh

... Appellant(s)

Versus

Sushil Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Satbir Gill, Advocate
for the appellant(s).

Mrs. Rupinder Kaur Thind, Advocate
for the respondent.

Anil Kshetarpal, J.

1. 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 v. Chandrika and Others (2016) 6 SCC 157*.

2. While assailing the concurrent findings of facts, arrived at by both the Courts below, the defendant has filed the present appeal. In a suit filed for grant of decree of specific performance of the agreement to sell, the Court has ordered refund of the earnest money of ₹2,25,000/- along with the interest @ 12% per annum.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book and photocopy of the record produced by the learned counsel representing the parties.

4. The learned counsel representing the appellant contends that the endorsement dated 27.01.2003 has not been proved by leading the evidence. He submits that the aforesaid endorsement is not exhibited. He further contends that the plaintiff, while appearing in evidence, has admitted that no

amount was paid on the day the agreement to sell was executed.

5. The agreement to sell is Ex.P1. It runs into two pages. On the reverse side of page No.2, there is an endorsement which is signed by both the parties while extending the date of execution of the sale deed from 18.02.2003 to 17.11.2003. It is also signed by a witness, namely Sh.Ram Partap, who has appeared in the evidence and proved the same. The main document is also exhibited. Failure to exhibit the endorsement separately would not defeat the rights of the plaintiff particularly when Sh.Ram Partap as well as Sh.Sushil Kumar (the plaintiff) have proved those facts.

6. The next argument of the learned counsel representing the appellant is based on the admission of the plaintiff. However, this has to be examined in the context of the plea put forth by the defendant while filing the written statement. The defendant has stated that he used to sell his agricultural produce through the defendant and take loan from him and for that purpose, the plaintiff used to take his signatures. However, it has been stated that the loan was repaid and the plaintiff promised to destroy the document.

7. In view of the aforesaid, the agreement cannot be stated to be without consideration. The consideration can be paid in the past, present or promised to be paid in future, in order to constitute a valid contract.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 25, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No