

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1756 of 2013(O&M)
Date of decision: 28.07.2022

Bhupinder Mohan and others

..Appellants

Versus

Prem Dutt @ Prem Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Jindal, Advocate and
Mr. Samar Pratap Singh Ahluwalia, Advocate
for the appellants.

None for the respondents.

ANIL KSHETARPAL, J(Oral)

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 vs. Chandrika and others, (2016) 6 SCC 157.**

The plaintiffs are assailing the correctness of the concurrent findings of fact arrived at by the courts below while dismissing their suit for possession by way of specific performance of the agreement to sell. The execution of the agreement to sell on 14.12.1988, with respect to a house located in village Raipur Rani for a total sale consideration of Rs.44,000/-, is not disputed between the parties.

As per the agreement to sell, the defendants, on receipt of Rs.5000/- as earnest money, agreed to execute and register the sale deed on 30.04.1989. It is the case of the plaintiffs that on 09.04.1989 the parties mutually agreed to extend the date of execution as some litigation was pending with respect to the suit property. It was agreed that the sale deed

would be executed within a period of two months from the date of disposal of the litigation. The suit was filed on 29.11.2005, after the plaintiffs' notice to the defendants did not bring any fruitful result.

The defendants appeared and stated that the agreement to sell was cancelled while returning the earnest money and a communication to this effect was sent to the plaintiffs on 18.12.1991, through Under Postal Certificate (UPC).

Both the courts, on appreciation of evidence, have found that the cancellation of the agreement to sell has been proved and the plaintiffs have failed to prove that the aforesaid letter was never received by them. In fact, Sh. Hukam Chand Verma, predecessor-in-interest of the plaintiffs died on 02.03.2000 and the suit was filed by his three sons. Sh. Kiran Mohan Verma appeared as PW6 but did not state that the communication dated 18.12.1991, was never received by his father. During the cross-examination, he denied the receipt of the communication, however, the courts on appreciation of the evidence, found that the communication cancelling the agreement was received by them. The courts have also noticed that when defendant no.2 appeared in evidence, no suggestion was put to him that the said letter is a forged or fabricated document. The communication along with the Under Postal Certificate (UPC) receipt has been placed on file as Ex.D1 and D2, respectively.

This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book.

The learned counsel representing the appellants submits that the defendants were required to prove the cancellation of the agreement. He submits that Sh. Raj Kumar-defendant no.2 was, at the relevant time, posted

in Post Office, therefore, there are chances of manipulation in the Under Postal Certificate (UPC) receipt.

Undoubtedly, the argument of the learned counsel representing the appellants is firm and substantive, however, the High Court, while hearing the Regular Second Appeal, is not expected to interfere unless the judgment(s) passed by the courts below suffer from some material irregularity or perversity. Merely because an alternative conclusion is probable, on appreciation of evidence, that in itself is not sufficient to interfere in the findings of fact arrived at by the Courts below. Moreover, 34 years have elapsed from the date of the agreement to sell. Hence, it would not be appropriate to grant the relief of specific performance of the agreement to sell after passage of such a long time. Both the parties at the relevant time, were residing in the one and the same village.

Hence, no ground to interference is made out.

Dismissed.

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

July 28th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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