

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1210 of 2016 (O&M)

Balbir Singh and Another

... Appellant(s)

Versus

Ram Sarup and Others

... Respondent(s)

AND

2. Regular Second Appeal No. 1315 of 2016 (O&M)

Veena and Another

... Appellant(s)

Versus

Ram Sarup and Others

... Respondent(s)

DATE OF DECISION: 23.08.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Balbir Singh, Appellant No.1 in person and
for the appellant No.2 (In RSA-1210-2016).

Mr. Ripudaman Singh Sidhu, Advocate
for the appellants (In RSA-1315-2016).

Mr. Vijay Lath, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeals 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*

2. Two connected regular second appeals, arising from a common suit filed for grant of decree of possession by way of specific performance of the agreement to sell dated 18.01.2005, shall stand disposed of.

3. The learned counsel representing the defendant No.1 and 2 (appellants in RSA-1315-2016) stated that both the appellants have died. As per the amendment in the CPC, the contract between the deceased appellants and the counsel continues. Hence, the learned counsel has come forward to assist the Court.

4. The defendant No.1 & 2 and defendant No.3 & 4 have filed two separate appeals against the concurrent findings of facts arrived at by both the Courts below.

5. The defendant No.3 and 4 are alleged to be the purchasers of the property during the pendency of the suit. Hence, the purchase is governed by the rule of *lis pendens*. The agreement to sell between the parties is Ex.P1 on the record. It runs into two pages. It is scribed on a non-judicial stamp paper of Rs.500/-. Smt.Kamlawati and Smt.Veena have signed the first page of the agreement to sell twice over each page. The first set of signatures are on the left end margin, whereas the second set of signatures are down below. Similar is the position on the second page, it has also been signed twice. It has come in evidence that the stamp paper for execution of the agreement to sell was purchased by Sh.Baldev Sahai, brother-in-law of Smt.Kamlawati and uncle of Smt.Veena. It has come on record that the relationship between Sh.Baldev Sahai and Smt.Kamlawati was cordial. Sh.Baldev Sahai has not been examined. The plaintiff, in order

witness as well as Smt.Manisha Sharma, the Scribe. Both the Courts below have found that the defendants claimed that the agreement to sell was executed on account of misrepresentation under the undue influence. However, they failed to prove that fact.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books and the record, which was requisitioned.

7. The learned counsel representing the appellant contends that the defendants are pardanasheen ladies and the plaintiff is uncle of Smt.Veena, whereas, brother-in-law of Smt.Kamlawati. He submits that a heavy onus lays on the plaintiff to prove that the agreement to sell was not a result of undue influence. On the other hand, Sh.Balbir Singh-defendant No.3 is a practicing Advocate of this Court. He appeared in person for himself as well as for defendant No.4. He submits that they are the bonafide purchasers.

8. As already noticed, the agreement to sell has been signed by the defendant No.1 and 2 four times each. Smt.Veena has signed in English, whereas, Smt.Kamlawati has signed in Hindi. It has come on record that Smt.Kamlawati as well as Smt.Veena are residing with their respective in-laws. The plaintiff, in order to prove his readiness and willingness to perform his part, has proved that though the agreed date for execution of the sale deed was 30.08.2005 i.e. Saturday, he visited the office of the Sub Registrar on 29.07.2005 as well as on 01.08.2005 and sworn affidavits to that effect.

9. Keeping in view the aforesaid facts, the argument of the learned counsel representing the defendant No.1 and 2 is required to be analyzed.

The agreement to sell is drafted on a non-judicial stamp paper of ₹500/-. It is signed by the defendants. At the cost of repetition, Smt. Veena has signed the agreement to sell in English language. Hence, she is not illiterate. The defendants have failed to prove undue influence, particularly when the stamp paper was produced by Sh. Baldev Sahai, brother-in-law of Smt. Kamlawati.

10. As regards the argument of defendant No.3-Balbir Singh that he along with defendant No.4 is a bonafide purchaser, it would be noted that the sale deed in their favour is governed by the rule of *lis pendens*. The suit was instituted on 17.08.2005, whereas the sale of property in favour of defendant No.3 and 4 is done on 12.09.2005. Hence, there is no substance in the argument of defendant No.3-Balbir Singh, who appears for himself as well as defendant No.4.

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

**(Anil Kshetarpal)
Judge**

August 23, 2022
“DK”

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