

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

1. RSA-859-2013 (O&M)
Date of decision: 02.12.2022

RANJIT SINGH AND ORS

..Appellants

Versus

SALWINDER SINGH AND ORS

..Respondents

2. RSA-862-2013 (O&M)

KULWANT SINGH AND ANR

..Appellants

Versus

SALWINDER SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Arora, Advocate
for the appellants (in RSA-859 of 2013)

Mr. Parminder Singh, Advocate
for the appellant(s) (in RSA-862 of 2013)

Mr. S.P.Arora, Advocate for respondent no.1.

ANIL KSHETARPAL, J(Oral)

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

2. These two Regular Second Appeals have been filed by two different sets of defendants, challenging the correctness of concurrent findings of facts arrived at by the Courts below.

3. The relevant facts, in brief are as under:-

4. On 21.07.2008, the plaintiff-Sh. Salwinder Singh, son of Sh. Nidhan Singh, filed a suit for grant of decree of possession by way of

specific performance of the agreement to sell. The execution of the agreement to sell dated 13.03.2008 with respect to 5 kanals of land including two constructed shops for a total sale consideration of Rs.9,65,000/- is not disputed between the parties. At the time of execution of the agreement to sell, the defendant received Rs.1,50,000/- as earnest money. The parties agreed to execute and register the sale deed on 16.04.2008, on receipt of the balance consideration. The property was jointly owned by Sh. Kulwant Singh and his son who have entered into the agreement to sell. The plaintiff claims that on 16.04.2008, he along with the requisite amount visited the Office of Sub-Registrar Khem Karan for honouring his part of the agreement. It has been stated that the plaintiff was always ready and willing to purchase the property in terms of the agreement to sell. Defendants No.1 and 2 contested the suit claiming that the plaintiff was never ready and willing to perform his part of the contract. They have claimed that they visited the Office of Sub-Registrar on 16.04.2008 and on the next day i.e. on 17.04.2008, they issued a notice to the plaintiff calling upon him to come and execute the sale deed on 05.05.2008, however, the plaintiff still did not come forward to honour his commitment. The remaining defendants have contested the suit on the ground that the property has been purchased by them bonafidely and for consideration.

5. Both the Courts have recorded a concurrent finding of fact that plaintiff was always ready and willing to perform his part of the contract and defendants No.1 and 2 were not honest in performing their part of the contract.

6. The Court has noticed the following circumstances:-

- i. An amount of Rs.7,75,000/- was withdrawn by the plaintiff's brother from his bank account on 16.04.2008.
- ii. The plaintiff visited the Office of Sub-Registrar on 16.04.2008 and got his affidavit attested to prove his presence.
- iii. The defendants No.1 and 2, in order to create evidence, allegedly sent a notice to the plaintiff on 17.04.2008 under certificate of postal service. In the notice, the plaintiff was called upon to come to the Office of Sub-Registrar on 05.05.2008. Immediately thereafter, on 30.05.2008, the defendants No.1 and 2 transferred the property in favour of their sister's son and other relatives for a sum of Rs.3,50,000/- by executing two different sale deeds although the agreement to sell with the plaintiff was executed for a higher consideration of Rs.9,65,000/-.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

8. The learned counsels representing the appellants contend that there is no evidence to prove that the amount of Rs.7,75,000/- was withdrawn from the account of the brother of the plaintiff. He further submits that the plaintiff in his deposition has stated that he withdrew the amount from his own bank account, whereas, in evidence, the bank account statement of Sh. Balwinder Singh was produced who never stepped into the witness box. He further submits that both the Courts have wrongly shifted their focus on the sale deed dated 30.05.2008 executed by defendants No.1 and 2 in favour of

their nephew and other relatives rather than examining the readiness and willingness on the part of the plaintiff.

9. Per contra, the learned counsel representing the plaintiff submits that Sh. Salwinder Singh and Sh. Balwinder Singh are the sons of Sh. Nidhan Singh. While drawing the attention of the Court to the caption of the plaint as well as the bank account statement, he submits that Sh. Salwinder Singh (the plaintiff) and Sh. Balwinder Singh are brothers. He further submits that on 16.04.2008, a major portion of the balance sale consideration was withdrawn from the Bank in order to honour the agreement to sell.

10. This Court has considered the submissions. The bank account statement is Exhibit P5. From a bare perusal thereof, it is evident that Sh. Balwinder Singh is the son of Sh. Nidhan Singh. The plaintiff is also the son of Sh. Nidhan Singh. Moreover, when the plaintiff appeared in evidence, he was cross-examined with regard to the availability of the amount for making payment of the balance sale consideration to the defendants. The plaintiff stated that he has withdrawn the amount of Rs.9,65,000/- from his own bank account. This witness was not cross-examined any further on this aspect of the matter.

11. Once the plaintiff was cross-examined, he, in order to prove his readiness and willingness produced the bank account statement of his brother to prove the availability of balance sale consideration on the date of registration of the sale deed. In the considered view of the Court, such bank account statement is sufficient to prove the readiness and willingness of the plaintiff particularly when the suit was filed within a period of 44 days from the agreed date of registration.

12. The next argument of the learned counsel is to the effect that remaining defendants are bonafide purchasers. There is no dispute that the purchasers are close relatives of defendant No.1 and 2. Moreover, the suit property was agreed to be sold for Rs.9,65,000/- on 13.03.2008, however, it was allegedly transferred in favour of the remaining defendants for a lower sale consideration of Rs.3,50,000/- only. These facts clearly reflect the malafide conduct of the defendants and also prove that the subsequent buyers are not bonafide purchasers of the suit property.

14. Hence, dismissed.

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

December 02nd, 2022
Parul/Ay

(ANIL KSHETARPAL)
JUDGE

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