

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6281 of 2022 (O&M)

Date of Decision: 19.09.2022

Tej Pal

... Petitioner(s)

Versus

Nitin

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Rubai J. Singh, Advocate
for the petitioner(s).

Mr. Rakesh Dhiman, Advocate
for the respondent.

Anil Kshetarpal, J.

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

2. While assailing the concurrent finding of facts arrived at by both the Courts below, the plaintiff has filed this second appeal. The respondent-defendant is the appellant's son. The appellant-plaintiff filed a suit for grant of decree of declaration to the effect that he is co-sharer and co-owner in joint possession of the suit land with a consequential relief of permanent injunction. In substance, the plaintiff prays for declaring the registered transfer deed No. 4613 dated 25.01.2008 and consequent mutation of the land to be illegal. Through the aforesaid transfer deed, the appellant-

plaintiff has transferred the suit land in favour of his son. The plaintiff-appellant claims that he wanted to mortgage the land to secure loan, however, the respondent fraudulently got the transfer deed executed.

3. Both the Courts, on appreciation of the evidence, have concurrently found that the plaintiff has miserably failed to prove his case as he has failed to prove fraud. The plaintiff-appellant admits that he appended signatures on the release deed. His photograph is also printed on the aforesaid lease deed. The plaintiff has examined PW.1-Sh.Jagdish, Numberdar, who in his cross-examination admitted that he along with another witness, namely Sh.Balkishan appeared before the Sub Registrar when the transfer deed was registered and the Sub-Registrar did question Sh.Tej Pal (appellant) regarding the purpose of such transfer.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts below as well as the record.

5. It is evident that if a loan from the bank is required to be taken on the execution of the mortgage deed, the officials of the bank are required to be present. PW.1-Sh.Jagdish, Numberdar, stated that no official of the bank was present. PW.3-Appellant-plaintiff has admitted that he has sold his land earlier as well and he is, therefore, aware of the procedure of registration of a document. He also admitted that the Sub-Registrar did ask him as to why he was transferring the land through a transfer deed, however, he never objected to such transfer. The appellant has also admitted that he did not sign any document for borrowing loan from the bank.

6. The respondent has also examined Sh.Vijay Kumar Yadav, Sub-

Scribe, has also stated that the transfer deed was drafted on the instructions of the appellant.

7. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 19, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No