

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5198 of 2019 (O&M)

Date of Decision: 31.10.2023

Fayaaz

... Appellant(s)

Versus

Vijay Malik

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Amrita Nagpal, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-14725-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 475 days in refiling the appeal is condoned.

RSA-5198-2019

2. 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*.

3. In this second appeal, the defendant assails the correctness of the judgment and decree passed by the First Appellate Court in a suit for the grant of possession of the area measuring 2 marlas and 6 sarsai (equivalent to 80 square yards).

the relevant facts, in brief, are required to be noticed. The plaintiff (respondent herein) has filed a suit for the possession on the ground that he has purchased a house comprised in khasra No. 19/7/2 (4 kanals) located in Vidya Nand Colony, Uрга Kheri, Tehsil and District Panipat, vide registered sale deed dated 14.11.2008 from the appellant (defendant before the trial Court). However, the defendant, after promising to handover possession within the next 15 days from the date of the sale deed, has failed to deliver the possession. The defendant, while contesting the suit, denied execution of the sale deed. He pleaded that there was a full and final payment of the agreement to sell dated 03.06.2008 between the parties. It has been submitted that as per the aforesaid agreement, the defendant was entitled to cancel the agreement while refunding the amount along with interest.

5. The trial Court dismissed the suit on the ground that the registered sale deed has been attested by only one attesting witness. However, the First Appellate Court held that as such the attestation of the registered sale deed by the attesting witnesses is not required.

6. Heard the learned counsel representing the appellant at length and with her able assistance, perused the paper-book.

7. The learned counsel representing the appellant submits that as per the agreement to sell dated 03.06.2008 (Ex.D1), the defendant could refund the amount along with interest upto 03.06.2008, therefore, the registered sale deed was illegal. She further submits that this is the only residential house of the appellant and the Court should take a liberal view.

On a Court question, the learned counsel representing the appellant admits that no suit or counter claim has been filed by the appellant to seek

annulment/cancellation of the registered sale deed executed by him in favour of the respondent on 14.11.2008. In such circumstances, the plaintiff (respondent herein) is the owner on the basis of the registered sale deed. The appellant has failed to show any right, title or interest in the property. The sale deed is a registered document. It carries the presumption of having been executed in accordance with the law while following the prescribed procedure. Unless and until the same is annulled by the competent Court, the appellant cannot claim any right to continue to be in possession. As of now, nearly 15 years have passed. The appellant has never taken any step to seek the annulment of the sale deed.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by the First Appellate Court. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

October 31, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No