

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4610 of 2019 (O&M)

Date of Decision: 05.07.2023

Raj Karan

... Petitioner(s)

Versus

Mool Chand (Since Deceased) through his Legal Representative and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikram Singh and Ashish Gupta, Advocate
for the appellant(s).

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. This litigation is between the members of the same family. The appellant (plaintiff) is the son of the defendant No.1 (since deceased), whereas the defendant No.2 is his brother. The defendant No.3 and 4 are the sisters of the plaintiff, whereas the defendant No.5 is the sister-in-law of the plaintiff.

3. The appellant (plaintiff) has filed a suit that his deceased brother late Sh.Raj Kumar was not mentally sound when he executed the general power of attorney in favour of his father (late Sh.Mool Chand), the

defendant No.1 in the suit. He also claims that late Sh.Mool Chand executed

the two sale deeds in favour of his daughter-in-law (wife of the defendant No.2) without payment of any sale consideration and the sale deed is not binding on the appellant's rights. Both the Courts below, on the appreciation of evidence, found that the plaintiff has failed to prove his case as he did not lead any evidence to prove that on 31.05.2010, late Sh. Raj Kumar was not mentally sound.

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

5. The learned counsel representing the appellant submits that late Sh. Mool Chand himself wrote a letter to the Registrar on 10.05.2010 to the effect that late Sh. Raj Kumar was not mentally sound, hence, no sale deed on his behalf should be registered. He further submits that both the Courts below have wrongly ignored the aforesaid document which conclusively proves the case of the plaintiff.

6. This Court has considered the submission of the learned counsel representing the appellant. On a court question as to how the communication dated 10.05.2010 has been proved by the appellant, the learned counsel has failed to draw attention of the Court to any evidence to this effect. The letter dated 10.05.2010 has not been proved in accordance with law. Hence, no reliance can be placed thereon. Moreover, the appellant filed a suit claiming that late Sh. Raj Kumar was not mentally sound when he executed the general power of attorney in favour of his father-late Sh. Mool Chand. However, no evidence to prove the same was led by the appellant.

7. Keeping in view the aforesaid facts and discussion, 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

July 05, 2023
“DK”

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