

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 3486 of 2023 (O&M)****Date of Decision: 23.11.2023**

Joginder Pal

... Appellant(s)

Versus

Ashok Kumar Kohli

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Kumar Khubbar, 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 regular second appeal has been filed along with an application for condonation of 497 days in filing the appeal.

3. On the request of this Court, the learned counsel representing the appellant has addressed the arguments on merits of the case.

4. In this regular second appeal, the defendant (appellant herein) assails the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the respondent's suit for the grant of decree of possession by way of redemption of mortgage. The plaintiff claims

that he is owner of the property by virtue of the sale deed No. 722, dated

26.11.2009 executed by the appellant (defendant before the trial Court). It is the case of the plaintiff that he mortgaged the property in favour of the defendant vide registered mortgage deed No. 752 dated 07.12.2009.

5. On the other hand, the defendant, while contesting the suit, claims that the plaintiff's son, namely David is running the Shiv Finance Company and the defendant borrowed a loan which he was unable to repay as his wife was suffering from cancer.

6. Both the Courts below, on appreciation of evidence, have concurrently found that the defendant has failed to prove his case. The defendant-appellant has never challenged the correctness of the aforesaid sale deed executed by him on 26.11.2009. Similarly, the appellant does not dispute the aforesaid registered mortgage deed dated 07.12.2009, executed by the plaintiff in favour of the appellant.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

November 23, 2023

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No