

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 69 of 2023 (O&M)

Date of Decision: 25.01.2024

Suresh Kumar and Others

... Appellant(s)

Versus

Satish Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anish Setia, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and 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. In this regular second appeal, the defendants assail the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiff's suit for the grant of decree for specific performance of agreement to sell dated 14.08.2012.

3. On 14.08.2012, appellant No.1-Suresh Kumar, his brother Chhotu, sister-in-law, nephew and nieces have entered into a joint agreement to sell with respect to 1/3rd share of the land measuring 25 kanals and 12 marlas in favour of the respondent (plaintiff). His brother and other relatives

have already honoured their part of the agreement to sell and executed the sale deed in accordance with the said agreement. However, the appellants have refused. The plaintiff's suit for specific performance of the agreement to sell has been decreed by both the Courts below.

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 the appellant was brought to the Tehsil Complex at gun point i.e. under coercion and forced to sign the agreement to sell. He further submits that PW.1-Ramphal, Stamp Vendor, has failed to identify the appellants. He further submits that the deposition of PW.3-Surender Kumar, Marginal witness to the agreement to sell, has admitted that all the persons were not present at the spot when the agreement to sell was executed.

6. This Court has considered the submissions of the learned counsel representing the appellants.

7. From a bare perusal of the photocopy of the agreement to sell, it is evident that the appellant No.1 purchased the stamp paper for execution of the agreement to sell on behalf of his other relatives. He has signed the first page as well as the second page. In fact, he has appended two signatures on the second page. He is the only educated person who has appended his signatures, whereas the remaining vendors have put their thumb marks. He does not dispute that he has appended his signatures. However, he submits that the agreement to sell was got executed under coercion, but he failed to prove the same. Significantly, PW.3 Surender Kumar, marginal witness to the agreement to sell, is also his nephew. The stamp vendor is not expected

to remember the face of every customer who comes to purchase the stamp paper. Moreover, on appreciation of evidence, both the Courts below have decreed the suit. The learned counsel representing the appellants has failed to draw the attention of the Court to any perversity in the impugned judgments passed by both the Courts below.

8. 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.

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

(Anil Kshetarpal)
Judge

January 25, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No