



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 46 of 2025 (O&M)

Date of Decision: 14.01.2025

Dharam Chand (Deceased) through his Legal Representative
... Appellant(s)

Versus

Kritpal and Another
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Roopak Bansal, 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. The concurrent findings of fact arrived at by both the Courts below are challenged by the defendant in this Regular Second Appeal. The plaintiff filed a suit for the decree of possession by way of specific performance of the agreement to sell. It was claimed by the plaintiff that the defendant-late Sh. Dharam Chand entered into an agreement to sell dated 27.08.2012 with respect to the land measuring 9 kanals and 16 marlas on payment of ₹5,00,000/- as earnest money out of the total sale consideration of ₹53,50,000/-. The sale deed was agreed to be executed on 28.12.2012,

24.09.2012, which was replied by the plaintiff on 04.10.2012 while calling upon the defendant to come for registration on 15.10.2012. However, the defendant did not come, whereas the plaintiff was present in the office of the Sub Registrar on 15.10.2012 and attested his affidavit. In the written statement, the defendant admitted the execution of the agreement to sell on payment of ₹5,00,000/- as earnest money. However, he claimed that the entire payment was to be paid within a period of 30 days from the date of agreement to sell. Both the Courts below decreed the plaintiff's suit.

3. The learned counsel representing the appellant submits that the notice sent by the defendant cancelling the agreement to sell has not been challenged and, therefore, the suit was not maintainable in view of the judgment passed by the Supreme Court in *I.S.Sikandar (Dead) by LRs v. K.Subramani and Others (2013) 15 SCC 27*.

4. This Court has considered the submissions of the learned counsel representing the appellant.

5. Subsequently, in *Mrs. A. Kannthamani v. Mrs. Nasreen Ahmed (2017)4 SCC 654*, the Supreme Court has distinguished the judgment passed in *I.S. Sikandar's case (supra)* and held that the judgment passed in the said case was in the peculiar facts of the case. Subsequently, in *Surinder Mohan Batra and Others v. Gurbinder Pal Singh Tiwana and Another (Regular Second Appeal No. 1770 of 2014, decided on 03.08.2023)*, this Court examined the aforesaid objection in the following manner:-

“19. In these circumstances, it would not be appropriate to non-suit the plaintiff on a hyper-technical objection which does

not affect the merits of the case. Moreover, it is a well settled principle that the Court in the facts and circumstances of the case is entitled to mould the relief keeping in consideration the peculiar facts of the case.

20. *Additionally, the attention of the Supreme Court in **I.S.Sikander's case (supra)** was not drawn to Order VII Rule 7 CPC which provides that it shall not be necessary to ask for general or other relief which may always be given as the court may think just and proper. In common parlance, this is called the moulding of relief. In **Neelawwa vs. Shivawwa, ILR 1988 KAR 2761**, a Division Bench of the Karnataka High Court explained the scope of Order VII Rule 7 CPC to hold that the Court even in absence of a specific prayer for partition and separate possession should have passed a preliminary decree for partition. In this judgment, the Division Bench relied upon a previous judgment passed in **Rangappa vs. Jayamma , ILR 1987 Karnataka 2889**, to the same effect. In fact, this issue was also examined in a different context by the Supreme Court in **Kidar Lal Seal and another vs. Hari Lal Seal , AIR 1952 SC 47**, it was held as under:-*

"The Court would be slow to throw out a claim on a mere technicality of pleading when the substance of a thing is there and no prejudice is caused to the other side and it is always open to a Court to give the plaintiff such general or other relief as it deems just to the same extent

as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs."

21. Similarly, other High Courts have also taken the same view. Furthermore, the judgment passed in **I.S.Sikander's case (supra)**, it was held that the aforesaid judgment has been passed on the facts involved therein and is thus distinguishable. Reliance in this regard can be placed on a judgment passed in **Mrs.A.Kanthamani vs. Mrs. Nasreen Ahmed, 2017(40) SCC 654**. In such circumstances, it will not be appropriate to dismiss the suit filed by the plaintiffs only on a hyper technical objection which does not affect the merits of the case."

6. The learned counsel representing the appellant did not press any other argument.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact 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

January 14, 2025
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No