



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4364 of 2019 (O&M)

Reserved On: 16.01.2025
Pronounced On: 20.01.2025

Mohan Lal and Another

... Appellant(s)

Versus

Rajinder Kumar and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjay Kaushal, Senior Advocate
 with Mr. Kanwal Goyal and Ms. Sheena Dahiya, Advocates
 for the appellant(s).

Mr. Puneet Jindal, Senior Advocate
 with Mr. Sahil Khunger and Mr. Rohit Sharma, Advocates
 for respondent No.1.

Anil Kshetarpal, J.

1. Factual Background

1.1 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*.

1.2 The correctness of the concurrent findings of fact arrived at by both the Courts below while decreeing a suit for possession by way of specific performance of the agreement to sell has been assailed by the defendants in this appeal.

suit claiming that appellant No.1 (defendant No.1) on receipt of the entire sale consideration of ₹14,00,000/-agreed to sell plot No. 890, Sector 25, Part-II, HUDA, Panipat (4 marlas), Panipat, in favour of the plaintiff. In the agreement to sell, there was no recital with respect to the date for execution and registration of the sale deed. However, the defendant No.1 gifted the property in favour of his wife on 23.03.2007. The defendant contested the suit by claiming that neither any earnest money has been received nor any agreement to sell was executed. In fact, on 07.11.2001 the defendant No.1 lost a bag containing original allotment letter of the plot. Before the alleged execution of the agreement to sell, he also got a daily diary report recorded on 09.02.2007 with respect to the loss of the documents.

2. Arguments put forth by learned counsel representing the parties

2.1 Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

2.2 The learned senior counsel representing the appellants has made the following submissions:-

- I) As per plaint, the agreement was signed in the presence of the plaintiff, however, when he appeared in evidence, he stated to the contrary.
- II) On 07.11.2006 and 09.02.2007, the defendant had lodged reports that the bag containing his documents had been lost.
- III) On 05.03.2007, the agreement to sell was also entered and the full payment was made which is highly improbable.

IV) The cash book and entries in the day book do not match and therefore, the payment of ₹14,00,000/- has not been proved. The agreement to sell required registration because full and final payment has been made and the plaintiff failed to prove that the money was withdrawn from the bank.

2.3 Per contra, the learned counsel representing the respondents has submitted that the defendant No.1 on 05.03.2007, submitted an application to the Estate Officer, Haryana Urban Development Authority, Panipat, seeking permission to transfer the suit plot in favour of the plaintiff which is Ex.DW.4/A. This document is attested by the Executive Magistrate on 16.03.2007 and draft of transfer fee of ₹5,000/- was got prepared by the plaintiff.

3. Analysis and Discussion

3.1 This Court has considered the submissions of the learned counsel representing the parties.

3.2 The minor discrepancies in the oral evidence would not be sufficient to discard the evidentiary value of voluminous documentary evidence which had been produced by the plaintiff. The defendant No.1 does not dispute his signatures on the agreement to sell dated 05.03.2007. His plea that the bag containing documents was lost on 07.11.2006 has been disbelieved by both the Courts below. In the letter dated 07.11.2006, the defendant No.1 does not state that the bag was also containing his blank signed papers. Similarly, there is no explanation of the defendant No.1 with respect to the signing of the application submitted to the competent authority

for seeking permission to transfer of the property in favour of the plaintiff.

3.3 With regard to the loss of document, it would be noticed that the defendants may have planned in advance in this regard, however, the facts and circumstances of the present case prove that in fact the agreement to sell was executed on 05.03.2007. Though the document (Ex.D4/A) (application seeking permission to transfer the plot) was signed by the defendant No.1 on 05.03.2007, however, he got it attested from the Executive Magistrate on 16.03.2007. Thus, upto 16.03.2007 there was no dispute.

3.4 The next submission with regard to the execution of the agreement to sell and payment of the entire sale consideration on the same day is not unusual particularly when PW.2 Harish Bhatia, who is the attesting witness and a property broker has proved that the transaction took place in his office and in his presence. Moreover, the circumstances clearly prove that on 05.03.2007, the plaintiff got prepared a draft in favour of the Haryana Urban Development Authority for the payment of fee while submitting application to permit transfer of the plot.

3.5 With regard to the requirement of registration, it would be noticed that the agreement to sell evidencing delivery of possession is required to be registered only for the purpose of protecting possession under Section 53A of the Transfer of Property Act, 1882. It is evident that in this case, there was no delivery of possession. In any case, the suit for specific performance of the agreement to sell is maintainable even if the possession is delivered. However, in this case, there is no recital with regard to the delivery of possession.

3.6 The last argument of the learned senior counsel representing the appellants also has no substance because the defendant No.1 has acknowledged the receipt of entire payment of ₹14,00,000/- by virtue of agreement to sell and he also signed the application for the grant of permission to transfer the property in favour of the plaintiff. The civil cases are required to be decided on preponderance of evidence. The overwhelming documentary evidence cannot be discarded on the basis of minor discrepancies in the oral evidence.

3.7 The learned senior counsel representing the appellants did not press any other argument.

4. Decision

4.1 Finding no merits, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

January 20, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No