

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 872 of 1988

Date of Decision: 17.7.2015

Hari Ram and Others

... Appellant(s)

Versus

Subhash and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: None.

G.S.Sandhawalia, J.

The present appeal has been filed by the plaintiff/appellants aggrieved against the judgment & decree dated 24.12.1986 whereby the trial Court partly decreed their suit and set aside the decree dated 23.3.1973 passed in Civil Suits No. 65-T & 61-T on the ground that it is not binding against them and they were not parties to the suit. However, it was held that the order dated 28.1.1982, passed by the Director, Consolidation of Holdings is binding upon them and they have failed to show that the suit land was in their possession. Thus, the relief of permanent injunction was declined. The said judgment & decree has been upheld by the Additional District Judge, Bhiwani vide judgment dated 11.1.1988 by holding that the possession of the plaintiffs could not be proved over the suit property. The reasoning given was that the uncle and brother of the plaintiffs were the parties in the petition filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") and the effective hearing had been given to some of the co-sharers in the

proceedings under the Act and it was not necessary to implead all the co-sharers and to serve them individually. Reliance was placed upon the Full Bench judgment of this Court in ***Biru and another v. Suraj Bhan and Others 1983 AIR Punjab & Haryana 347***. It was further held that if any of the co-sharers was aggrieved of the order passed by the Director, Consolidation of Holdings, on merits, they should have challenged the said order. The arguments that the plaintiffs were in possession of the land in dispute were rejected as they were minor on the date of filing of the suit, therefore, they could not be expected to cultivate the suit land. Therefore, they were held not in possession of the land in dispute, since the evidence led by the defendants was consistent that they were using the land for grazing and tethering their cattle and it was a part of johar. The said finding of fact was recorded on the basis of evidence recorded by the Court below.

No substantial question of law arises for consideration which would warrant interference in the present appeal. Even otherwise none has put in appearance on behalf of the appellants to assist this Court.

Accordingly, the present appeal is dismissed.

(G.S.Sandhawalia)
Judge

July 17, 2015

“DK”