

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 19.10.2016

1. RSA-1106-1991 (O&M)

Vijay Pal and others

... Appellants

Versus

Risal Singh (deceased through LRs) and others

... Respondents

2. RSA-1338-1988 (O&M)

Khubi Ram (dead) through LRs

... Appellant

Versus

Sharbati @ Saraswati

... Respondent

3. RSA-463-1990 (O&M)

Bhawaria

... Appellant

Versus

Soran Bai

... Respondent

4. RSA-673-1990 (O&M)

Bhanwaria (dead) through LRs

... Appellant

Versus

Pret Pal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Alka Sarin, Advocate
for the appellant(s) in RSA-1106-1991.

Mr. C.B. Goel, Advocate
for the appellant(s).
(in RSA-1338-1988, RSA-463-1990 & RSA-673-1990).

Ms. Vandana Rana, Advocate for
Mr. Hemant Bassi, Advocate
for the respondent(s) in RSA-1106-1991.

Mr. K.S. Cheema, Advocate and
Mr. K.S. Pawan Advocate
for the respondent(s) in RSA-1338-1988, RSA-463-1990 &
RSA-673-1990.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of four appeals bearing **RSA No.1106 of 1991** titled as **“Vijay Pal and others V/s Risal Singh (deceased through LRs) and others”**, **RSA No.1338 of 1988** titled as **“Khubi Ram (dead) through LRs V/s Sharbati @ Saraswati”**, **RSA No.463 of 1990** titled as **“Bhawaria V/s Soran Bai”** and **RSA No.673 of 1990** titled as **“Bhanwaria (dead) through LRs V/s Pret Pal and others”**. Facts are being taken from **RSA No.1106 of 1991**.

Ms. Alka Sarin, learned counsel appearing on behalf of the appellant(s) in RSA-1106-1991 and Mr. C.B. Goel, learned counsel appearing on behalf of the appellant(s) in RSA-1338-1988, RSA-463-1990 & RSA-673-1990, submit that the respondent-plaintiff had filed the civil suit for possession on the allegation that there was some joint land of *Patti Shamlat* Ram Singh in Village Jatauli. The parties were co-sharers in the said *Patti Shamlat*. The documentary evidence placed on record showed that the appellant(s) are the tenants and the entry in the column No.9 about the alleged chakota @ ₹ 35/- is reflected. The trial Court dismissed the suit also on the ground that the Civil Court did not have the jurisdiction, but the lower Appellate Court decreed the suit, thus, there is a illegality and

perversity and urges this Court for setting aside the findings under challenge.

Ms. Vandana Rana, Advocate for Mr. Hemant Bassi, learned counsel appearing on behalf of the respondent(s) in RSA No.1106-1991 and Mr. K.S. Cheema, Advocate and Mr. K.S. Pawan, learned counsel appearing on behalf of the respondent(s) in RSA-1338-1988, RSA-463-1990 & RSA-673-1990, submit that there is no illegality and perversity in the judgment and decree of the lower Appellate Court which are based upon the appreciation of oral and documentary evidence. The findings of fact cannot be interfered until and unless there is a gross illegality, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once column No.9 of the revenue record shows the status of the co-sharer i.e. the appellant as tenant, then, in my view, the suit of the respondent-plaintiff was not maintainable seeking possession. Once it has been found that the appellant(s) are the tenants, the remedy for seeking the eviction would be under the Punjab Tenancy Act, 1887.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed

under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in “Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in “Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab*

Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeals, aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court in RSA No.1106 of 1991, RSA No.1338 of 1988 and RSA No.463 of 1990 is not sustainable and the same is hereby set aside and that of the trial Court is restored and in RSA No.673 of 1990, the impugned judgment and decree of both the Courts below are set aside, in essence, the suit of the respondent-plaintiff is dismissed.

The appeals stands allowed.

19.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No