

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

RSA No.1907 of 2013 (O&M)

Date of Decision.29.09.2016

2. RSA No.2511 of 2013 (O&M)

Mani Ram

.....Appellant

Vs.

Surender and others

.....Respondents

Present: Mr. Sumeet Goel, Advocate
for the appellant.

Mr. Vikram Singh, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two appeals i.e. RSA No.2511 of 2013 arising out of Civil Suit No.10 of 2008 titled as “Mani Ram Vs. Sona Devi and others” (hereinafter called as “First Suit”) and RSA No.1907 of 2013 arising out of civil suit No.308 of 2007 titled as 'Surender Vs. Mani Ram and others' (hereinafter called as “Second Suit”).

It is pertinent to mention here that Surender Singh is defendant No.2 in the First Suit. Both the parties had instituted suit in respect of the same property. The suit bearing No.308 of 2007 filed by Surender was dismissed by the trial Court but the lower Appellate Court reversed the same whereas the civil suit bearing No.10 of 2008 filed by Mani Ram was decreed by the trial Court but the lower Appellate Court reversed the

finding of the trial Court in the appeal. Hence, Mani Ram being aggrieved

of the judgments and decrees passed by the lower Appellate Court in both the aforementioned cases, is the appellant before this Court.

Mr. Sumeet Goel, learned counsel for the appellant in both the appeals submits that the trial Court on the basis of oral and documentary evidence decreed the suit No.1 as the injunction sought was that plaintiff was owner in possession of the property consisting one dilapidated house and open courtyard as mentioned in paragraph No.1 in the plaint since 24 years and installed a cattle feed and *hara* for placing milk etc. Defendant No.1 was previously married with the real brother of the plaintiff named Ram Kala who expired in the year 1985 and after 4-5 months of his death, defendant married with one Ram Swaroop son of Sardara and thereafter, continuously resided with him. One son i.e. defendant No.2 was born through the previous marriage of defendants No.1 and two sons were born out of re-marriage. Defendants wanted to interfere in his possession and requested not to interfere but the same was refused, hence, the suit was filed.

In order to prove the aforementioned contention, the counsel for the appellant placed on record site plan PW3/A. As per the site plan, the plaintiff had been in possession of the area shown in red colour and the defendants were interfering. Since it is an area located in *abadi deh*, there is no record of ownership. The person in possession is deemed to be the owner. The defendants put in appearance and even tendered statements of Sona Devi and Surender as Ex.D1 and D2. In second suit, DW-1 Mani Ram admitted in the cross-examination that the appellant-plaintiff was owner in possession of the suit property and he was residing at any other property in the village but the lower Appellate court has non-suited the appellant on the

ground that the property was not described by any khasra number and mere keeping of the cow dung, wooden sticks and other articles for domestic purpose would not establish the ownership. Site plan Ex.PW3/A was not correct, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. Vikram Singh, learned counsel appearing for the respondents submits that the suit filed by Mani Ram was not maintainable as Surender had already filed the suit which was pending in the Court. Site plan produced by Mani Ram was not according to the existing position. On the plot there is constructed house and open plot towards the western side of the court yard. It was stated that the said plot was allotted to Ram Kala brother of the plaintiff as the plaintiff sold half share of his allotted plot in family arrangement to Kishna Ram son of Dhanna who was lying beyond the street towards the north side and the plaintiff wanted to encroach over some portion of the property, hence filed the suit. Except site plan no other evidence has been placed on record. No doubt, the property was in *abadi deh* but the Court could not have granted injunction in the absence of documentary evidence, much less, corroborative evidence, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that once there is categorical admission of defendant No.3 as noticed by the trial Court and cross-examination of DW1 regarding possession, it was sufficient, rightly so, the Court below decreed the suit. Once the property had been identified by the defendant, in my view, the finding arrived at by lower Appellate Court regarding the dimension in the site plan pales into insignificance. The respondents-defendants have not

disputed the ownership of the plaintiff whereas no corroborative evidence has been led to prove contrary i.e. ownership of the defendant. No doubt, the lower Appellate Court observed that the plaintiff had been putting articles, such a finding as necessary corollary would lead to proof of possession. Once a person is in possession, his possession cannot be disturbed except in due course of law. The case is of encroachment but since the plaintiff has raised the plea of possession which has been proved, I am of the view that the trial Court had rightly granted the injunction.

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 Vs. 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 Vs. 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 appeal, aforementioned.

For the foregoing reasons, the judgment and decree passed by

the lower Appellate Court is set aside and the second appeals are allowed.
Resultantly, the judgment and decree passed by the trial Court is restored.
Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

September 29, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes