

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

RSA No.5201 of 2014 (O&M)

Date of decision : 09.12.2016

Raj Kumari and another

...Appellants

Versus

Kuldeep Singh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. Gaurav Sharma, Advocate for the appellants.

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**AMIT RAWAL, J. (Oral)**

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by both the Courts below, whereby following relief, has been declined:-

*“Suit for permanent injunction restraining the defendants from alienating any part of plot measuring 76 square yards comprising in khasra No.4733 min (0-1-1/2) khata No.312/2575 situated at Hans Nagar, Gali No.7/A, Patti Jhutti, Bathinda bounded as under:-*

*East:- 23' Street*

*West:- 23' Jarnail Singh etc.*

*North:- 30' Mitpal Singh*

*South:- 30' Bikkar Singh Sarpanch*

*AND*

*Plot measuring 97 square yards, comprising in khasra No.1733 min (1-3-1/2), i.e. 2/23 share, khata No.312/2575,*

*situated at Hans Nagar; Gali No.7/A, Patti Jhutti, Bathinda bounded as under:-*

*East:- 53' Street 20'*

*West:- 53' Jarnail Singh,*

*North:- 17' Street 30'*

*South:- 17' Raj Kumar*

*and also restraining the defendants' from dispossessing the plaintiffs from the abovesaid plots illegally and forcibly.”*

Mr. Gaurav Sharma, learned counsel appearing on behalf of appellants-plaintiffs submits that vide two sale deeds of same date dated i.e. 22.02.2010, land measuring 76 square yards comprising in khasra No.4733 min (0-1-1/2) khata No.312/2575 situated at Hans Nagar, Bathinda and land measuring 97 square yards comprising in khasra No.4733 min (1-3-1/2) khata No.312/2575 situated in Gali No.7/A, Hans Nagar, Bathinda, were purchased for a valuable consideration and appellants-plaintiffs were put into possession. Defendants started ascertaining their right in the land despite having receipt for consideration. It is in this backdrop of the matter, injunction was sought and the defendants on appearance cross-examined the one witness but thereafter did not come present later, were proceeded ex parte, yet Courts below has declined the relief as original sale deed has not been brought on record. However, before the lower Appellate Court, same has been brought on record but it has been rejected on the premise that witnesses of the same have not been examined. He submits that registered documents always carries presumption of truth, therefore, findings of the Courts below are erroneous and are not sustainable in the eyes of law.

On 13.01.2015, notice of this appeal was issued to the respondent Nos.1 and 2 only and same have been served but there is no

representation. Accordingly, I proceed to decide the appeal.

I have heard counsel for the appellants-plaintiffs and appraised the paper book.

The registered documents always carries a presumption of truth, much less, the contents of the same, as per Section 91 of the Indian Evidence Act. They have gone unrebutted, therefore, trial Court ought not to have put the blame on the plaintiffs in not seeking the relief particularly relief of injunction as no declaration has been sought.

I am of the view that on the basis of findings rendered by the Courts below in non-suiting the plaintiffs and not examining the sale deed, but though brought on record before the lower Appellate Court, injunction ought to have been granted.

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.

Judgment and decree of both the Courts below are set aside.

Suit is decreed.

Accordingly, present appeal is allowed.

Learned counsel for appellants-plaintiffs submits that he does not wants to press the application filed under Order 1 Rule 10 CPC and wishes to withdraw the same, therefore, present application is dismissed as withdrawn.

**09.12.2016**

*pawan*

**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**