

RSA-915-1992 (O&M)

1584

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

RSA-915-1992 (O&M)

Date of decision : 05.12.2018

Paramjit Singh

... Appellant

Versus

Government Primary School Arya Nagar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kuldip Sanwal, Advocate
for the appellant.

Mr. P.S. Goraya, Advocate
for the respondents.

AMIT RAWAL, J.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondents-plaintiff for permanent injunction restraining the defendants not to interfere in the peaceful possession in respect of land measuring 1 kanal 16 marlas, has been decreed by the trial Court and affirmed in the appeal.

Learned counsel appearing on behalf of the appellant-dfendnt submitted that during the pendency of the appeal before the lower Appellate Court, after framing the following additional issue, called for the report of the trial Court:

"Whether the suit has been filed by a competent person and Sham Lal and Babu Ram have locus standi to file the suit?OPR"

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As per report dated 20.05.1991, it was held that the suit by Ex-Member Panchayat, on behalf of Government Primary School, could not have been filed as it would be only either by Head Teacher of the said School or by Block Primary Education Officer or by an other officer of the Government. For the sake of brevity, the relevant portion of the report, reads as under:-

"I am of the view that the suit has been not filed by a competent person and Sham Lal and Babu Ram have not locus standi to file the present suit. Otherwise too, the plaintiff is a Govt. Primary School and as such the suit should have been filed either by the Head Teacher of the said School or by Block Primary Education Officer or by an other officer of the Government. So this issue is decided against the plaintiff."

This Court while admitting the appeal had vide order dated 09.09.1992 granted the status quo regarding possession.

The contention of the appellant-defendant before the trial Court was that he was allotted a plot by Wakf Board, which was not admitted by the Wakf Board. However, identify of the property could not be established. I am of the view that once as per the report dated 20.05.1991, it has been found that suit was not filed by competent person, judgments and decrees of the Courts below can be held to be sustainable.

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

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Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. 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*

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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.

Keeping in view the aforementioned facts, the present regular second appeal is allowed on the aforesaid ground.

05.12.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**