

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2364 of 1989 (O&M)

Date of Decision: November 27, 2018

Savitri (deceased) through L.Rs & others

...Appellants

Versus

Manphool & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.P.K.Mutneja, Advocate,
for the appellants.

Mr. Raj Kumar Gupta, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Vide Misc.Application No.6435-C of 2018, appellant-defendants sought the indulgence of this Court for disposal of the present appeal in view of the law laid down by Hon'ble the Supreme Court in **Gurudwara Sahib Versus Gram Panchayat, (2014) 1 SCC 669.** Respondent-plaintiffs, in reply, have not disputed the judgment cited supra. It is settled law that the plea of adverse possession in affirmative either under Article 65 or Section 27 of the Limitation Act cannot be taken.

The appeal stood admitted on 13.07.1990. The application is allowed and the appeal is taken on board for hearing today.

Concededly, the respondent-plaintiffs have filed the suit claiming ownership on the basis of long and settled possession on the ground of extinguishment of rights by two sons. In other words, set up the adverse possession.

The present appeal is disposed of in terms of the ratio decidendi

culled out in **Gurudwara Sahib's case (supra)**.

Mr. Mutneja seeks liberty of this court to take appropriate remedy in accordance with law in terms of the observations culled out in the judgment cited supra and does not press the application for mesne profits in the present appeal. Civil Misc.No.6434-C of 2018 in view of the statement stands dismissed. However, this observation of mine will not create impediment vis-a-vis the respective stands and in case any proceedings for taking the possession in accordance with law are initiated.

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 and decision thereof could be without framing the substantial questions of law. 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.

Before I could part with the judgment, Mr. Mutneja has drawn the attention of this Court to the order dated 25.11.1991, whereby the trial court was directed to submit the report in view of the additional evidence sought to be led by both the parties. The Additional District Judge, vide report dated 27.03.1992 has held that the plaintiffs are not exclusive owner

in possession of the suit property by virtue of adverse possession. The
aforementioned report is upheld.

November 27, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No