

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5434 of 2012 (O&M)

Date of Decision: 02.08.2022

Attar Singh and Others

... Petitioner(s)

Versus

Nihal Singh (Since Deceased) through LR's and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.A. Sheoran, Advocate
for the appellant(s).

Mr. H.S. Kasan, Advocate
for the respondents.

Anil Kshetarpal, J.

CM-5188-C-2022

1. In view of “no objection” by the learned counsel representing the appellants, the application for bringing on record the legal representatives of respondent No.1-Nihal Singh and respondent No.2-Balmukand, is allowed, subject to all the just exceptions. The proposed legal heirs are permitted to be brought on record as the legal heirs of the respondent No.1-Nihal Singh and respondent No.2-Balmukand, for the purpose of defending the present appeal.

RSA-5434-2012

2. The regular second appeals in the States of Punjab, Haryana and Union Territory, Chandigarh, are governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure,

(Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.

3. The defendants assail the correctness of the judgment and decree passed by the learned First Appellate Court while reversing the judgment and decree passed by the learned trial Court. The plaintiffs have been granted a decree of permanent injunction restraining the defendants from raising any construction or to change the nature of the *gair mumkin chah* (well) located on land measuring 1 kanal and 16 marlas, comprised in rectangle No. 48 and khasra No. 27.

4. The learned trial Court has passed a decree of injunction simplicitor without giving any final finding on the ownership of the property.

5. The plaintiffs filed a suit claiming that a joint well for drinking water was dug in the land measuring 1 kanal and 16 marlas comprised in rectangle No. 48 and khasra No. 27 and the defendants have no right to construct or change its nature. The defendants, while contesting the suit, claimed that the property belongs to them being successor-in-interest of Sh.Moti Singh son of Sh.Pirdan. It was also claimed that the well was abandoned and was in dilapidated condition. The learned trial Court has partly allowed the suit, whereas the learned First Appellate Court has modified the judgment and decree passed by the learned trial Court. On appreciation of the pleadings, the learned trial Court has culled out the following issues:-

“1. Whether the plaintiff is entitled to the relief of injunction on the grounds as mentioned in the plaint? OPP

2. *Whether the suit is not maintainable in its present form?*

OPD

3. *Whether plaintiff has no cause of action to file the suit?*

OPD

4. *Whether suit is false and frivolous? OPD*

5. *Whether the plaintiff has no locus standi to file the suit?*

OPD

6. *Relief”.*

6. In order to prove their case, the plaintiffs have produced a copy of jamabandi for the year 2000-2001 which shows that the land measuring 1 kanal and 16 marlas is entered in the name of various persons including the plaintiffs.

7. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

8. The learned counsel representing the appellants contends that from a bare perusal of Ex.DX, which was prepared at the time of consolidation of holdings, and from the reading of column No.8, it is evident that the property was exclusively owned by Sh.Tirkha son of Sh.Moti Ram and grandson of Sh.Pirdan.

9. On a careful perusal of Ex.DX, it is evident that in column No. 9, the list of the persons who are co-owners have been given. It has been mentioned that there are as many as eight co-sharers including the predecessor-in-interest of the plaintiffs.

10. This is not a suit based on title. A limited relief of injunction has been prayed for. Prima facie, there is evidence to prove that a common

well is in existence over the property in dispute.

11. Keeping in view the aforesaid facts, the appeal is disposed of while maintaining the judgment and decree passed by the learned First Appellate Court. However, it is clarified that the parties shall be at liberty to prove their title and proceed accordingly.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 02, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No