

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2961 of 2016 (O&M)
Date of decision: 29.09.2022

Paramjit Kaur and others

..Appellants

Versus

Kamaljit Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pradeep Singh, Advocate, for
Mr. Mohd. Yousaf, Advocate
for the appellants.

Mr. A.S.Gill, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the concurrent findings of fact arrived at by the courts below, the plaintiffs have been forced to file the Regular Second Appeal.

3. In the considered view of the Court, the only question which arises for consideration is “Whether the Class-II heirs (sisters) are entitled to the possession of the property left behind by late Sh. Mukesh Kumar, their brother (who died issueless) in preference to his agnates as per the Hindu Succession Act, 1956 (hereinafter referred to as the '1956 Act')?”

the issue involved in the present case.

5. The allotment of the property in favour of late Sh. Mukesh Kumar is not in dispute. He died issueless on 09.06.1984. The defendants are the grand children of the paternal uncle of late Sh. Mukesh Kumar, whereas the plaintiffs are the sisters of late Sh. Mukesh Kumar.

6. Both the courts have dismissed the suit on the ground that the plaintiffs have failed to prove the allotment letter issued in favour of late Sh. Mukesh Kumar. In fact, the aforesaid allotment is not in dispute because the defendants themselves claim that the property was allotted to late Sh. Mukesh Kumar and after his death they started residing therein.

7. The defendants filed a suit for grant of decree of permanent injunction which remained pending till 2014. The plaintiffs filed the present suit for possession in 2012.

8. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

9. The learned counsel representing the respondents contends that the plaintiffs have failed to prove the ownership of late Sh. Mukesh Kumar. He further submits that the suit filed by the plaintiffs is beyond the prescribed time and the plaintiffs have failed to seek declaration.

10. The learned counsel representing the respondents does not dispute that the plaintiffs are the Class-II heirs who have preferential rights in comparison to the rights of the defendants (agnates) as per the 1956 Act. The sisters of the deceased Hindu fall in category II of Schedule II of the Hindu Succession Act, 1956, whereas the defendants are the agnates. Section 8 of the 1956 Act provides for the rules of succession of a Hindu

Male dying intestate and the same is reproduced as under:-

Section-8-General rules of succession in the case of males.—*The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter*

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(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

11. Thus, the issue is answered in affirmative and the sisters who are Class-II heirs (petitioners) are entitled to the property from the grandchildren of the paternal uncle of the deceased.

12. As regards the first argument of the learned counsel representing the respondents, it may be noted that the defendants did not dispute that the plot in question was allotted to late Sh. Mukesh Kumar who constructed the house. In such circumstances, whatever rights came to be conferred on late Sh. Mukesh Kumar, the same would stand inherited by the plaintiffs. Once the allotment in favour of late Sh. Mukesh Kumar was not disputed by the defendants while filing the written statement, the plaintiffs were not required to prove that fact. It is well settled that a fact which has been admitted is not required to be proved, generally.

13. The next argument of the learned counsel representing the

respondents is with respect to limitation.

14. As per Article 65 of the Limitation Act, 1963, the limitation for filing the suit for possession on the basis of right, title or interest would begin to run from the date on which the defendants openly claim that their possession is adverse to the true owner. It is evident that the defendants's suit for grant of permanent injunction remained pending till 2014, whereas this suit was filed in the year 2012. The defendants do not claim that their possession is adverse to the rights of late Sh. Mukesh Kumar or his heirs.

15. Before closing the judgment, this Court is compelled to make an observation that an officer at the level of superior judiciary has failed to even understand the actual issue involved in the case.

16. Hence, let a copy of the judgment be forwarded to the Administrative Judge of the concerned Additional District Judge, wherever posted.

17. With these observations, the appeal is allowed.

18. All the pending miscellaneous applications, if any, are also disposed of.

September 29, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*