

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

**RSA-4662 of 2014 (O&M)  
and other connected cases  
Date of decision: 08.09.2022**

**Garibu**

**..Appellant**

**Versus**

**Kachhwa Scheduled Caste Land owners Coop. Society Ltd.**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Ranjit Saini, Advocate  
for the applicant-appellant (in RSA-4662 of 2014)

Ms. Sukhmani Patwalia, Advocate  
Mr. Adesh Pannu, Advocate  
Mr. Gunjeet Brar, Advocate  
for the appellant (s) (in RSA-3295, 3006, 3007-2014, 5867-  
2015 and 995-2018).

Mr. Vikas Mehsempuri, Advocate  
for the appellant(s) (in RSA-6805-2016 and 7587-2018)

Mr. K.K.Garg, Advocate and  
Mr. R.P.Daaria, Advocate  
for the respondent.

**ANIL KSHETARPAL, J(Oral)**

**C.M.No.6278-C-2022**

1. For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives of deceased-Garibu-the sole appellant mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this appeal only.

2. The amended memorandum of parties is taken on record.

**MAIN**

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. This batch of 8 Regular Second Appeals have come up for final disposal. Seven appeals have been filed against the concurrent findings of fact arrived at by the Courts below, whereas Regular Second Appeal No.4662 of 2014 has been filed against the judgment passed by the First Appellate Court, wherein the judgment of the trial court has been reversed.

3. As many as 8 suits were filed for grant of decree of possession by the plaintiff (respondent-society herein). The respondent-society has been constituted to look after the welfare of persons belonging to Scheduled Caste. The land has been allotted by the State Government to the respondent-society in order to provide sustenance to the members of the respondent-society, who are downtrodden. The appellants in various appeals claim to be either in possession on the basis of a sale agreement or an oral mortgage allegedly executed by the members of the respondent-society. No resolution of the society authorizing its members to execute the sale agreement or the oral mortgage has been placed on file.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

5. The learned counsel representing the different appellants have challenged the judgments and decrees passed by the courts below on the

following grounds:-

- (1) The suit filed by the plaintiff (society) for possession was beyond the prescribed time as the appellants are proved to be in possession of the property for quite some time.
- (2) Sh. Pala Singh, who filed the suit on behalf of the respondent-society was not even the member of the society, hence the suit could not be filed.
- (3) The original record of the respondent-society has not been produced and therefore, the suit was not maintainable.

6. Per contra, the learned counsel representing the respondent-society contends that there is no ground to interfere with the findings of fact arrived at by the courts below. He submits that Sh. Pala Singh had filed the suit on behalf of the respondent-society on the basis of a resolution and there is no requirement that the suit should be filed through a member only. He submits that Pala Singh's wife as well as uncle are members of the respondent-society.

7. An application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 has been filed in Regular Second Appeal No.4662 of 2014, in order to produce copies of jamabandies for the year 1986-87, 1991-92 and khasra girdwari from 1987 to 1992. Even these jamabandies clearly show that the plaintiff-society is the owner of the property. At the most, the appellant-Garibu wants to prove that he is in possession since 1985 in the capacity of a mortgagee. It may be noted here that it is not the case of the appellant-Garibu that the respondent-society ever mortgaged the property in

his favour.

8. The respondent-society is a juristic person. It has to act in accordance with the procedure prescribed. In the absence of resolution of the Managing Committee or any rule authorizing members to mortgage the property of the respondent-society, there is no substance in the argument of the appellant.

9. With regard to the argument that the suit is time barred, it may be noticed that the plaintiff has filed a suit for possession which shall be governed by Article 65 of the Schedule attached to the Limitation Act, 1963. In column no.3 of Article 65 of the Limitation Act, 1963, it is provided that the time from which the period shall begin to run would be when the possession of the defendant becomes adverse to the plaintiff. The defendants do not claim that their possession has become adverse.

10. The attention of the court has also not been drawn to any rules or regulation restricting the respondent-society from authorizing any other person except its member to file the suit. The society, being a juristic person, can authorise any person to file a suit by passing a resolution to that effect.

11. As regard the argument that the original record of the respondent-society has not been produced before the Court, it may be noted that the ownership of the respondent-society is not in dispute. The revenue record which holds a presumption of correctness proves that the respondent-society is the owner of the property. Though, such presumption is rebuttable, however, the appellants have not led any evidence to rebut this fact.

12. Consequently, finding no merit, all the appeals are ordered to be dismissed.

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

September 08, 2022  
*nt*

(ANIL KSHETARPAL)  
JUDGE

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