

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 383 of 2023 (O&M)****Date of Decision: 03.07.2023**

Sunheri

... Appellant(s)

Versus

Sarwan Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vivek Suri, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

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 v. Chandrika and Others (2016) 6 SCC 157.***

2. While challenging the concurrent finding of facts arrived at by both the Courts below, the plaintiff has filed the present regular second appeal.

3. The plaintiff's suit for grant of decree of declaration to the effect that she is the owner to the extent of 1/9th share in the land measuring 125 kanals and 5 marlas has been dismissed by both the Courts below. She claims that the property is the ancestral coparcenary property in the hands of her father, therefore, the judgment and decree passed on 25.07.1990 on the basis of the family settlement is null and void.

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4. Ram Kishan (defendant No.5), on the basis of the family settlement, acknowledged his four sons as the owners of the property vide judgment and decree dated 25.07.1990. The appellant has filed a suit on 27.08.2013 claiming that such decree is null and void as her father has no right to transfer the property. The trial Court dismissed the suit after appreciating the evidence produced by the plaintiff. The defendant No.5 claimed that the property was neither ancestral nor coparcenary. It has come in evidence that the grandfather of the appellant received the property through a court decree. It has further been found that the plaintiff has failed to connect the mutation No. 530 (Ex.PW.2/A) with the suit property. Moreover, the suit was filed after a period of 23 years.

5. The learned counsel representing the appellant has, though, made a sincere endeavour, however, failed to draw the attention of the Court to any substantive error either in the appreciation of evidence or otherwise.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of the facts recorded by both the Courts below. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

July 03, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No