

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2123 of 2019 (O&M)

Date of Decision: 08.08.2023

Rakesh Kumar

... Appellant(s)

Versus

Parkash Lal and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naveen Batra, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-5755-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 13 days in re-filing the appeal is condoned.

CM-5756-C-2019

2. For the reasons stated in the application, the same is allowed and delay of seven days in filing the appeal is condoned.

RSA-2123-2019

3. 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*.

4. The concurrent findings of fact arrived at by both the Courts below are challenged by the plaintiff in this second appeal.

5. A suit for grant of decree of permanent injunction restraining the defendants from raising construction or planting trees on the suit land has been dismissed by both the Courts below. The plaintiff claims that he is a co-owner with the defendants and an application for partition is pending. The defendants, while contesting the suit, claim that in a family settlement, the parties divided the land for about 45 years back and they continued to be in possession of their respective shares. Both the Courts below, on the appreciation of evidence, have concurrently found that the plaintiff has failed to make out any case for grant of decree of injunction, particularly when he is not in the exclusive possession of the property, whereas the defendants are in the exclusive possession thereof.

6. In any case, the First Appellate Court dismissed the appellant's appeal on 04.07.2018. Since then, a period of five years have elapsed.

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

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

(Anil Kshetarpal)
Judge

August 08, 2023

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No