

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 457 of 1990 (O&M)****Date of Decision: 03.10.2023**

Ramesh Kumar (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Smt. Parkash Wanti Jain and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Adarsh Jain, Advocate
for the appellant(s).Ms. Bhavna Kapur, Advocate
for the respondents.**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. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed in this second appeal filed by the plaintiff.

3. The plaintiff's suit for the grant of decree of possession by way of partition to the extent of 2/3rd share has been dismissed by both the Courts below. The plaintiff has claimed that late Sh.Munshi Ram, during his life time, had adopted him and the suit property is a joint hindu family ancestral property, therefore, the sale deeds executed by late Sh.Munshi

Ram and his wife on 21.01.1977 and 29.08.1978, respectively, are illegal, null and void, has been concurrently dismissed by both the Courts below.

4. The defendants, while contesting the suit, claimed that the plaintiff was never adopted by late Sh. Munshi Ram and the nature of property is not ancestral. The First Appellate Court has also held that the plaintiff has failed to prove the custom to prove that the property was inalienable.

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

6. The learned counsel representing the appellant contends that the concerned official from the school has been examined, which proves that the plaintiff is the adopted son of late Sh. Munshi Ram. The learned counsel submits that both the Courts below have erred in overlooking the same. He further submits that an application for leading additional evidence was filed before the First Appellate Court which was wrongly dismissed.

7. On the other hand, the learned counsel representing the respondents submits that even if the plaintiff is proved to be the adopted son, still he has no right particularly when the suit was filed beyond the prescribed period of limitation. He submits that the sale deeds executed in January, 1977 and August, 1978, have been challenged by filing a suit in the year 1983.

8. This Court has considered the submissions. It is evident that though the appellant examined the Clerk of the School, however, he never produced the admission form to prove that late Sh. Munshi Ram had ever got him admitted in the school as his adopted son. Moreover, the appellant has

not produced his wedding invitation card as well as the original bill dated 03.07.1977. In any case, his suit was filed beyond the prescribed period of limitation. Furthermore, the appellant has failed to prove the custom which, in turn, would ascertain that in the family, the property could not be alienated. It is evident that the civil cases are required to be decided on preponderance of the probabilities.

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

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

(Anil Kshetarpal)
Judge

October 03, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No