

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 2876 of 2019 (O&M)****Date of Decision: 24.08.2023**

Rajwant Kaur (Died) through her Legal Representatives

... Appellant(s)

Versus

Gram Panchayat, Village Karial, Tehsil Ajnala, District Amritsar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. G.S.Nagra and Mr. K.S.Rawat, Advocates
for the appellant(s).**Anil Kshetarpal, J.****CM-7936-C-2019**

1. For the reasons stated in the application, the same is allowed and delay of 18 days in filing the appeal is condoned.

CM-7937-C-2019

2. In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all just exceptions. The proposed legal representatives, named in para 3 of the application, are the Class-I heirs of appellant-Rajwant Kaur, who is stated to have died on 20.02.2018. They are permitted to be brought on record as the legal heirs of the appellant-Rajwant Kaur, for the purpose of prosecuting the present appeal.

RSA-2876-2019

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 correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed by the plaintiff in this second appeal.

5. It is the case of the plaintiff that she is owner of the land measuring 24 kanals, which, in the revenue record, is recorded as *Mushtarkan Malkan Rakba Hasab Rasad Khewatwar*. The plaintiff claimed that the land in dispute is an unutilized land which remained for the common purpose during the consolidation of holdings after imposing the pro-rata cut.

6. The Appellate Court has refused to grant the declaration, however, has granted injunction restraining the defendants from forcibly dispossessing the plaintiff. In fact, the plaintiff wanted the Civil Court to grant declaration with respect to the property in dispute.

7. As per the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”), the appropriate remedy for deciding the question, “whether the property vests in the Gram Panchayat or not” is exclusively triable before the Court of the Collector under Section 11 of the 1961 Act. Moreover, in *State of Haryana versus Jai Singh and others reported as 2022 (2) RCR (Civil) 803*, the Supreme Court has held that the entire land reserved for the common purpose by applying the pro-rata cut to be applied by the Gram Panchayat for present and future needs of the village community cannot be partitioned amongst the proprietors.

8. 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.

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

August 22, 2023
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned

:Yes/No

Whether reportable

: Yes/No