

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4391 of 2011 (O&M)

Date of Decision: 18.08.2023

Babu Lal

... Appellant(s)

Versus

Smt. Gaindi Devi and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rakesh Nehra, Senior Advocate
with Mr. Chirag Kundu, Mr. Saurabh Bhorla and
Mr. Ankit Yadav, Advocates, for the appellant(s).

Mr. B.K.Bagri, Advocate
for the respondent No. 1 to 4.

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 by the plaintiff in this second appeal.

3. A civil suit for the grant of decree of possession by way of partition of the residential property located in the village has been dismissed by both the Courts below. The plaintiff claims that the aforesaid property is joint, therefore, he is entitled to its one-half share, whereas the defendants, while contesting the suit, claim that the property in dispute was the self-

acquired property of late Sh.Ghisa Ram, predecessor-in-interest of the defendants and the plaintiff has no right therein. It was also asserted that late Sh.Ghisa Ram had constructed the house after getting the building plan sanctioned from the Municipal Committee, Bawal, in the year 1969 and the electricity and water connections, voter list and ration card were sanctioned in the name of late Sh.Ghisa Ram. In fact, the plaintiff and late Sh.Durga Parsad (father) used to reside in New Delhi, whereas late Sh.Ghisa Ram was settled in the village. Both the Courts below have found that when late Sh.Ghisa Ram constructed the house, the plaintiff never raised any objection. No document to prove that the property was originally owned by the predecessor-in-interest of the parties, was produced. Undoubtedly, before the First Appellate Court, an application under Order XL1 Rule 27 of the Code of Civil Procedure, 1908, was filed to produce the *khasra paimaishi* of the abadi, however, the same was dismissed by the First Appellate Court.

4. The suit property that consisted of a residential house was constructed on the 100 square yards of the plot which is located in the abadi of the village. The family of late Sh. Ghisa Ram is exclusively residing there after its reconstruction from the year 1969 without any interference from the plaintiff. Moreover, the sister of late Sh. Ghisa Ram and Babu Lal appeared in evidence and stated that the property was purchased by late Sh. Ghisa Ram.

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

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

(Anil Kshetarpal)
Judge

August 18, 2023
“DK”

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