

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2437 of 2022 (O&M)

Date of Decision: 12.12.2023

Anju Bala and Others

... Appellant(s)

Versus

Rajbir

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Mohammad Arshad and Mr. Salman Ahmad, Advocates
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and 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. In this regular second appeal, the correctness of the concurrent findings of facts, arrived at both the Courts below, is challenged by the defendants.

3. The plaintiff, while filing the suit, asserted that Surender son of Ram Sarup was a co-owner of the land measuring 1 biswa and 10 biswansi comprised in khasra No. 216 and he is in possession of the same. The plaintiff's father purchased the property in dispute to extend his house and, thereafter, gifted it to the plaintiff vide gift deed No. 3729/1 dated

06.03.2013. The defendants, while contesting the suit, claimed that Surender

was not the owner of the land measuring 1 biswa and 10 biswansi.

4. Both the Courts below, on the appreciation of the evidence, have concurrently found that the plaintiff is in the exclusive possession of the suit property, therefore, the defendants have no right to create obstructions in the plaintiff's construction work.

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

6. The learned counsel representing the appellants submits that there is a preliminary decree of partition in favour of appellants declaring that they are also the co-owners in the khasra No. 227.

7. This Court has considered the submissions of the learned counsel representing the appellants. Firstly, in this case, the suit property is comprised in khasra No. 216 and not 227. Secondly, this suit was filed only for the grant of decree of permanent injunction. Moreover, the learned counsel representing the appellants admits that the judgment declaring the plaintiff to be the owner in khasra No. 227 is not a part of the record.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of the 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.

(Anil Kshetarpal)
Judge

December 12, 2023

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No