

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 556 of 2019 (O&M)

Date of Decision: 31.10.2023

Baldev Raj

... Appellant(s)

Versus

Surja (Deceased) through his Legal Heirs and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vijay Pal, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-1258-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 75 days in filing the appeal is condoned.

RSA-556-2019

2. 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*.

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

4. The plaintiff has filed a suit for the grant of possession against the respondents (tenants). The plaintiff claims that the respondents have abandoned their tenancy as they failed to cultivate the land. The defendants

admitted the relationship, however, disputed that the possession of the land has been abandoned. It was claimed that the lease money is being regularly paid to the plaintiff through Court. Both the Courts below, on appreciation of the evidence, have come to a conclusion that the jurisdiction to order eviction of the tenant of the agricultural land is regulated by the provisions of the Punjab Tenancy Act, 1887 (hereinafter referred to as “the 1887 Act”) read with the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as “the 1953 Act”). Thus, both the Courts below have held that the appropriate remedy for the appellant is to file an eviction petition under the aforesaid Acts in the Court of competent jurisdiction i.e. the Assistant Collector.

5. The learned counsel representing the appellant submits that the First Appellate Court has also recorded the same findings on the merits of the case which would come in his way when he files a petition before the Court of the Assistant Collector.

6. This Court has considered the submissions. Once, it is well settled that if the Court comes to a conclusion that it has no jurisdiction to decide the matter, any observation made on the merits of the case shall not be binding on the Court of competent jurisdiction.

7. Keeping in view the aforesaid facts, the present appeal is disposed of with the observation that the observations made by the First Appellate Court shall not be binding on the Court of the Assistant Collector while deciding the petition under the provisions of the 1887 Act read with the 1953 Act.

8. The learned counsel representing the appellant has informed the

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Court that two other connected regular second appeals i.e. Regular Second Appeal No. 3548 of 2018 and Regular Second Appeal No. 1773 of 2019 are pending on the identical issues for 09.11.2023 and 18.04.2024, respectively.

The office is directed to solicit orders from the Hon'ble Chief Justice for listing both the aforesaid appeals for hearing on 09.11.2023, in the urgent list, as *prima facie*, the matter is covered by the view taken in this appeal.

The office is also directed to inform the learned counsel representing the parties in both the aforesaid appeals.

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

(Anil Kshetarpal)
Judge

October 31, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No